

ORDINANCE NO.

NO. 15-13
Series of 2015

TITLE: AN ORDINANCE APPROVING A FRANCHISE AGREEMENT WITH UNITED POWER, INC.

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HUDSON, COLORADO, THAT:

Section 1. Article 2 of Chapter 5 of the Hudson Municipal Code, granting a franchise to United Power, Inc., is repealed and reenacted to read as follows:

Sec. 5-50 Definitions.

(a) **Short Title.** This agreement shall be known as the Town of Hudson/United Power Electric Franchise Agreement (“Franchise Agreement” or “Agreement”).

(b) **Definitions.** For the purpose of this franchise, the following words and phrases shall have the meaning given in this article . When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” or “will” are mandatory and “may” is permissive. Words not defined in this article shall be given their common and ordinary meaning.

“**Board of Trustees**” means the governing body of the Town of Hudson.

“**CPUC**” means the Colorado Public Utilities Commission.

“**Electric Distribution Facility**” means that portion of United Power’s electric system, which delivers electricity from the substation breakers to United Power’s meters including all devices connected to that system.

“**Electricity**” and “**Electric Service**” means all electric energy and electric service provided to customers located within the Town, including street lighting and traffic signal services.

“**Emergencies**” means an event that directly influences the ability to provide service or is life threatening.

“**Energy Conservation**” means the decrease in energy requirements of specific customers during any selected time period, with end-use services of such customers held constant.

“Energy Efficiency” means methods of energy conservation, reduced demand or improved load factors resulting from hardware, equipment, devices, or practices that are installed or instituted at a customer facility.

“Facilities” means all physical components of United Power which are deemed necessary by United Power to provide electricity within and through the Town for transportation, distribution and sale of electricity and include, but are not limited to, plants, works, systems, substations, transmission and distribution structures, lines, street lighting fixtures, equipment, conduit, transformers, underground lines, meter reading devices, communications and data transfer equipment, wires, cables, poles, and building structures.

“Town Property” refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the Town or hereafter held by the Town, that would not otherwise fall under the definition of “Streets.”

“Party” or **“Parties”** refers to and includes United Power and the Town, either singly or collectively as the context requires.

“Private Project” refers to any project which is not covered by the definition of “Public Project.”

“Public Project” refers to (1) any public work or improvement within the Town that is wholly owned or wholly funded by the Town; or (2) any public work or improvement within the Town where fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, in the County of Weld, and other entities established under Title 32 of the Colorado Revised Statutes.

“Public Utility Easement” refers to any easement over, under, or above public or private property, lawfully acquired by or dedicated to the use of United Power, its predecessors in interest, or other public utility companies for the placement of public utility facilities, including but not limited to United Power facilities. Public Utility easement shall not include any easement for the use of United Power that is located within the Streets.

“Renewable Resource” refers to any facility, technology, measure, plan or action utilizing a renewable “fuel” source such as wind, solar, biomass, geothermal, municipal, animal, waste-tire or other waste, or hydroelectric generation of twenty megawatts or less, including any eligible renewable energy resource as defined in § 40-2-124(i)(a), C.R.S., as the same shall be amended from time to time.

“Residents” means all persons, businesses, industry, governmental agencies and any other entity whatsoever, presently located or which are hereinafter located, in whole or in part, within the territorial boundaries of the Town of Hudson.

“Revenues” means those amounts of money, which United Power bills for the sale of electricity under authorized rates to residents and any other sums that are generated by United Power from the use of its Facilities located within the Streets and Public Utilities easement. The word “revenue” does not include any other receipts including, but not limited to, receipts from the Town or any other person or entity, pole attachment revenue, disconnect/reconnect charges or late payment charge, but only receipts of money from the sale of electricity to Residents.

“Service Area” means the area within the Town of Hudson, which United Power is certified to serve by the CPUC.

“Streets and Public Places” means streets, alleys, viaducts, bridges, highways, avenues, boulevards, roads, lanes, public rights-of-way, easements, and places suitable for the placement of facilities that are located in the Town.

“Street Lighting Facilities” refers to all United Power facilities necessary to provide street lighting service.

“Street Lighting Service” refers to the illumination of streets and other Town property by means of United Power-owned non-ornamental street lights and United Power-owned ornamental street lights located in the Town or along the streets adjacent to the Town limits thereof, supplied from United Power’s overhead or underground electric distribution system.

“Tariff” or **“Tariffs”** shall mean the rules, regulations and rates which apply to United Power’s provision of electric service to its customers.

“Town” means the Town of Hudson located in Weld County, Colorado.

“Town Administrator” means the Town Administrator, and any agent, representative, officer or employee of the Town designated by the Town Council or the Town Administrator to act as the official Town representative with the authority to act on behalf of the Town under this franchise.

“Town Streets” means the roads, streets and associated right-of-way easements owned or controlled by the Town.

“Traffic Facilities” refers to any Town-owned or authorized traffic signal, traffic signage or other traffic control or monitoring device, equipment or facility, including all associated controls, connections and other support facilities or improvements, located in any streets or other Town property.

“Traffic Signal Lighting Service” refers to the furnishing of electricity from United Power’s distribution system for use in traffic facilities pursuant to the rules and regulations relating to such service in United Power’s Tariffs.

“**United Power**” means United Power, Inc. of Colorado, a Colorado not-for-profit electric cooperative, and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

Sec 5-51 Grant of Franchise

(a) **Grant of Franchise.** The Town hereby grants to United Power, for the period specified herein, and subject to the conditions, terms and provisions contained in this Agreement, an exclusive right to furnish, sell and distribute electricity within the Town, to the Town and to all residents of the Town within United Power’s service area as specified by the CPUC. Subject to the conditions, terms and provisions contained in this Agreement, the Town also hereby grants to United Power an exclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to furnish, sell and distribute electricity within the Town, and as may be necessary to carry out the terms of this Agreement, subject to the Town’s prior right of usage for and subject to the Town’s reasonable exercise of the police powers including, but not limited to, zoning, subdivision, permit and building code requirements. These rights shall extend to all areas of the Town within United Power’s service area as specified by the CPUC, as the Town is now constituted, and to additional areas as the Town may increase in size by annexation or otherwise in said service area. The Town and United Power do not waive any of their rights under the statutes and Constitution of the State of Colorado and the United States, except as otherwise specifically set forth herein. The rights granted in this franchise will include the right to provide street lighting service and traffic signal lighting service to the Town, for which the Town will pay in accordance with its agreement with United Power or its established Tariffs. These rights shall extend to all areas of the Town within United Power’s certificated territory, as it is now constituted and to additional areas as the Town may increase in size by annexation or otherwise within United Power’s service territory.

(b) **Effective Date and Term of Franchise.** This Franchise shall be effective as of the effective date of the ordinance adopting the same and shall supersede any prior franchise grants to United Power by the Town, and shall supersede the previous provisions of Article 2, Chapter 5 of the Municipal Code of the Town of Hudson. The term of the Franchise shall be twenty (20) years unless extended by mutual agreement of the parties. This Franchise is not intended to revoke any prior license, grant, or right to use the Streets or other Town property and such licenses, grants or rights of use are hereby affirmed. Such rights shall hereafter be governed by the terms of this Franchise. Any events occurring prior to the effective date of this Agreement shall be construed under the agreement in place as of the date of any such event except that any provisions relating to under-grounding of distribution lines shall be construed under this Agreement. All under-grounding fund balances in existence and work-in-process on the date this Franchise Agreement becomes effective shall carry forward unaffected by this transition and as provided generally herein.

(c) **Financial Responsibility.**

(1) At the time of presentation of the letter accepting the terms of this Franchise, United Power shall submit to the Town certificates of insurance to demonstrate that United Power has the following insurance coverage to meet its obligations under the Franchise Agreement:

worker's compensation insurance, comprehensive general liability and automobile liability insurance. The Town shall be listed as an additional listed insured for the comprehensive general liability insurance. United Power shall continuously maintain such coverage during the term of the Franchise, and the certificates of insurance shall be kept current by annual revisions as of January 1 during the term of the franchise. The Town reserves the right to request and receive a copy of an insurance certificate(s) from United Power's insurers, demonstrating the placement of the coverage required hereunder. The Town may require, from time to time, and United Power agrees to provide, additional reasonable funding of United Power's indemnification obligations as a self-insured, if United Power is acting as a self-insured. Nothing herein contained shall create any right in any third party or cause the Town to be liable to any party for a failure so to act.

(2) The parties hereto understand and agree that the Town, its officers, and its employees are relying on, and do not waive or intend to waive by any provision of this Franchise Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

(3) The Town agrees to list United Power as an additional listed insured on the Town's insurance policies, and to cover any claims by any person or entity for injuries (including death) to persons or damage to property, including theft, resulting in whole or in part from the acts or omissions of the Town, its trustees, employees, agents, contractors, and subcontractors, or in connection with or based upon a violation of applicable federal, state or local laws by the Town, and related to the facilities and operations described in this Franchise Agreement.

(d) Notice of Boundary Changes.

(1) United Power will provide the Town with a map defining the current United Power service area within the Town within thirty (30) days of the execution of this Agreement and will transmit the map as an attachment to a letter from United Power to the Town Administrator.

(2) United Power will notify the Town within thirty (30) days of any changes in boundaries of United Power service area in the Town. Such notice will be in written form addressed to the Town Administrator.

(3) The Town will notify United Power of a proposed annexation within fourteen (14) days of the Town Council's resolution finding the petition for annexation to be in substantial compliance with the statutory requirements. Further, the Town will notify United Power of final approval of all annexations of land into the Town which occur within United Power's service area, within thirty (30) days after the effective date of the annexation. Failure by the Town to comply with the thirty-day time frame does not preclude the Town from collecting franchise fees from revenues received by United Power from residents of the annexed area after the effective date of the annexation.

(e) Conditions, Limitations and Exclusions.

(1) The right to use and/or occupy public streets, alleys, viaducts, bridges, roads and public places for the purposes set forth herein is not, and shall not be deemed to be an exclusive franchise, and the Town reserves the right to itself to make or grant a similar use of public streets and other public places to any other person, firm or corporation. The right to make reasonable use of Town streets and other public property to provide electric service to the Town and its residents under the Franchise is subject to and subordinate to any Town usage of said streets or other public property.

(2) Nothing contained in this Franchise shall be construed to authorize United Power to engage in any activities requiring a license or permission from the Town other than the provision of electric service without first obtaining such license or permission. This Agreement does not grant United Power the right, privilege or authority to engage in the cable television business, but does not prohibit joint use agreements between United Power and cable television companies for the shared use of facilities. Any such joint use agreement entered by United Power shall be consistent with United Power's obligations and responsibilities under this Franchise, including inserting provisions that require any joint user of an above ground facility be required to bear their costs of relocating such facility under-ground where United Power converts its shared above ground facilities to an under-ground facility.

(3) This Agreement does not grant United Power the right, privilege or authority to use or occupy any land currently designated as parks, park land or open space of the Town or which may in the future be so designated except to the extent United Power is currently using or occupying said parks, park land or open space and as otherwise authorized in writing by the Town. United Power shall not expand its use or occupancy of said parks, park land or open space except by specific written authorization of the Town; provided, however, that nothing herein contained shall limit or restrict United Power's right to maintain, renovate, repair or replace any such facilities currently occupying said parks, park land or open space, subject to the conditions set forth in this Franchise. The Town may require removal, relocation, or under-grounding of facilities from any parks, park land or open space subject to conditions set forth herein.

(f) Police Powers.

(1) The Town retains the following rights in regard to this Franchise:

A. To use, control and regulate, through the exercise of its police power, Town streets, public easements and other Town property, places and the space above and beneath them.

B. To impose such other regulations as may be determined by the Town Council to be necessary in the exercise of its police power to protect the health, safety, welfare and convenience of the public.

(2) United Power expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the Town considers making any substantive changes in its local codes or regulations that in the Town's reasonable opinion will

significantly impact United Power's operations in the Town's Streets and other Town property, it will make a good faith effort to advise United Power of such consideration; provided, however, that lack of notice shall not be justification for United Power's non-compliance with any applicable local requirements. United Power expressly acknowledges the Town's right to enforce regulations concerning United Power's access to or use of the Streets and other Town property, including requirements for permits.

(3) United Power shall comply with all laws, regulations, permits, and orders enacted by the Town that are applicable to United Power's provision of electric service within the Town. Compliance with the terms of this Franchise shall be deemed to constitute compliance with the Municipal Code of the Town of Hudson.

(g) **Payment of Expenses Incurred by Town in Relation to Ordinance.** At the Town's option, United Power shall reimburse the Town for expenses incurred in publication of notices and ordinances related to this Franchise.

(h) **Continuation of Utility Service.** In the event this Franchise is not renewed at the expiration of its term or is terminated for any reason, and the Town has not provided for alternative utility service, United Power will not remove any United Power facilities pending resolution of the disposition of the system, or portions thereof, and shall continue to provide, and be paid for at current rates, electric service within the Town until the Town arranges for utility service from another provider. United Power further agrees that it will not withhold any continued interim electric services necessary to protect the public. The Town agrees that in the circumstances of this Section 5-51, United Power shall be entitled to monetary compensation as provided in United Power's Tariffs on file with the CPUC and United Power shall be entitled to collect from residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the Franchise, an aggregate amount equal to the amount which United Power would have paid as a franchise fee as consideration for the continued interim use of the Town Streets. Only upon receipt of written notice from the Town stating that the Town has adequate alternative electric service for residents and upon order of the CPUC shall United Power be allowed to discontinue the provision of electric service to the Town and its residents. United Power will be compensated through the agreed upon final date of interim electric service provided by United Power.

Sec 5-52 Franchise Fee

(a) **Franchise Fee.** In consideration for the grant of this Franchise, United Power shall pay the Town a sum equal to three percent (3%) of all revenues received from the sale of electricity within the Town. Payment of the franchise fee shall not exempt United Power from any lawful taxation upon its property or sales, except as set forth in 3.5 below. All amounts paid to United Power by the Town for use of electricity by any of its departments shall be excluded from computation of the franchise fee.

(b) **Surcharge of Franchise Fee.** United Power may collect this fee by adding a surcharge not to exceed the franchise fee upon all Town residents that use facilities of United Power in the Town to obtain electrical service.

(c) **Electric Service Provided to the Town.** No franchise fee shall be charged to the Town for electric service provided to the Town for its own consumption, including Street Lighting Service and Traffic Signal Lighting Service.

(d) **Franchise Fee Payment in Lieu of Certain Taxes and Other Fees.** The Town accepts payment of the franchise fee by United Power in lieu of any occupation tax, occupancy tax, license tax, or similar tax or fee the Town might charge United Power or its subcontractors for the privilege of doing business in the Town, for the use or occupation of Town Streets, for the installation, operation and maintenance of United Power facilities, or for any other personal, real property, sales, use, or other tax or fee of any kind.

(e) **Franchise Fee Payment Not In Lieu of Permit or Other Fees.** Payment of the franchise fee does not exempt United Power from any other lawful tax or fee imposed generally upon persons doing business within the Town, including by way of illustration any fee for a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the Town, except that the franchise fee provided for herein shall be in lieu of any occupation fee or similar tax for the use of Town Streets.

(f) **Payment Schedule.** Unless otherwise specifically provided herein, payment of the franchise fee accruing after the effective date of this Agreement shall be made in monthly installments not more than twenty days following the close of the month for which payment is to be made for the franchise fees resulting from the sale of electricity. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this Agreement. All payments shall be made to the Town in care of the Director of Finance.

(g) **Audit of Franchise Fee Payments.**

(1) If requested, every three (3) years commencing at the end of the third year of this Franchise, United Power shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the Town. Such audit shall be limited to the previous three (3) calendar years. If requested, United Power shall provide a written report to the Town Administrator containing the audit findings regarding the franchise fee paid to the Town for the previous three (3) calendar years.

(2) If the Town disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the Town may conduct its own audit at its own expense, and United Power shall cooperate fully, including but not necessarily limited to, providing the Town's auditor with all information reasonably necessary to complete the audit. If the results of a Town audit conducted pursuant to Section 5-52(g) concludes that United Power has underpaid the Town by three percent (3%) or more, in addition to the obligation to pay such amounts to the Town, United Power shall also pay all costs of the audit. Errors arising solely from customer addresses inadvertently not identified as located within the municipal boundaries of the Town shall not be included in determining the error rate unless the Town has provided specific detailed written notice to United Power that such location address is within the municipal boundaries of the Town.

(3) Either party may challenge any written notification of error as provided for in this Section 5-52 of this Franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

(4) In addition to the three year audit provided above, the Town Administrator, or official Town representative, shall have access to the metering records of United Power during normal business hours upon reasonable notice for the purpose of auditing to ascertain that the franchise fee has been correctly computed and paid. All information obtained by the Town Administrator during a franchise fee audit shall be kept confidential and shall be utilized for the sole purpose of verifying that the franchise fee has been correctly computed and paid.

(h) Change of Franchise Fee and Other Franchise Terms. The Town Council, upon giving ninety (90) days' notice to United Power, may request that the Town and United Power review the franchise fee rate and other material financial aspects of the Franchise. Upon such a request by the Town, the parties shall engage in good faith negotiations related to amending the franchise fee rate, and/or other related provisions of this Franchise to allow the Town to receive a different franchise fee rate, or other significant change in the financial aspects of the Agreement. In no event shall the franchise fee rate be increased more than twenty percent (20%) in any five (5) year period.

(i) Most Favored Party Clause. United Power shall report to the Town, within 60 days of execution, the terms of any franchise or of any change of franchise in any other municipality that contains a franchise fee or other significant financial benefit greater than the franchise fee rate or other significant financial benefit to the Town contained in this Franchise. United Power shall also report about such other provisions which may be beneficial to the Town. If the Town Board of Trustees decides the Franchise fee or other significant financial benefit should be incorporated into the Franchise, then such change shall be agreed to in writing and approved by the Town Board of Trustees by ordinance.

(j) Contract Obligation. This Franchise Agreement constitutes a valid and binding agreement between United Power and the Town. In the event that the franchise fee specified in this Agreement is declared illegal, unconstitutional or void for any reason by final judgment of any court (or other proper authority), United Power shall be contractually bound to pay monthly fees to the Town in an aggregate amount that would be equivalent to the amount which would have been paid by United Power as a franchise fee hereunder as consideration for use of the Town Streets and other Town property.

(k) Payment of Taxes and Fees. United Power shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge

against this Agreement (“Impositions”), provided that United Power shall have the right to contest any such impositions and shall not be in breach of this section so long as it is actively contesting such impositions. The Town shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable Tariffs on file and in effect from time to time with the CPUC.

(l) **Changes in Utility Service Industries.** The Town and United Power recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this Franchise, United Power agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the Town, United Power will cooperate with and assist the Town in amending this Franchise to assure that the Town receives an amount in franchise fees or some other form of periodic compensation that is the same amount of franchise fee rate paid to the Town as of the date that such initiatives and changes adversely impact the future franchise fee revenue.

Sec. 5-53 Administration of Franchise

(a) **Supervision.**

(1) **Town Designee.** The Town Administrator, or the Manager's designated representative, is hereby designated the official of the Town having full power and authority to take appropriate action for and on behalf of the Town and its inhabitants to enforce the provisions of this Franchise and to investigate any alleged violations or failures of United Power to comply with the provisions hereto or to adequately and fully discharge its responsibilities and obligations hereunder. The failure or omission of said official Town representative to so act shall not constitute any waiver or estoppel nor limit independent action by other Town officials. The Town Administrator may also designate one or more Town representatives to act as the primary liaison with United Power as to particular matters addressed by this Franchise and shall provide United Power with the name and telephone numbers of said Town representatives. The Town may change these designations by providing written notice to United Power. The Town's designee shall have the right, at all reasonable times, to inspect any United Power facilities in Town Streets.

(2) **United Power Designee.** United Power shall designate a representative to act as the primary liaison with the Town and shall provide the Town with the name, address, and telephone number for United Power's representative under this Franchise. United Power may change its designation by providing written notice to the Town. The Town shall use this liaison to communicate with United Power regarding electric service and related service needs for Town facilities.

(3) In order to facilitate such duties of the said official Town representative, United Power agrees as follows:

A. To allow said official Town representative or his designee reasonable access to any part of United Power's plant that is directly used to serve the Town of Hudson, works and systems, and that said Town official may make and supervise tests to determine the quality of the electric service supplied the customers of United Power within the municipal boundaries of the Town of Hudson. Access to United Power facilities described in this paragraph and 4.1(C)(2) shall be on an "appointment made" basis during normal business hours. The Town official(s) provided access shall be accompanied by at least one employee of United Power of its choosing. The Town official(s) shall comply with all United Power requirements for such access, and particularly safety requirements. For safety reasons, United Power shall have the right to designate — at its sole discretion — the method, means, and timing of such access, which access United Power can terminate or deny at its discretion.

B. To grant said official Town representative or his designee reasonable access to the books and records of United Power, insofar as they relate to matters covered by this Franchise, upon advance appointment made during normal business hours.

C. To provide said Town official with such reasonable and necessary reports containing or based on information readily obtainable from United Power's books and records as the Town may from time to time request with respect to the electric service supplied under this franchise.

D. To meet as requested with said official Town representative to share information useful in coordinating management, operation and repair of the facilities of United Power and the operations and property of the Town.

(b) Coordination of Work.

(1) United Power agrees to meet with the Town's designee upon written request for the purpose of reviewing, implementing, or modifying mutually beneficial procedures for the efficient processing of United Power bills, invoices and other requests for payment.

(2) United Power agrees to coordinate its activities in Town Streets and on other Town Property with the Town. The Town and United Power will meet annually upon the written request of the Town designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town Streets and other Town Property. The Town and United Power shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the Town will be assured that all provisions of this Franchise, building and zoning codes, and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

(c) **Examination of Records.** The Parties agree that any duly authorized representative of the Town and United Power shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other party involving any activities related to this Franchise. All such records must be kept for a minimum of four (4) years. To the extent that either Party believes in good faith that it is necessary in order to monitor compliance with the terms of this Franchise to examine confidential books, documents, papers, and records of the other Party, the Parties agree to meet and discuss providing confidential materials, including but not limited to providing such materials subject to a reasonable confidentiality agreement which effectively protects the confidentiality of such materials.

Sec. 5-54 Reports

(a) **Reports of United Power Operations.** United Power shall submit reasonable financial and operating reports containing or based on information available from United Power's books and records annually to the Town and other reports the Town may from time to time request with respect to the operations of United Power under this Franchise, provided that such information can be provided at a reasonable cost to the Town. Such form of reports may be changed from time to time as mutually agreed between the Town and United Power.

(b) **Annual Reports.** United Power shall provide the Town on or before May 1 of each year beginning, for the preceding calendar year, after the effective date of this franchise:

- (1) United Power's then modified debt service calculation;
- (2) A report of margins collected by United Power; and
- (3) Short-term (three years or less) and long-term (over three years) plans for all major capital improvements, construction and excavation within the Town or affecting service to the Town and its residents.

(c) **Requested Reports.** Upon request by the Town, United Power shall provide the Town:

- (1) A list of real property and leasehold interests in real property owned by United Power within the municipal boundaries of the Town, for the purpose of calculating property taxes; and
- (2) A map (paper or electronic copy) indicating the major location of United Power facilities within and contiguous of the municipal boundaries of the Town of Hudson.
- (3) A report regarding the reliability indexes of United Power's electric service.
- (4) A list of all Town electrical accounts and account numbers and items metered.
- (5) A list of street lights in the Town energized by United Power.

(d) Copies of Tariffs and Regulatory Filings. United Power shall notify the Town of all proposals to change rates relating to service by United Power to its customers located within the Town. Upon request by the Town, United Power shall provide the Town with copies of all rules, regulations, rate tariffs, and policies. Town acknowledges that United Power is a not-for-profit electric cooperative formed primarily to distribute electrical energy, and its utility rates are not subject to regulation by the CPUC and are largely determined by the cost of acquiring electric power from its supplier(s).

Sec. 5-55 Supply, Construction And Design

(a) Adequate Supply at Lowest Reasonable Cost. United Power shall work with its wholesale power suppliers to take all reasonable and necessary steps to assure an adequate supply of electricity to United Power's customers at the lowest reasonable cost consistent with long term supply reliability.

(b) Service Reliability.

(1) United Power shall operate and maintain United Power facilities efficiently and economically and in accordance with general utility practices and best systems, methods, and skills consistent with the provision of adequate, safe, and reliable electric service. United Power recognizes and agrees that, as part of its obligations and commitments under this Franchise, United Power shall carry out each of its performance obligations in a timely, expeditious, efficient, economical, and workmanlike manner.

(2) United Power shall be excused from the performance of its obligations hereunder, to the extent that performance of said obligations are delayed due to: failure of high voltage transmission facilities needed to serve the Town which are beyond United Power's responsibility and control; strikes; acts of public enemies; war; order of military authority; insurrections; riots; acts of epidemics; tornadoes; landslides; earthquakes; floods; any Act of God; or any other reason beyond United Power's control. Notwithstanding the foregoing, if the supply of electricity to United Power's customers should be interrupted due to any circumstance beyond United Power's control, United Power shall take all necessary and reasonable actions to restore such supply at the earliest practicable time.

(c) Planned Outage. If the supply of electricity to United Power's customers should be interrupted due to a planned outage, except cases of emergency outage repair, United Power shall notify, consistent with the provisions of Section 5-55, its customers as soon as practical in advance of the planned outage. United Power agrees that it will in good faith try to contact all customers at least forty-eight (48) hours prior to a planned outage.

(d) Town Participation. The Town shall have the right to approve major facility site plans within the Town. Upon reasonable notice to United Power, the Town shall have the right to hold public hearings related to United Power's facilities, site selection, under-grounding of overhead lines, construction and service quality. United Power agrees to fully participate in such public

hearings as requested by the Town and to provide to the Town information available to United Power that relates to the hearings described in this paragraph.

(e) **Compliance with Town Requirements.** Representatives of the Town and United Power shall meet annually to discuss annual and long-term planning for capital improvement projects contemplated by each within the Town. United Power shall include within its capital improvement projects the plans of the Town relating to same. United Power and the Town shall exchange copies of their reports or plans regarding annual and long-term planning for capital improvement projects with descriptions of construction activities including, to the extent known, the timing and method of construction.

(f) **Excavation, Construction, and Maintenance and Repair Work.** United Power shall be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the Town. All construction, excavation, maintenance and repair work done by United Power shall be done in a timely manner, which minimizes inconvenience to the public and individuals. When United Power does any work in or affecting the Town Streets, it shall, at its own expense, promptly remove any obstructions there from and restore such Town Streets or other Town Property to a condition that meets applicable Town standards. If weather or other conditions do not permit the complete site restoration for work done pursuant to this Section, United Power may with the approval of the Town, temporarily restore the affected Town Streets or other Town Property, provided that such temporary site restoration is at United Power's sole expense and provided further that United Power promptly undertakes and completes any necessary permanent site restoration when the weather or other conditions no longer prevent such permanent restoration. All site restoration work under this section shall be subject to inspection by the official Town representative and compliance by United Power with reasonable remedial action required by said official pursuant to inspection and left in equivalent or better conditions as found. Upon the request of the Town, United Power shall restore the Streets or other Town Property to a better condition than existed before the work was undertaken, provided that the Town shall be responsible for any additional costs of such site restoration. If United Power fails to promptly restore the Town Streets or other Town Property as required by this Section, and if, in the reasonable discretion of the Town, immediate action is required for the protection of public health and safety, the Town may, upon giving reasonable notice to United Power that is commensurate with the danger posed, restore such Town Streets or other Town Property or remove the obstruction there from; provided however, Town actions do not unreasonably interfere with United Power facilities. United Power shall be responsible for the actual cost incurred by the Town to restore such Town Streets or other Town Property or to remove any obstructions there from. In the course of its site restoration of Town streets or other Town property under this Section, the Town shall not perform work on United Power facilities unless specifically authorized by United Power in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

(g) **Outages and Restoration of Service.**

(1) **Customer Notification.** Upon request, United Power shall provide annually to the Town Administrator a written protocol that addresses the process for customer notification of