

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, (D.B.A. Xcel Energy) A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS PLANT AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF SAID CITY FOR THE PURPOSE OF INSTALLING, ENLARGING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF OAK PARK HEIGHTS, MINNESOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE FURNISHING OF GAS TO SAID CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH SAID CITY.

THE CITY COUNCIL OF THE CITY OF OAK PARK HEIGHTS, WASHINGTON COUNTY, MINNESOTA, DOES ORDAIN:

1003.01 Definitions.

- A. "City" means the City of Oak Park Heights, County of Washington, State of Minnesota.
- B. "City Utility System" refers to the facilities used for providing any public utility service owned or operated by City or agency thereof, including sewer and water service.
- C. "Company" means Northern States Power Company, a Minnesota corporation, its successors and assigns.
- D. "Gas" includes manufactured gas or other form of gaseous energy.
- E. "Notice" means a writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to the Division General Manager thereof at 1700 East County Road East, White Bear Lake, Minnesota, 55110. Notice to City shall be mailed to the City Clerk, 14168 North 57th Street, Box 2007, Oak Park Heights, Minnesota, 55082.
- F. "Public grounds" means City parks and squares as well as land held by the City for the purpose of open space.
- G. "Public ways" means streets, avenues, alleys, parkways, walkways, and other public rights of way within the City.

1003.02 Grant of Franchise.

City hereby grants Company, for a period of twenty (20) years from the date hereof, the right and privilege of erecting a gas plant and using the public ways and public grounds of City for the purpose of installing, operating,, repairing, and maintaining, in, on, over, under, and across the same, all gas pipes, mains, and appurtenances, usually, conveniently, or necessarily used in connection therewith, for the purpose

of transmitting and furnishing gas for public and private use within and through the limits of City as its boundaries exist or as they may be extended in the future. Company may also do all reasonable things necessary or customary to accomplish these purposes subject, however, to the further provisions of this franchise.

1003.03

Restrictions.

- A. All gas pipes, mains, regulators, and other property and facilities shall be so located, constructed, installed, and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, travel upon, and use of public ways of City. In installing, repairing, and maintaining, removing, or replacing said gas pipes, mains, and appurtenances, Company shall, in all cases, place the public ways, in, on, under, or across which the same are located in as good condition as they were prior to said operation.
- B. Company shall not construct any new or modified installations within or upon any public grounds without receiving the prior written consent of an authorized representative of City for each such new installation.
- C. Company shall provide field locations for all its underground facilities when requested by City 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 Cities in the County to locate municipal underground facilities for Company. ("County" refers to the County in which City is located.)
- D. Before Company constructs any new structure or converts any existing structure for the manufacture or storage of gas, Company shall first obtain the approval of the structure and the location thereof from City. Such approval by City shall not be unreasonably withheld.

1003.04

Service, Rates.

The service to be provided and the rates to be charged by Company for gas service in City are subject to the jurisdiction of the Public Service Commission of this State or its successor agency.

1003.05

Relocating.

- A. Whenever City shall grade, regrade, or change the line of any public way, or construct or reconstruct any City utility system therein and shall, in the proper exercise of its police power, and with due regard to seasonable working conditions, when necessary, order Company to relocate permanently its mains, services, and other property located in said public way, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade, or change the line of any public way or to construct or reconstruct any City utility system therein. However,

after Company has so relocated, if a subsequent relocation or relocations, shall be ordered within ten (10) years from and after first relocation, City shall reimburse Company for such non-betterment relocation expense which Company may incur on a time and material basis; provided, if subsequent relocations are required because of the extension of City utilities to previously unserved areas, Company may be required to relocate at its own expense at any time.

- B. Nothing contained in this franchise shall require Company to relocate, remove, replace, or reconnect at its own expense its facilities where such relocation, removal, replacement, or reconnection is for convenience and not of necessity in the construction or reconstruction of a City utility system or extension thereof.
- C. Any relocation, removal, or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally aided highway project shall be governed by the provisions of Minnesota Statutes, §161.46 as supplemented or amended; and further, it is expressly understood that the right herein granted to Company is a valuable property right and City shall not order Company to remove or relocate its facilities without compensation when a public way is vacated, improved, or realigned 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 a relocation and the loss and expense resulting therefrom are first paid to Company.
- D. Nothing contained herein shall relieve any person, persons or corporations from liability arising out of the failure to exercise reasonable care to avoid injuring Company's facilities while performing any work connected with grading, regrading, or changing the line of any public way, or with the construction of any City utility system.

1003.06

Indemnification.

Company shall indemnify, keep, and hold City 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 Company's gas facilities located in, on, over, under, or across the public ways and public grounds of City, unless such injury or damage grows out of the negligence of City, its employees or agents, or results from the performance in a proper manner of acts reasonably deemed hazardous by Company, but such performance is nevertheless ordered or directed by City after notice of Company's determination. In the event a suit shall be brought against City under circumstances where the above agreement to indemnify applies, Company, at its sole cost and expense, shall defend City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If such notice is not reasonably given as

hereinbefore provided, Company shall have no duty to indemnify nor defend. If Company is required to indemnify and defend, it will thereafter have complete control of such litigation, but Company may not settle such litigation without the consent of City, 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 City; and Company, in defending any action on behalf of City, shall be entitled to assert in any action every defense or immunity that City could assert in its own behalf.

1003.07 Vacation of Public Ways.

The City shall give the Company at least two (2) weeks' prior written notice of a proposed vacation of a public way. Except where required solely for a City improvement project, the vacation of any public way, after the installation of gas facilities, shall not operate to deprive Company of its rights to operate and maintain such gas facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to the Company for failure to specifically preserve a right-of-way, under Minnesota Statutes, §160.29.

1003.08 Written Acceptance.

Company shall, if it accepts this Ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Clerk within ninety (90) days after the final passage and any required publication of this Ordinance.

1003.09 Provisions of Ordinance.

Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City Ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

1003.10 Publication Expense.

The expense of any publication of this franchise Ordinance required by law shall be paid by Company.