

## **ORDINANCE NO. 2, SERIES 2021**

**AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO POWDER RIVER ENERGY CORPORATION TO CONSTRUCT, ACQUIRE, OPERATE AND MAINTAIN AN ELECTRIC SYSTEM IN THE TOWN OF UPTON, WYOMING, AND TO FURNISH ELECTRICITY TO THE TOWN AND THE INHABITANTS THEREOF, AND TO USE THE STREETS, ROADS, ALLEYS AND OTHER PUBLIC PLACES WITHIN THE TOWN; LENGTH OF FRANCHISE; FRANCHISE FEE; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF UPTON, WESTON COUNTY, WYOMING:**

### **Section 1: Right to Construct, Operate and Maintain**

Powder River Energy Corporation, hereinafter called PRECorp, a corporation organized and existing under the laws of the State of Wyoming, its successors and assigns, is hereby granted a franchise by the Town of Upton, Wyoming, hereinafter called Town, to construct or acquire, either or both, and thereafter to operate and maintain electric facilities consisting of, without limitation, lines, generating plants, substations, transformers, switches, and appurtenances, within the limits of the Town for the purpose of generating and supplying electric energy for light, heat and power; to furnish electric energy for light, heat and power for public and private use within the Town and to transmit electricity through and beyond the Town; to construct, reconstruct, maintain and operate electric transmission and distribution lines with all necessary appurtenances, including without limitation, poles, wires, anchors, anchor rods, and transformers on, over, along, upon, under, or across the public streets, roads, alleys, or other public thoroughfares of the Town; and to make all necessary excavations in the public streets, roads, alleys or other public thoroughfares and to cut and trim all trees or shrubbery insofar as may be necessary to keep them clear of the transmission and distribution lines and appurtenances, all subject to the following terms and conditions.

### **Section 2: Construction, Maintenance, and Operation**

- A. The electric facilities shall be constructed, operated and maintained in a proper workmanlike manner so as to afford all reasonable safeguards and convenience to the public. The Town shall be given at least 48 hours' notice in advance of any scheduled repairs, maintenance, or construction within the Town limits. Emergency maintenance or repair may be done without notice. Further, the Town, with permission of the affected landowners, may waive any notice requirements.
- B. All poles, wires, anchors, anchor rods, and other appurtenances which are located on, over, along, upon, under, or across the public streets, roads, alleys, or other property of the Town shall be placed so as not to interfere with traffic on the traveled portion of such property; and PRECorp, after the construction or reconstruction of the electric

transmission or distribution lines, will restore to their original condition at its own expense, the streets, roads, alleys, or other public thoroughfares on which such lines have been constructed. All electrical lines and facilities placed in the Town shall be mapped. Their location, types and use shall be given to the Town along with the map(s) illustrating their locations.

- C. Whenever the poles, anchors, anchor rods, transformer, and other appurtenances located on, over, along, under, or across the public streets, roads, alleys, or other public thoroughfares interfere with the widening or improvement of such public thoroughfare, PRECorp shall, at the request of the Town, move its poles, anchors, anchor rods, transformers, and other appurtenances at its own expense to such other reasonable location as may be designated by an authorized representative of the Town.
- D. The services rendered by PRECorp shall be continuous except that PRECorp shall not be held accountable for a failure of service which is caused by acts of God, strikes or other causes beyond the control of PRECorp.
- E. PRECorp will comply with all reasonable rules and regulations of the Town and with all ordinances now in effect or which may hereafter be passed insofar as they do not conflict with the terms or purposes of the franchise herein granted.
- F. For and in consideration of the rights and privileges herein granted, PRECorp, its successors and assigns, shall at all times during the term of this franchise, maintain a proper and efficient electric power and light system for the purpose of supplying the Town and its inhabitants with electric energy at rates as shall be reasonable and fixed and determined in the manner provided by law.
- G. The Town agrees to defend, indemnify, and hold harmless PRECorp from and against any and all claims, actions, causes of actions, liabilities, damages, losses, and expenses on account of, arising out of, or in any way connected with or incidental to the construction, operation, or maintenance of electrical facilities by PRECorp, the generation and supply of electric energy by PRECorp, or the transmission and distribution of electric energy by PRECorp arising from the negligent or intentional acts or omissions of the Town, its agents, employees, or contractors.

PRECorp agrees to defend, indemnify, and hold harmless the Town from and against any and all claims, actions, causes of actions, liabilities, damages, losses, and expenses on account of, arising out of, or in any way connected with or incidental to the construction, operation, or maintenance of electrical facilities by PRECorp, the generation and supply of electric energy by PRECorp, or the transmission and distribution



of electric energy by PRECorp arising from the negligent or intentional acts or omissions of PRECorp, its agents, employees, or contractors.

**Section 3: Length of Franchise**

The Town hereby grants PRECorp the aforementioned franchise for a period of five years (5 years) commencing immediately upon passage of this ordinance. Consideration may be given to PRECorp for continued operation in the Town after expiration of this franchise, but the Town is not obligated to extend this franchise and no option to extend this franchise shall be implied by the terms and conditions herein.

**Section 4: Franchise Fee**

In consideration of the Town granting of this nonexclusive franchise, PRECorp shall pay the Town a franchise fee of 2 percent (2%) of its gross revenue generated from the sale of electricity within the Town limits. The term "gross revenue" shall mean and be construed as PRECorp's gross revenue derived from the sale of electrical energy to customers within the Town limits. PRECorp shall be allowed to reduce said gross revenue by subtracting any uncollectible accounts from the gross revenue. PRECorp will provide the Town with an accounting of all fees generated and based upon filed tariffs in effect for the calendar year for which the franchise fee is paid. The franchise fee for the previous calendar year for which the franchise agreement was in effect shall be paid on or before April 15<sup>th</sup> of each year, and PRECorp shall provide the Town with an accounting of each payment so that the Town may review the payment made. If there is a disagreement, PRECorp shall cooperate with the Town and provide access to such records as the Town may reasonably request to verify the amount of the payment.

**Section 5: Repealing All Ordinances in Conflict Herewith**

Any ordinance of the Town in conflict herewith be and the same is hereby repealed.

**Section 6: Severability**

Should the courts of this State or the United States declare any section, provision, paragraph, clause, sentence, phrase or part of this ordinance invalid or unconstitutional or in conflict with any other section, provision, paragraph, clause, sentence, phrase or part thereof of this ordinance, then such decision shall affect only the section, provision, paragraph, clause, sentence, phrase or part thereof declared to be unconstitutional or unauthorized and shall not affect any other part of this ordinance.

**Section 6: Providing for an Effective Date**

This ordinance shall be effective upon completion of all readings and other acts required by law.

DATED this 10<sup>th</sup> day of August, 2021.

Attest:

TOWN OF UPTON, WYOMING

BY: Kelley Millar  
Kelley Millar, Town Clerk  
Town of Upton

BY: Travis Beck  
Travis Beck, Mayor  
Town of Upton

(SEAL)

Passed on first reading: 06/08/2021

Passed on second reading: 07/13/2021

PASSED, APPROVED AND ADOPTED on third reading this 10<sup>TH</sup> day of August, 2021.

CERTIFICATION OF PUBLICATION

I hereby certify the foregoing Ordinance No. 2, Series 2021 was published once in the Weston County Gazette on the 19<sup>th</sup> day of August, 2021.

Kelley Millar  
Kelley Millar, Town Clerk