

ORDINANCE NO. 15-04-01

AN ORDINANCE IMPOSING AN ELECTRICITY INFRASTRUCTURE MAINTENANCE FEE UPON THE DELIVERY OF ELECTRICITY WITHIN THE VILLAGE OF MAHOMET, COUNTY OF CHAMPAIGN, STATE OF ILLINOIS

WHEREAS, the Village of Mahomet had a previous franchise agreement with Ameren Illinois Company d/b/a Ameren Illinois, which expired by its own terms after 50 years on March 17, 2015; and

WHEREAS, the Village has determined that imposing an electricity infrastructure maintenance fee upon the delivery of electricity within the Village is desirous and in the best interest of the Village; and

WHEREAS, the Village wishes to negotiate and enter into a new franchise agreement with Ameren Illinois while implementing this electricity infrastructure maintenance fee, with approval from the Illinois Commerce Commission, with the first billing process issued on or after July 1, 2015, which the Village references as the date of implementation of the fee; and

NOW, THEREFORE, BE IT ORDAINED, by the President and Board of Trustees of the Village of Mahomet, Champaign County, Illinois, as follows:

Section 1 – Definitions. Used in this Ordinance, unless the context clearly requires otherwise:

- A. "Village" mean the Village of Mahomet, Illinois.
- B. "Electricity deliverer" means any person who uses any portion of any public rights or way of the Village for the purpose of distributing, transmitting or otherwise delivering electricity, regardless of its source, for use or consumption within the Village, and not for resale.

For the purposes of this definition, use of the public rights-of-way shall not include the use of real property pursuant to the terms of an easement, lease or other similar property interest held over property owned by the Village.

- C. "Delivery of electricity" means the distribution, transmission or other delivery of electricity through the use of the Village's public rights-of-way, regardless of the source of the electricity, for use or consumption within the Village, and not for resale. The term includes the delivery of electricity for use or consumption by the electricity deliverer, except for electricity used or consumed by the electricity deliverer for the production or distribution of electricity.

- D. "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company municipal corporation, the state or any of its political subdivisions, any state university, or a receiver, trustee, guardian or other representative appointed by order of any court.
- E. "Public rights-of-ways" means streets, alleys and similar public ways, and all areas over and under such public ways, title to which is owned by the Village, and which are dedicated exclusively to public use.
- F. "Purchaser" means any person who uses or consumes, within the corporate limits of the Village, electricity acquired in a purchase at retail.
- G. "Resale" includes any and all sales of electricity for the purpose of a subsequent sale to another, including the sale of electric energy within the meaning of the Federal Power Act (16 U.S.C. 824), but excluding the distribution of electricity to occupants of a building or buildings, or to a group of customers within the Village by a person who owns, controls or manages, or acts as agent for, the building, buildings or group of customers.

Section 2 – Mahomet Electricity Infrastructure Maintenance Fee Imposed.

- A. Pursuant to the Electricity Infrastructure Maintenance Fee Law (35 ILCS 645/1 *et seq.*) and any and all other relevant authority, there is hereby imposed an Electricity Infrastructure Maintenance Fee upon electricity deliverers, as compensation for granting electricity deliverers the privilege of using public rights-of-way, in an amount specified in Subsection B of this section. If more than one electricity deliverer is responsible for the delivery of the same electricity to the same customer, the fee related to that electricity shall be imposed upon the electricity deliverer who last physically used the public way for delivery of that electricity prior to its consumption.
- B. The amount of the infrastructure maintenance fee imposed under this section shall be at the following rates for kilowatt-hours delivered within the Village to each purchaser:
 - (i) For the first 2,000 kilowatt-hours of electricity used or consumed in a month: 0.53 cents per kilowatt-hour;
 - (ii) For the next 48,000 kilowatt-hours of electricity used or consumed in a month: 0.35 cents per kilowatt-hour;
 - (iii) For the next 50,000 kilowatt-hours of electricity used or consumed in a month: 0.31 cents per kilowatt-hour;
 - (iv) For the next 400,000 kilowatt-hours of electricity used or consumed in a month: 0.305 cents per kilowatt-hour;
 - (v) For the next 500,000 kilowatt-hours of electricity used or consumed in a month: 0.30 cents per kilowatt-hour;

- (vi) For the next 2,000,000 kilowatt-hours of electricity used or consumed in a month: 0.28 cents per kilowatt-hour;
- (vii) For the next 2,000,000 kilowatt-hours of electricity used or consumed in a month: 0.275 cents per kilowatt-hour;
- (viii) For the next 5,000,000 kilowatt-hours of electricity used or consumed in a month: 0.27 cents per kilowatt-hour;
- (ix) For the next 10,000,000 kilowatt-hours used or consumed in a month: 0.265 cents per kilowatt-hour;
- (x) For all kilowatt-hours of electricity in excess of 20,000,000 kilowatt-hours used or consumed in a month: 0.26 cents per kilowatt-hour.

- C. Notwithstanding any other provisions of this Ordinance, a fee shall not be imposed if and to the extent that imposition or collection of the fee would violate the Constitution or the statutes of the United States or the Constitution of the State of Illinois.
- D. The fee authorized by this section with respect to the kilowatt-hours delivered shall become effective beginning with the first bill issued on or after July 1, 2015.

Section 3 – Collection of Additional Charge by Electricity Deliverers.

- A. Any electricity deliverer making or effectuating a delivery of electricity shall pay the infrastructure maintenance fee to the Village Clerk as provided by Section 4 hereinbelow. The fee shall constitute a debt owed by the electricity deliverer to the Village.
- B. Any electricity deliverer may collect an amount equal to the fee imposed under this section from the purchaser using or consuming the electricity with respect to which the fee was imposed. The fee may be collected by the electricity deliverer from the purchaser as a separately stated charge on the purchaser's bill or in any other manner permitted from time to time by law or by the electricity deliverer's tariffs.
- C. The electricity deliverer shall be allowed credit for any portion of the fee related to deliveries of electricity the charges for which are written off as uncollectible; provided, that if such charges are thereafter collected, the electricity deliverer shall be obligated to pay such fee. For purposes of this section, any partial payment of a billed amount not specifically identified by the purchaser shall be deemed to be for the delivery of electricity.

Section 4 – Filing Returns and Payments by Electricity Deliverers. On or before the last day of each calendar month every electricity deliverer required to pay the infrastructure maintenance fee imposed by this Ordinance shall file with the Village Clerk a return and shall pay the fee attributable to electricity delivered to purchasers during the preceding calendar month. The return shall be filed on a form prescribed by the Village

Clerk, and shall contain such information as the Village Clerk may reasonably require.

Section 5 – Maintaining Books and Records. Every electricity deliverer required to pay the fee imposed by this Ordinance shall keep accurate books and records of its business or activity, including contemporaneous books and records denoting the transactions that gave rise, or may have given rise, to any tax liability under this Ordinance. The books and records shall be subject to and available for inspection by the Village Clerk at all times during business hours of the day.

Section 6 – Application of Other Revenue Provisions.

- A. The infrastructure maintenance fee imposed by this Ordinance is imposed in addition to all taxes, fees and other revenue measures imposed by the Village, the State of Illinois or any other political subdivision of the state; provided, however, that no fee or other compensation in addition to the fee provided in this Ordinance shall be required for the use of the public way by electricity deliverers except as provided in Subsections B and C below. Notwithstanding the provisions of any agreement or ordinance to the contrary, the Village hereby waives its right to receive, during the time the electricity infrastructure fee is imposed under this Ordinance, all fees, charges and other compensation from electricity deliverers for use of the public way pursuant to any franchise or similar agreement, except as provided in Subsections B and C below.
- B. Prior to March 17, 2015, the Village shall receive from any electricity deliverer, pursuant to any franchise or similar agreement, the amount of compensation payable under such agreement, less the amount of the electricity infrastructure maintenance fee imposed under this Ordinance for the same period.
- C. Nothing in this Ordinance prohibits the Village's reasonable exercise of its police powers over the public rights-of-way. In addition, an electricity deliverer shall be required, in accordance with its franchise agreement or similar agreement, to reimburse any special or extraordinary expenses or costs reasonably incurred by the Village as a direct result of damages to its property or public rights-of-way, such as the costs of restoration of streets damaged by an electricity deliverer that does not make timely repair of the damage, or for the loss of revenue due to the inability to use public facilities as a direct result of the actions of the electricity deliverer.

Section 7 – That all ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 8 – This Ordinance shall be effective immediately after its adoption and approval.

Upon motion by Trustee COIRAVY, seconded by Trustee Lynn, passed by the President and Board of Trustees of the Village of Mahomet, Illinois this 28th day of APRIL, 2015, by roll call vote, as follows:

Voting "aye" (names): COIRAVY, COOK, HARST, LYNN, OLIGER

Voting "nay" (names): _____

Abstained (names): _____



PASSED and APPROVED this 28th day of APRIL, 2015.

S. M. W.
Village President

Attest:

Cheryl Spruel
Village Clerk