

DRAFT

**TOWN OF ARRIBA
BOARD OF TRUSTEES PUBLIC HEARING
Monday, November 9, 2015
Arriba Town Hall, 711 Front Street, Arriba, CO 80804**

Call to Order Mayor Alex Flores called the hearing to order at 7:00pm. Roll call for the Arriba Town Board was read and those answering were Troy McCue, Jody Schiffers, Caleb Brent and Marcella Flores. Will Rowe and Karen Kovar were absent.

Public Audience included Gerald & Carolyn Steinsiek, Ted Grundmeier, Jay Spurling, Maria Root, Laurie Spurling, Jerry Norris, Beverly Langley, Mike Bekker, Doug Reisman, Lynn Francis, Tim Palfy, Leigh Anna Andersen, Jon Hart, Tom & Deanette Knight, Jeff Fike, Louise Skipper, Dave Churchwell with KC Electric Association, Kevin Penny, and Jeff Cure.

KC Electric Franchise Agreement Ordinance

Mayor Flores said that anyone who would like to ask questions or voice their opinions would each have 5 minutes to do so.

Jay Spurling asked how long the Agreement was for. Kevin Penny with KC Electric Association said that it was on page 4 of the Agreement Ordinance and the agreement was for 25 years. Jay Spurling asked if KC Electric buys power from Tristate, and asked how long KC Electric's contract was with Tristate. Dave Churchwell said that the contract is for 40 years, they'll renew in 2050. Jay Spurling asked if Tristate can change rates and change how power is bought from them and how often this can be done. Dave Churchwell said that any utility company can change their rates anytime they need to. Jay Spurling asked if the Town could ask KC Electric for any improvements to the electric system in town, such as having the electric infrastructure put underground. Kevin Penny said that if the Town wanted that it would be at the Town's expense. Jay Spurling said that there are grants available for that. Jay Spurling said that he thought a 25 year contract was much too long, a five year contract that has KC Electric make some improvement in town would be a more viable thing for the town. He said he realized that Arriba is one of KC Electric's smaller towns that they service. He said that he would like to see this town grow and be improved.

Dave Churchwell commented that one mile of underground 3 phase would cost \$80,000.

Jay Spurling said that he would like to reserve the remaining balance of his time.

Doug Reisman spoke about his hearing aid dog and how it is vital to his safety. He said that he would like to give the remainder of his time to Jeff Fike.

Mayor Flores said that there would be no reserving or giving remaining time to anyone.

Jeff Fike said that KC Electric is regulated by the Public Utilities Commission and the service area is guided by the State. Dave Churchwell said that wasn't true, they have certified territories, they are not regulated by Public Utilities Commission (PUC), but their certified service area is registered with the PUC. Jeff Fike asked if there was no

franchise agreement with KC Electric would the town still have power. Dave Churchwell said yes it would. Jeff Fike said that the biggest feature in the contract is that the Town of Arriba gets a 5% franchise fee, which is an electric tax, that's collected by KC Electric and paid to the Town. Jeff Fike asked who came up with the 25 year contract term. Dave Churchwell explained that is how long all their contracts are with the towns they serve. Jeff Fike asked why KC Electric's terms with Tristate is for 3 years. Dave Churchwell said that they don't have 3 year terms with Tristate, they signed a 40 year contract with Tristate in 2010. Dave Churchwell said that Tristate can change their rates at any time they deem necessary. Jeff Fike asked if the Town would be able to change anything within the contract, the way it is structured over the period of 25 years. Dave Churchwell said that he didn't know how you could compare the power supplier contract with this contract. Jeff Cure with KC Electric said that it would essentially take an agreement from both parties to make a change to the franchise agreement ordinance.

Jeff Fike said the Franchise Agreement Ordinance states "said cooperative (KC Electric) has made or may make extensive additions, alterations and improvements in the system for the maintenance of the electrical lines and facility within said town". He said that it also says in the last paragraph "if the Town desires to relocate the electric system such relocation shall be done at the sole expense of the Town". Jeff Fike asked what the Town was getting out of the deal. Dave Churchwell explained that if the Town decided to move half their block to the north that would mean the Town would have to pay KC Electric to move the electric poles and lines.

Jeff Fike said he proposed that line would be stricken from the contract. He said that he didn't know who negotiated on behalf of the Town but the contract needed some work. He said also it states "the Town is exempt from such franchise fees", he said that he had a better idea, why don't they give the Town free power. He said the Town's bill is only like \$1,700 a month.

Kevin Penny said that what that says is KC Electric is not going to charge the Town a franchise fee to be paid back to the Town.

Jeff Fike asked what about the vulnerability of the grid that he keeps hearing about, according to news sources the electric grid is very vulnerable to hacking. He said that he would like to see the Town invest the money, which would be under 2 million dollars, to get the whole thing put under ground, state of the art. He said that he found out from the Flagler Town Clerk that there is a bunch of money out there for infrastructure improvements and he found out from Trustee McCue that for solar within the area there is an 80% rebate, so if the Town spent \$100,000 over at the sewer farm, the Town would get 80% of that back, and thereby cut the electric bill substantially. Mayor Flores said that that ended Jeff Fike's 5 minutes. Jeff Fike objected saying that a person can reserve their time.

Jonathan Hart asked if the Franchise agreement isn't done and they still have power, what happens if a pole needed repaired, would KC Electric refuse to work on it. Dave Churchwell said that they wouldn't do that, they are a cooperative here for the town.

Trustee Brent asked what the importance was to have this agreement in place, he asked what it does. Kevin Penny said that it was a contract that they are going to serve this

municipality and do the things that are listed, part of it being if the Town grows in areas and they have to build it out more to that area. He said it just depends on what is going to happen in the Town of Arriba, it is the desire to take care of this municipality as they have. He said part of that is to go back to the history, is the Town satisfied with KC Electric, are they providing Arriba with a good electric service, KC Electric does not want to be against Arriba, or have Arriba against KC Electric.

Mayor Flores said he was happy with the electricity service provided by KC Electric. Beverly Langley said she didn't think it was such an issue that KC Electric is so bad, she said the people just feel that with everything that is going on to sign a 25 year contract a lot of things could change in that time, also the \$900 or whatever the Town receives from franchise fees we (the people) would like to put that back into good use, and the people would have to take that up with the Board, KC Electric will still provide service to Arriba no matter what without the contract. Kevin Penny said right now they wouldn't stop service to Arriba but he doesn't know the ramifications down the road, he said his guess was if Arriba didn't want KC Electric, Arriba would have to find someone else to provide electricity. Beverly Langley said she just thought 25 years was a long time with all the changes going on. Kevin Penny said that every contract they have with municipalities is 25 years. He said they were just coming off of a 25 year contract with the Town of Arriba. Beverly Langley said you take the 5% franchise fee back to the Town and we aren't benefitting that's why we're talking.

Dave Churchwell said that another way to look at it, the contract, is that the Town of Arriba is guaranteed to have good electric service for the next 25 years.

Jeff Cure said that this contract ensures that Arriba will be served in a good fashion, there is actually an agreement between the two parties. He said if the Town of Arriba requests to have a pole moved the Town would have to pay for it. He said if KC Electric decided to move a pole, the Town would not be charged for that, hypothetically if that parts not in the Agreement Ordinance and the Town requests that a pole be moved for a street improvement legally the Town would be obligated to pay that expense. He said that to him this was just notifying everyone this is how it works.

There was a question asked about the facility charge on electric bills, Dave Churchwell said that is KC Electric's fee and has nothing to do with the Town or the franchise fee. Beverly Langley wanted to know what the money the Town receives from the franchise fee was doing to better the Town. Mayor Flores said that it helps pay for the Town's electric bill.

Mayor Flores ended the hearing at 7:30pm.

Submitted by Josie Hart, Arriba Town Clerk

Signed by _____
Alex Flores, Mayor

Approved by the Board on:

ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO K.C. ELECTRIC ASSOCIATION, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN AN ELECTRIC SYSTEM IN THE TOWN OF ARRIBA, INCORPORATED, AND TO USE THE STREETS OR ALLEYS OF THE TOWN FOR SUCH PURPOSES, AND IMPOSING A SURCHARGED FRANCHISE FEE OF FIVE PERCENT, THE ORDINANCE DOES REPEAL ORDINANCE NO. 107

WHEREAS, K.C. Electric Association, a cooperative corporation, organized and existing under the laws of the State of Colorado, hereinafter termed the "Cooperative" has heretofore and is now operating and maintaining an electric system within the Town of Arriba, Incorporated, hereinafter termed the "Town" under an electric franchise and subsequently assigned to this cooperative; and

WHEREAS, the said cooperative has made or may make extensive additions, alterations and improvements in the said system for the maintenance of the electric lines and facilities within said Town; and

WHEREAS, it would be to the mutual benefit of the Town and the cooperative to have the electric system of the Town maintained and would further be to the mutual benefit of the Town and the cooperative for the Board of Trustees to grant a franchise to the cooperative to construct, operate and maintain an electric system on terms that will assure the full control and use of the streets or alleys to the public, the safety of the persons and property of the public so far as the maintenance of the system is concerned and the continuity of service upon the same classifications of service in the Town as the classifications of service in other towns served by the cooperative and upon the same rates and charges for electric service to consumers and users in the Town in each classification as the rates and charges of the cooperative in other towns of the same class served by it; and

WHEREAS, the cooperative has duly published its intention of applying for a franchise as provided by law,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ARRIBA, INCORPORATED, STATE OF COLORADO:

That K.C. Electric Association, its successors and assigns, is hereby granted a franchise:

(a) To construct, operate and maintain an electric system with all fixtures and appurtenances necessary or advisable for the proper operation and maintenance of said system within the limits of the Town in order to supply power for public and private use within the Town and for the transmission of electricity through and beyond the Town,

(b) To use the streets and alleys and public places of the Town for such purposes; and

(c) To cut and trim all trees and shrubbery insofar as may be necessary to keep them clear of the poles and wires of the electric system and to make all necessary excavation in the public streets, roads, alleys or other public thoroughfares;

(d) To furnish electric energy for public and private use within the Town and to transmit electricity through and beyond the Town.

This franchise is granted upon the following terms:

First: The electric system shall be constructed, operated and maintained in a proper workmanlike manner so as to afford all reasonable safeguards to the public.

Second: All poles, wires, transformers, substations and other facilities of every kind and nature, forming a part of said electric system, shall be so erected, operated and maintained so as not to interfere with traffic on the traveled portions of the streets or alleys; and the cooperative, after the construction or reconstruction of said electric system, or any part thereof, shall restore as close to their original condition the streets or alleys on which said poles, wires, transformers, substations and other facilities have been erected, operated and maintained insofar as this is practicable. If the Town desires to relocate any electric system, such relocation shall be done at the sole expense of the Town.

Third: The Cooperative will comply with all reasonable rules and regulations of the municipality 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.

Fourth: This franchise shall be effective for a period of twenty-five (25) years, measured from the date of the final passage of the Ordinance granting this franchise.

Fifth: The Board of Trustees of the Town, as a condition for granting this franchise by Ordinance, have heretofore determined that the best interest of the Town and its inhabitants and consumers will be best served by imposing a franchise fee on the gross revenue derived by the cooperative from the sale of electric power to the inhabitants and consumers of the Town, the Town being exempt from such franchise fee.

Therefore, there is hereby imposed a franchise fee equal to five percent (5%) of the gross revenue derived by the cooperative from the gross sale of electric power to the inhabitants and consumers of the Town, excluding the gross revenue derived by the cooperative from the sale of electric power to the Town.

The payment of the franchise fee being surcharged to the inhabitants and consumers of the town and imposed upon the gross revenue received by the cooperative from the sale of electric power to the inhabitants and consumers of the Town shall be paid to the Town on a quarterly basis. At the time such

quarterly payment is made, the cooperative shall file with the quarterly payment a certification of such revenue. The effective date of the imposition of the franchise fee shall be the effective date of this franchise by Ordinance.

In the event any applicable legislation or final Order of Court were to subsequently prevent the payment of the franchise fee, the parties agree to revise this agreement so as to otherwise allow for compensation to be paid to the Town for the use of its streets, alleys, and public ways in an amount comparable to the historical sum paid as a franchise fee.

Sixth: The classification of service in the Town will be the same as the classification of service in other towns served by the cooperative and the rates and charges for electric service to consumers and users in the Town in each classification will be the same as the rates and charges of the cooperative in other towns of the same class served by the cooperative.

Seventh: The Cooperative shall hold the Town harmless from any and all claims, actions, litigations or damages proximately caused by the negligence of the Cooperative, its agents or employees in construction, reconstruction, service when needed, maintenance or operation of the Cooperative's electric distribution system located with the boundaries of the Town.

Eighth: This Ordinance was considered passed and adopted in accordance with the provisions of the Colorado Revised Statutes 31-32-101 through 105 and shall be in full force and effect upon its passage and the cooperative filing its written acceptance with the Town.

Passed and adopted this _____ day of _____, 2015.

Alex Flores, Mayor

Attested:

Josie Hart, Town Clerk of the Town of Arriba