

# NORTHERN STATES POWER COMPANY GAS FRANCHISE ORDINANCE

## ORDINANCE NO. 1071

### CITY OF COTTAGE GROVE, WASHINGTON COUNTY, MINNESOTA

**AN ORDINANCE GRANTING NORTHERN STATES POWER COMPANY, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN FACILITIES AND EQUIPMENT FOR THE TRANSPORTATION, DISTRIBUTION, MANUFACTURE AND SALE OF GAS ENERGY FOR PUBLIC AND PRIVATE USE AND TO USE THE PUBLIC WAYS AND GROUNDS OF THE CITY OF COTTAGE GROVE, WASHINGTON COUNTY, MINNESOTA, FOR SUCH PURPOSE; AND, PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF**

The City Council of the City of Cottage Grove, Washington County, Minnesota, does hereby ordain as follows:

#### **SECTION 1. DEFINITIONS.**

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

- 1.1 **City.** The City of Cottage Grove, County of Washington, State of Minnesota.
- 1.2 **City Utility System.** Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer and water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting or other forms of energy.
- 1.3 **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 Gas retail rates now vested in the Minnesota Public Utilities Commission.
- 1.4 **Company.** Northern States Power Company, a Minnesota corporation, its successors and assigns including all successors or assigns that own or operate any part or parts of the Gas Facilities subject to this Franchise.
- 1.5 **Effective Date.** The Effective Date of this ordinance is identified in Section 14, which must be at least 90 day after adoption.
- 1.6 **Gas Energy.** Gas Energy includes both retail and wholesale natural, manufactured or mixed gas.
- 1.7 **Gas Facilities.** Gas transmission and distribution pipes, lines, mains, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the

Company for the purpose of providing Gas Energy for retail, wholesale or other public or private use.

1.8 **Notice.** A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to the General Counsel, 401 Nicollet Mall, 8<sup>th</sup> Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to Jennifer Levitt, City Administrator, 12800 Ravine Parkway South, Cottage Grove, MN 55016. Any party may change its respective address for the purpose of this Ordinance by written Notice to the other parties.

1.9 **Ordinance.** This gas franchise ordinance, also referred to as the Franchise.

1.10 **Public Ground.** Land owned or otherwise controlled by the City, park, a trail or walkway not in a right-of-way, open space or other public property, which is held for use in common by the public or for public benefit.

1.11 **Public Way.** Any highway, street, alley, or other public right-of-way within the City.

## **SECTION 2. ADOPTION OF FRANCHISE.**

2.1 **Grant of Franchise.** City hereby grants Company, for a period of twenty (20) years from the Effective Date as defined in Section 14, the right to transmit, distribute and sell Gas Energy 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 and also the right to transport Gas Energy through the limits of the City for use outside of the City limits. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to a public right-of-way ordinance or permit requirements adopted consistent with state law. All Gas Facilities located on Public Grounds shall be memorialized in a utility easement or other legally recordable instrument between City, Company and the underlying property owner if different than the City, to document the Gas Facilities.

2.2 **Effective Date; Written Acceptance.** This franchise agreement shall be in force and effect from and after passage of this Ordinance and publication as required by law on the Effective Date. However, if Company does not file a written acceptance with the City within ninety (90) days after the date the City Council adopts this Ordinance, the City Council by resolution shall revoke this Franchise.

2.3 **Service and Gas Rates.** The terms and conditions of service and the rates to be charged by Company for Gas Energy in City are subject to the jurisdiction of the Commission.

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

2.5 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 of the default and the desired remedy. The notification shall be written. 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 Washington County District Court to interpret and enforce this Franchise or for such other relief as may be permitted by law or equity .

2.6 Continuation of Franchise. If the City and the Company are unable to agree on the terms of a new franchise by the time this Franchise expires, this Franchise will remain in effect until a new franchise is agreed upon, or until ninety (90) days after the City or the Company serves written Notice to the other party of its intention to allow Franchise to expire. However, in no event shall this Franchise continue for more than one (1) year after expiration of the twenty (20) year term set forth in Section 2.1.

### **SECTION 3. LOCATION, OTHER REGULATIONS.**

3.1 Location of Facilities. Gas Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System. Gas Facilities may be located on Public Grounds in a location selected by the City. The location and relocation of Gas Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this Franchise. Company may abandon underground gas facilities in place, provided, at City's request, Company will remove abandoned gas facilities interfering with a City improvement project, but only to the extent such gas facilities are uncovered or will be uncovered by excavation as part of the City's improvement project.

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

3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee, subject to Section 9.1 of this Ordinance. Permit conditions imposed on Company shall not be more burdensome than those imposed on other public right-of-way users for similar facilities or

work. Company may, however, open and disturb any Public Ground or Public Way without a permit from the City where an emergency exists requiring the immediate repair of Gas Facilities and Company gives telephone, email or similar notice to the City before commencement of the emergency repair, if reasonably possible. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same in accordance with Minnesota Rules, 7819.1100 and City requirements for paving and foundation that are not in conflict with Minnesota Rules, 7819.1100, to as good a condition as formerly existed, and shall maintain any surface in good condition for one year thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of Company to install, replace or maintain facilities in a Public Way, unless otherwise agreed to by the City and Company.

3.5 Avoid Damage to Gas Facilities. Per Minnesota Statute 216D.05, the City and Company must take protective measures when it performs work near the Gas Facilities. Nothing in this Ordinance relieves any person, including Company, from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity.

3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways 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. The notice must be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Gas Facilities.

3.7 Mapping Information. If requested by City, the Company must promptly provide complete mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100.

#### **SECTION 4. RELOCATIONS.**

4.1 Relocation of Gas Facilities in Public Ways. The Company and City shall comply with the provisions of Minnesota Rules 7819.3100, with respect to requests for the Company to relocate Gas Facilities located in Public Ways.

4.2 Relocation of Gas Facilities in Public Ground. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

4.3 Projects with Federal Funding. Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally aided highway project, or such a project within City, shall be governed by the provisions of Minnesota Statutes Sections 161.45 and 161.46. City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request.

4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

#### **SECTION 5. TREE TRIMMING.**

Company may trim all shrubs and trees, including roots, in the Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of Gas Facilities installed, provided that Company shall save City harmless from any liability arising therefrom. The City shall not be indemnified for losses or claims occasioned through its own negligence or otherwise wrongful act or omission except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work.

#### **SECTION 6. INDEMNIFICATION.**

6.1 Indemnity of City. Company shall indemnify and hold the City harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence or otherwise wrongful act or omission except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination

6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the 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 Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation 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 action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This Franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

## **SECTION 7. VACATION OF PUBLIC WAYS.**

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way or Public Grounds. The City and the Company shall comply with Minnesota Rules 7819.3100 and Minnesota Rules 7819.3200 with respect to any request for vacation. In no case, however, shall the City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29. Except where required 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. Any remaining Gas Facilities in a vacated right-of-way shall be memorialized in an easement or otherwise recordable instrument between Company and the underlying property owner, unless otherwise agreed to by the City and Company.

## **SECTION 8. CHANGE IN FORM OF GOVERNMENT.**

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

## **SECTION 9. FRANCHISE FEE.**

9.1 Fee Schedule. During the term of the franchise hereby granted, the City may impose on the Company a franchise fee. The Company will administer the collection and payment of franchise fees to City. The franchise fee will be collected on a flat per meter basis, or by some other method that is mutually acceptable to both City and Company for each retail customer within the corporate limits of the City. The amount of the fee collected may differ for each customer class. The City will use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. The franchise fee formula may be changed from time to time, however, the change shall meet the same Notice and acceptance requirements of this Ordinance and the fee may not be changed more often than annually. If the Company claims that the City required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company will provide a formula that will produce a substantially similar fee amount to the City. If the City and Company are unable to agree, the disagreement shall be subject to the Dispute Resolution provisions of Section 2.5.

9.2 Separate Ordinance; Notice of Ordinance. The franchise fee shall be imposed by a separate ordinance, duly adopted by the City Council, which ordinance shall not be effective until at least 90 days after adoption. Following adoption, the City shall send written notice by certified mail to Company of the passage of the Ordinance. The Company is not required to collect a franchise fee if the terms of the fee agreement are inconsistent with this franchise or state law, provided the Company notifies the City of the same within the ninety (90) day period. The fee shall not become effective until the beginning of a Company billing month at least 90 days after the Effective Date. Section 2.5 shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of energy within the City by any other energy supplier, provided that, as to such supplier, the City has the authority or contractual right to require a franchise fee or similar fee through an agreed-upon franchise. Such fee shall not exceed any amount that the Company may legally charge to its customers. No franchise fee shall be payable by Company if Company is legally unable to collect an amount equal to the franchise fee from its customers under Commission rules or order.

9.3 Collection of the Fee. The franchise fee shall be payable quarterly during complete billing months of the period for which payment is to be made. The payment shall be made to the City within 30 days after the end of each quarter. The time and manner of collecting the franchise fee is subject to the approval of the Commission. Such fee is subject to subsequent reductions to account for uncollectibles, erroneous billings and customer refunds incurred by the Company. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments. The Company may collect a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for gas service in each class.

**SECTION 10. PROVISIONS OF ORDINANCE.**

10.1 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. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

10.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement 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 agreement 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.

**SECTION 11. AMENDMENT PROCEDURE.**

Either party to this franchise agreement may at any time propose that the agreement be amended. 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 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. If the Company does not consent to the amendment, the ordinance containing the amendment shall be revoked by City.

**SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.**

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

**SECTION 13. SUMMARY PUBLICATION.**

Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

This 20-year Franchise Agreement allows Northern States Power Company to provide gas services to the residents of Cottage Grove. The associated franchise fee will be effective 90 days after final adoption.

**SECTION 14. EFFECTIVE DATE.** This ordinance shall become effective 90 days after final adoption.



Passed this 2nd day of August, 2023.

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Myron Bailey, Mayor

Attest:

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Tamara Anderson, City Clerk