

Title 9 ► Chapter 5

Electric Service Franchise

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Sec. 9-5-1 Definitions.

The following definitions shall be applicable in this Chapter:

- (a) **Village.** The Village of Merrilan, County of Jackson, State of Wisconsin.
- (b) **Utility Systems.** The facilities used for providing any public utility service owned or operated by the Village or agency thereof, including sewer and water service.
- (c) **Cooperative.** Jackson Electric Cooperative, a Wisconsin corporation, its successors and assigns.
- (d) **Notice.** A writing served by any party or parties on any other party or parties. Notice to the Cooperative shall be mailed to the Manager thereof at 119 Harrison Street, P.O. Box 546, Black River Falls, WI 54615. Notice to the Village shall be mailed to the Village Clerk, Village of Merrilan, 101 South Main Street, P.O. Box 70, Merrilan, WI 54754.
- (e) **Public Grounds.** Village parks and squares as well as land held by the Village for the purpose of open space.
- (f) **Public Ways.** Streets, avenues, alleys, parkways, walkways, and other public right-of-way within the Village.

Sec. 9-5-2 Grant of Authority; Franchise.

- (a) **Grant of Franchise.** The Village hereby grants the Cooperative the right to transmit and furnish electric energy for light, heat, power and other purposes for public use by the

Merrillan Elementary School within and through the limits of the Village. For these purposes, the Cooperative may construct, operate, repair and maintain an electric distribution system and electric transmission lines, including poles, pole lines, duct lines, fixtures, and any other necessary appurtenances in, on, over, under and across the public ways and public grounds of the Village. The Cooperative may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to the further provisions of this Chapter.

- (b) **Non-Exclusivity.** This Franchise and the rights, privileges, permissions, and authority granted hereunder are not exclusive, and there is hereby reserved to the Village the right, power and authority to grant, pursuant to Sec. 66.0061, Wis. Stats., as amended, similar rights, privileges, permission and authority to any person or persons, firm or firms, corporation or corporations at any time and from time to time.
- (c) **Initial Term and Automatic Extension.** The initial term of this Franchise shall commence on adoption of this Section and terminate at 12:00 p.m. (midnight) on January 1, 2016. Thereafter, unless otherwise agreed to in writing by the parties, this agreement shall be automatically renewed on an annual basis.
- (d) **Fees.** In March of each year, Jackson Electric Cooperative will pay the Village three percent (3%) of all dollar sales made during the prior calendar year to the Merrillan Elementary School. The obligation for this payment shall be retroactive to the date electric service was first provided to the Merrillan Elementary School (July 15, 1996).

Sec. 9-5-3 Restrictions.

- (a) The Cooperative facilities included in such electric distribution system, transmission lines and appurtenances thereto, shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over said public ways. The Cooperative's construction, operation, repair, maintenance and location of such facilities shall be subject to such reasonable regulations as may be imposed by the Village pursuant to charter, ordinance or statute.
- (b) The Cooperative shall not construct any new installations or service any other customer without receiving the prior written consent of an authorized representative of the Village Board for each new installation.
- (c) The Cooperative shall provide field locations for all its underground facilities when requested by the Village within a reasonable period of time. The period of time will be considered reasonable if it compares favorably with the average time required by the Cooperative to locate its own facilities.

Sec. 9-5-4 Tree Trimming.

The Cooperative is also granted the permission and authority to trim all trees and shrubs in the public ways and public grounds of the Village interfering with the proper construction, operation,

repair and maintenance of any poles, pole lines, and fixtures or appurtenances installed in pursuance of the authority hereby granted, provided the Cooperative shall identify and save the Village harmless from any liability whatsoever.

Sec. 9-5-5 Service Rates.

The service to be provided and the rates to be charged by the Cooperative for electric service to electric consumers in the Village are to be filed with the Village.

Sec. 9-5-6 Fees.

In March of each year, Jackson Electric Cooperative will pay the Village three percent (3%) of all dollar sales made during the prior calendar year to the Merrilan Elementary School. The obligation for this payment shall be retroactive to the date electric service was first provided to the Merrilan Elementary School (July 15, 1996).

Sec. 9-5-7 Relocation of Facilities.

- (a) Whenever the Village shall grade, regrade or change the line of any public way, or construct any Village utility system therein, the Village shall, in the proper exercise of its police power, and with due regard to seasonable working conditions only when absolutely necessary, order the Cooperative to relocate permanently its lines, services and other property located in said public way, the Cooperative shall relocate its facilities at its own expense. The Village shall give the Cooperative reasonable notice of plans to grade, regrade or change the line of any public way or to construct or reconstruct any Village utility system therein. However, after the Village has so relocated, if a subsequent relocation or relocations shall be ordered within one (1) year from and after the first relocation, the Village shall reimburse the Cooperative for such non-betterment relocation expense which the Cooperative may incur on a time and material basis.
- (b) Nothing contained in this franchise shall require the Cooperative to relocate, remove, replace or reconnect at its own expense its facilities where such relocation, removal, replacement or re-connection is for convenience and not of necessity in the construction or reconstruction of the Village utility system or extension thereof.
- (c) It is expressly understood that the right herein granted to the Cooperative is a valuable property right and the Village shall not order the Cooperative to remove or relocate its facilities without compensation when a public way is vacated, improved or re-aligned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the federal government or any agency thereof, unless the reasonable non-

betterment costs of such relocation and the loss and expense resulting therefrom are first paid to the Cooperative.

- (d) Nothing contained herein shall relieve any person(s) or corporations from liability arising out of the failure to exercise reasonable care to avoid injuring the Cooperative's facilities while performing any work connected with grading, or changing the line of any public way, or with the construction or reconstruction of any Village utility system.

Sec. 9-5-8 Indemnification.

The Cooperative shall indemnify, keep and hold the Village free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction maintenance, repair or operation of the Cooperative's electric facilities located in, on, over, under, or across the public ways and public grounds of the Village, unless such injury or damage grows out of the negligence of the Village, its employees, or agents, or results from the performance in a proper manner of acts reasonably deemed hazardous by the Cooperative, but such performance is nevertheless ordered or directed by the Village after notice of the Cooperative's determination. In the event a suit shall be brought against the Village under circumstances where the above agreement to indemnify applies, the Cooperative at its sole cost and expense shall defend the Village in such suit if written notice thereof is promptly given to the Cooperative within a period wherein the Cooperative is not prejudiced by lack of such notice. If such notice is not reasonably given as hereinbefore provided, the Cooperative shall have no duty to indemnify nor defend. If the Cooperative is required to indemnify and defend, it will thereafter have complete control of such litigation, but the Cooperative may not settle such litigation without the consent of the Village, which consent shall not be unreasonably withheld. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Cooperative; and the Cooperative, in defending any action on behalf of the Village shall be entitled to assert in any action every defense or immunity that the Village could assert in its own behalf.

Sec. 9-5-9 Vacation of Public Ways.

Except where required solely for a Village improvement project, the vacation of any public way or public ground, after the installation of electric facilities, shall not operate to deprive the Cooperative of its rights to operate and maintain such electric facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to the Cooperative.