

**ORDINANCE  
of the  
CITY OF MINNEAPOLIS**

**By Gordon**

**Amending the Minneapolis Code of Ordinances by adding a new Appendix D-1 relating to Northern States Power, d/b/a Xcel Energy, Electric Franchise.**

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That the Minneapolis Code of Ordinances be amended by adding thereto a new Appendix D-1 to read as follows:

An ordinance granting to Northern States Power Company, a Minnesota Corporation, d/b/a Xcel Energy, its successors and assigns, permission to construct, operate, repair and maintain in the city of Minneapolis Minnesota, an electric distribution system and transmission lines, including necessary poles, lines, fixtures and appurtenances, for the furnishing of electric energy to the city, its inhabitants, and others, and to use the public grounds and public ways of the city for such purposes.

**Section 1. Definitions.**

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

1.1 City Utility System. Facilities used for providing public utility service owned or operated by City or agency thereof, including, but not limited to, sewer, water, and storm water service.

1.2 Commission. The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.

1.3 Company. Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns.

1.4 Electric Facilities. Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company within the City for the purpose of providing electric energy for public use.

1.5 Franchise. The grant of rights made by the City to the Company in this Ordinance, subject to the terms and conditions of this Ordinance.

1.6 Gross Revenues. All sums received by the Company from the sale of electricity to its retail customers within the cooperate limits of the City. Gross Revenues for the purposes of calculating the franchise fee imposed by Section 9 shall be subject to adjustment only as specifically provided in Section 9.3.

1.7 Notice. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed or personally delivered to the General Counsel, 414 Nicollet Mall, 5<sup>th</sup> Floor, Minneapolis, MN 55401. Notice to the City shall

be mailed or personally delivered to the City Coordinator, City Hall, 350 South Fifth Street, Minneapolis, MN 55415. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.8 Public Ground. All real property for common use by the public that is owned by, controlled by, or dedicated to the City for open space or similar purposes.

1.9 Public Way. The area on, below, or above a public roadway, highway, street, alley, cartway, bicycle lane, walkway, public sidewalk, or other public right-of-way, or other dedicated right-of-way for travel purposes and utility easements of the City.

## **Section 2. Adoption of Franchise.**

2.1 Grant of Franchise. The City hereby grants the Company, for a period of ten (10) years, as further described in Section 11.3, from the date this Ordinance is passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City, as its boundaries now exist or as they may be extended in the future. For these purposes, the Company may construct, operate, repair and maintain Electric Facilities in, on, over, under, and across the Public Way and Public Ground within the City, subject to the provisions of this Ordinance. The use of the Public Way and Public Ground by the Company and the regulation of the same by the City shall be consistent with state law and (a) shall be subject to reasonable regulations by the City Council, including, but not limited to, applicable ordinances and permit procedures; (b) shall be consistent with the use of the Public Way for proper purposes by the public, by the City, by the public utilities, and others; and (c) shall be consistent with the use of the Public Ground by City and the public for the public purposes for which they are used and intended.

2.2 Option to Extend. Provided both parties agree, the term described in 2.1 may be extended up to two (2), five (5) year extension periods.

2.3 Other Authority. Other than giving the Company the right to use the Public Way and Public Ground, this Ordinance is not intended in any way to affect or modify or surrender any powers held by the City.

2.4 Effective Date. This Franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and upon the Company's duly authorized acceptance as executed within sixty (60) days after passage and publication of this Ordinance. The City, by Council resolution, may revoke this Franchise if Company does not file a written acceptance with the City within sixty (60) days after publication.

2.5 Annual Franchise Performance and Planning Meeting; Annual Reporting. Company and City shall meet annually to discuss items of concern or interest related to this Franchise, including, but not limited to, collaborative infrastructure planning, vegetation management and reliability performance. Company shall annually, upon City's request, provide to City reporting information on service reliability, including System Average Interruption Duration Index (SAIDI) and other measures as may be beneficial and mutually agreeable, such as Customers Experiencing Multiple Interruptions (CEMI) or other outage data, infrastructure investments and capital improvements, and customer usage and program participation, the exact format and content of which shall all be mutually agreed to by City and Company.

2.6 Service and Rates. The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

2.7 Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

2.8 Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party in writing of the default and the desired remedy. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used, or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in Hennepin County District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

### **Section 3. Location, Other Regulations.**

3.1 Location of Facilities. Electric Facilities shall be located, constructed, and maintained so as to not unreasonably interfere with the safety and convenience of ordinary travel along and over Public Way and so as not to disrupt normal operation of any City Utility System. Electric Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by the Minneapolis Code of Ordinances as they may be amended from time to time, and to such other reasonable regulations of the City consistent with authority granted the City to manage its Public Way and Public Ground under state law.

3.2 Field Locations. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 Street Openings. Subject to Sections 3.1 and 3.4, Company, or its authorized subcontractor, shall not open or disturb any Public Ground or Public Way for any purpose (the "Work") without first having obtained the required permits from the City. In performing the Work, the Company shall obtain any required obstruction permit or lane use permit under Minneapolis Code of Ordinances Chapter 430, and shall pay no fees therefor, except as follows. Failure of the Company to comply with the terms of the obstruction or lane use permit, which are directly attributable to the Company or its authorized subcontractor, and over which the Company or its authorized subcontractor has control, shall result in the imposition of a proportional charge of the obstruction or lane use permit fee as appropriate for the circumstance. This Section 3.3 does not apply to work for routine maintenance, storm restoration or tree trimming purposes. During the progress of the Work, the Company shall post signage identifying the Work as performed on behalf of the Company.

3.4 Emergencies. The requirements for obtaining permits from the City pursuant to Section 3.3 shall not apply when an emergency exists requiring the immediate repair of Electric Facilities. In an emergency, the Company shall notify the City by telephone and email to the office designated by the City before, if reasonably possible, commencing the emergency repair, but in any event as soon as practicable. Within two (2) business days after commencing the repair, the Company shall obtain any required permits and pay any required fees.

3.5 Restoration. After performing the Work, the Company shall, as promptly as weather permits, restore the Public Way in accordance with Minnesota rules, Part 7819.1100 and applicable City ordinances to the extent consistent with law. Company shall restore the Public Ground to as good a condition as formerly existed, remove all direct, rubbish, equipment and shall maintain any paved surface in good condition for two years thereafter (the "Restoration Work"). If Company fails to promptly, as weather permits, complete the Restoration Work, then the City shall, after demand to Company to cure and the passage of a reasonable period of time following the demand, not to exceed five days, have the right to perform or arrange the Restoration Work at the expense of Company.

3.6 Avoidance of Damage. The Company shall determine and implement reasonable measures to prevent the Electric Facilities from causing damage to persons or property and to protect the Electric Facilities from damage that could be inflicted on the Electric Facilities by persons, property, or the elements. The Company and City must take protective measures consistent with State Statutes 216D.05 to avoid damage to and minimize interference with underground facilities when excavating or performing work. The Company shall be responsible for removal of graffiti from Electric Facilities. The Company shall provide notice to the City in the event that any City Utility System is damaged in performing the Work or Restoration Work.

3.7 Public Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Way when the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain, if known: (i) the nature and character of the improvements, (ii) the Public Ground and Public Way upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. In an emergency situation, the City shall notify the Company by telephone and email to the representative designated by the Company before, if reasonably possible, commencing the emergency work, but in any event as soon as practicable.

3.8 Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon terms and conditions mutually acceptable to the parties whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by the Company because of such use by the City.

3.9 Compliance with Laws. In its operations under this Ordinance, the Company shall observe all applicable federal, state, and local laws, rules, regulations, and orders with respect to the transmission, distribution, transformation, or furnishing of electric energy. Company shall not release, spill or dispose in the Public Way or Public Ground or permit to be released, spilled or disposed in the Public Way or Public Ground any materials, substances, and wastes regulated as toxic or hazardous to health, natural resources, or the environment by the State of Minnesota, the United States, or any other applicable government authority with jurisdiction ("Hazardous Materials"). In the event Company releases, spills or disposes Hazardous Materials in the Public Way or Public Ground, Company shall comply with all applicable laws, regulations, and lawful governmental orders of federal, state, and local governmental agencies related to such Hazardous Materials. The Company shall remove or remediate any Hazardous Materials caused or permitted by the Company to be released, spilled or disposed on, in, or immediately adjacent to the Public Way and Public Ground within the City in compliance with all applicable laws, regulations, and lawful governmental orders, and pay or cause to be paid all costs associated therewith, but

Company shall not be responsible for removing or remediating any pre-existing Hazardous Materials encountered in the Public Way or Public Ground within the City. The indemnification terms and conditions of Section 6 shall apply to all claims made against City by any person, including any governmental agency, who or which asserts any right to costs, damages, or other relief which arise solely or directly from the Company's negligent acts or failure to act in compliance with any law, rule, regulation, or lawful order governing Hazardous Materials.

#### **Section 4. Relocations.**

4.1 Relocation. The Company shall promptly and at its expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the Public Way or Public Ground when it is necessary to prevent interference, and not merely for the convenience of the City, in connection with:

- (a) A present or future government use of the Public Way or Public Ground for a public project;
- (b) The public health or safety; or
- (c) The safety and convenience of travel over the right-of-way.

This Franchise shall not be construed as a waiver or modification of any easement or prescriptive rights acquired by the Company independent of and without reliance by the Company on this Franchise, or the Company's rights under state or county permit.

4.2 Relocation Within Five Years. Except in the event of a natural disaster, if the City orders a relocation of Electric Facilities within five years of ordering relocation of the same Electric Facilities at Company's expense, the City shall reimburse Company for non-betterment, actual costs on a time and material basis, without any markup. Provided, however, that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company will be required to relocate the Electric Facilities at its expense.

4.3 Projects with Federal Funding. The City acknowledges that the Company may request reimbursement for utility relocation costs from federal and/or state sources. The City will not object to the Company's requests for reimbursement from federal or state sources provided such costs do not directly or indirectly reduce funds available to the City from these sources or reduce funds for projects that will benefit the City. The City reserves its right to oppose the Company's requests if the City has a reasonable basis to believe such a request will negatively impact the feasibility of a project, or negatively affect the City as described above. Relocation of Electric Facilities due to a federally-aided state trunk highway project shall be governed by the applicable provisions of Minnesota Statutes, Section 161.46, as may be amended.

#### **Section 5. Tree Trimming.**

Company may trim all trees and shrubs in the Public Ground and Public Way of City as Company finds may be necessary to avoid interference with the proper construction, operation, repair, and maintenance of any Electric Facilities installed hereunder; provided that Company shall be subject to permit or other reasonable regulation by the City and the Minneapolis Park and Recreation Board (the "Park Board") and provided that the Company shall hold harmless the City and Park Board from any liability arising therefrom. The Company agrees to work cooperatively with the Park Board regarding the trimming and removal of trees and shrubs.

## **Section 6. Indemnification.**

6.1 Indemnity of City. If any claim is made against the City for injury to persons or property from the acts or failure to act by the Company, its agents, officials, or employees arising out of the construction, maintenance, repair, inspection, the issuance of permits, or the operation of Electric Facilities under and pursuant to this Franchise, the Company shall fully indemnify, keep, and hold free and harmless from any and all liability the City from any and all such claims. The City shall not be indemnified for that portion of any losses or claims arising from its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits, inspections, or supervision under this Franchise.

6.2 Defense of City. In the event that the Company must indemnify the City against a claim, the Company at its sole cost and expense shall defend the City against such claim if the City provides written notice to the Company within a reasonable period wherein Company is not prejudiced by the lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, including selection of defense counsel. Company agrees, however, to consult in good faith with the City as to who will defend such claim. Company may not settle such claim without the consent of the 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 the City. The Company, in defending any claim on behalf of the City, shall be entitled to assert every defense or immunity that the City could assert in its own behalf.

## **Section 7. Vacation of Public Way.**

The City shall give Company at least two weeks prior written notice of a proposed vacation of Public Way. The City and the Company shall comply with Minnesota Rule 7819.32.00 with respect to any request for vacation. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

## **Section 8. Assignment.**

Neither party may assign this Franchise without the prior approval of the other party. Notwithstanding the foregoing, if the Company merges with, is acquired by, or acquires another company, it reserves the right to assign this franchise.

## **Section 9. Franchise Fee.**

9.1 Franchise Fee. During the term of this franchise, and, in lieu of any permit or other fees being imposed on the Company, City imposes on the Company a franchise fee by collecting the amounts indicated in a fee schedule set forth in a separate ordinance from each customer in the designated customer class. The franchise fee may be expressed (i) as a specified charge per measurable unit of electricity being provided, transported, transmitted, sold, furnished, delivered, or received within the City, or (ii) as a percentage of the Gross Revenues received by the Company for its operations within the City, or (iii) a flat fee per customer based on service to retail customers within the City, or (iv) in such other manner or fashion as the City and the Company may determine.

9.2 Initial Fee. The initial franchise fee shall be an amount equal to the percentage of that portion of the Company's annual Gross Revenues arising from its operations within the City, as follows:

- a. For residential service customers, four and one-half percent (4.5%) of Gross Revenues;
- b. For large (100kW or greater) commercial and industrial customers served at primary or higher voltages, three percent (3%) of Gross Revenues;
- c. For small (less than 100kW) commercial and industrial customers, large (100kW or greater) commercial or industrial customers served at secondary voltage, and all remaining classifications, five percent (5%) of Gross Revenues.

The franchise fees shall be in lieu of permit or other fees being imposed on Company under City Ordinances. Company shall pay fees as provided in Section 3.3.

**9.3 Fee Payment.** The franchise fee shall be payable monthly and shall be based on the amount collected by the Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for electric service in each class. The payment shall be due 25 days after the end of the month for which the payment is due. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by the Company if the Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in the Company's applicable rates for electric services. The Company may pay the City the fee based upon the surcharge billed subject to reductions to account for uncollectibles, refunds and correction of erroneous billings. The Company agrees to make its records available for inspection by the City at reasonable times provided that the City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers.

**9.4 Separate Ordinance.** The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council (the "Fee Ordinance") which shall not be adopted until at least 60 days after written notice enclosing such proposed ordinance has been served upon the Company by certified mail. The fee Ordinance shall not become effective until the beginning of a Company billing month at least 60 days after written notice enclosing such adopted ordinance has been serviced upon Company by certified mail. Section 2.8 shall constitute the sole remedy for solving disputes between the Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. The Fee Ordinance may be changed by the City from time to time by ordinance; provided, however, such changes shall not occur more often than once within any twelve consecutive calendar months and shall be effective upon the same notice requirements.

**9.5 Equivalent Fee Requirement.** (a) *Other energy franchises.* The annual dollar amount of the franchise fee collected from a Company customer, or a reasonable estimate of the franchise fee that would be collected from a prospective Company customer, for electric service provided under this franchise shall not be materially greater than the annual dollar amount of the franchise fee that would be collected for similar service to such customer by a new energy supplier under the terms of a new franchise assuming comparable energy usage by said customer.

(b) *Definitions.* For the purposes of this section only, the following terms shall have the meanings given. "Similar service" shall mean the supply of energy to a customer for the same end-use purpose or function as the electricity which is or could be furnished by the Company.

"New franchise" shall mean a franchise granted to a new energy supplier after January 1, 2015, or an amendment to an existing franchise held by another energy supplier January 1, 2015.

"New energy supplier" shall mean a supplier of energy other than the company which begins supplying energy in the City Public Way after January 1, 2015.

(c) *Waiver.* The City may waive the requirement under paragraph (a) if, after one month's notice to and subsequent consultation with the Company, the City finds, by resolution, in its sole discretion, that waiver is necessary to encourage economic development within the City related to small, clean or renewable energy projects or for other public purposes. Once the requirement is waived, the City, in its sole discretion, may reinstate it at any time. If the Company consents in writing to a new franchise or separate ordinance collecting or failing to collect a fee from a new energy supplier in contravention of this section, the conditions of this section will be waived to the extent of such written consent.

9.6 Fee Modification. If for any reason the amount or rate of the franchise fee shall be determined to be in excess of the amount or rate allowed by law, then the amount or rate shall be reduced to the maximum amount or rate permitted by law.

## **Section 10. Reports and Records.**

10.1 City shall be accorded the right, during normal business hours, to inspect, examine or audit, and copy the books and records of the Company, which relate to the Company's operations in the City, or upon City's request in writing to provide such information relating to the Company's operations in City, and which is collected and maintained by the Company in the ordinary course of its business, as City may reasonably designate, to verify the accuracy of the Company's franchise fee payments, provided, that customer-specific information must remain confidential. Any such information shall be provided in a manner consistent with all applicable laws, regulations and Commission orders.

10.2 Company shall provide City the location of Company-owned street lights within the City, to be updated at least annually.

## **Section 11. Provisions of Ordinance.**

11.1 Severability. 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. This Franchise and other ordinances of the City shall be construed to give effect to all provisions to the maximum extent possible. In the event of a direct conflict between the provisions, the terms of this Franchise shall govern.

11.2 Limitation on Applicability. This Ordinance constitutes Franchise between the City and Company as the only parties, and no provision of this Franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the Franchise or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

11.3 Termination. The City may terminate this Franchise by providing written notice to the Company at least twelve (12) months before the effective termination date ("termination notice"); provided, however, that the earliest date of a termination notice is January 1, 2019. In no event shall this Franchise exceed ten (10) years from the Effective Date. The City may terminate the Franchise only upon a vote of two-thirds of all the members of the City Council.



11.4 Point of Contact. Company shall provide City with the contact information of the person designated as the single point of contact for City on issues related to this Franchise, reliability and service issues, and other such matters. Company shall provide City with updated point of contact information as necessary during the term hereof.

**Section 12. Amendment Procedure.**

Either party to this Franchise may at any time propose that the Franchise be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of the Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

**Section 13. Previous Franchises Superseded.**

This Ordinance supersedes any previous electric franchise granted to Company or its predecessor.