

By Gordon

Repealing Appendix D of the Minneapolis Code of Ordinances relating to Northern States Power Company: Charge for Use of Streets.

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

Section 1. That Appendix D of the Minneapolis Code of Ordinances be and is hereby repealed.

~~APPENDIX D NORTHERN STATES POWER COMPANY: CHARGE FOR USE OF STREETS~~

~~AN ORDINANCE RELATING TO THE RIGHT OF NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, INSTALL, ENLARGE, OPERATE, REPAIR AND MAINTAIN, IN THE CITY OF MINNEAPOLIS, MINNESOTA, ITS ELECTRIC DISTRIBUTION SYSTEM AND ELECTRIC TRANSMISSION LINES, INCLUDING NECESSARY POLES, POLE LINES, TOWERS, STRUCTURES, WIRES, CABLES, CONDUITS, AND OTHER FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRICITY TO THE CITY OF MINNEAPOLIS AND ITS INHABITANTS, AND OTHERS, AND TRANSMITTING ELECTRICITY FROM, INTO AND THROUGH THE CITY, AND TO USE THE STREETS, ALLEYS AND PUBLIC GROUNDS OF SAID CITY FOR SUCH PURPOSES, AND REPEALING A CERTAIN ORDINANCE PASSED MARCH 12, 1971.~~

Section 1.

Section 2.

Section 3.

Section 4.

Section 5.

Section 6.

Section 7. Vacation of public ways.

Section 8. Tree trimming.

Section 9.

Section 1.

~~For the Company's use of the streets, alleys, and public grounds of the City from January 1, 1994 ("Commencement Date") until December 31, 2014 for the Company's electric distribution and electric transmission lines, the Company shall pay to the City on or before the 25th day of each calendar month, beginning March 1, 1994, as full compensation therefor, a franchise fee as defined and scheduled in Section 4 below. The last franchise fee payment shall be made on the 25th day of the month following the expiration of the franchise term.~~

~~In consideration of such franchise fee, the Company may, during said franchise period, construct, install, enlarge, operate, repair and maintain in, on, over, under and across the streets, alleys and public grounds of the City, an electric distribution system and electric transmission lines, including all poles, pole lines, towers, structures, wires, cables, conduits, lamps, transformers, and other fixtures and appurtenances, usually, conveniently or necessarily used in connection therewith, for the purpose of transmitting electricity into, from and through~~

~~the City. The use of the streets by the Company shall be subject to reasonable regulations by the City Council and shall be consistent with the use of the streets for proper street purposes by the public, by the City, by the public utilities and others; and in the case of public grounds, shall be consistent with the use of said public grounds by the City and by the public for the public purposes for which they are used and intended.~~

Section 2.

~~This Ordinance is intended to cover only the right of the Company to the use of the City's streets, alleys and public grounds for the purposes set forth in Section 1 hereof. In all other respects this Ordinance is not intended in any way to affect or modify or surrender any powers now held by the City, or which may hereafter be granted to the City by the State Legislature, or to affect the powers of the State Legislature in dealing with the Company in authorizing taxation of the Company or its properties, in the regulation of its rates and charges, or in otherwise regulating or controlling the Company and its properties in all ways consistent with the Constitution of the United States and the Constitution of the State of Minnesota.~~

Section 3.

~~This Ordinance shall become effective January 1, 1994, provided that the Company by the Commencement Date shall have filed with the City Clerk a written consent by the Company to terms of the Ordinance after its adoption by the City Council and after publication of this Ordinance. All calculations and payments made under this Ordinance shall be made from February 1, 1994 whether or not the filing herein has been completed by January 1, 1994. The filing of such consent and the making of payments required by this Ordinance shall not be construed as a relinquishment or surrender by the Company to any rights it has or claims to have, independently of this Ordinance, to use the streets, alleys and public grounds of the City for the purposes set forth in Section 1 hereof, and shall not be construed to foreclose the Company from claiming, and exercising, after the expiration of this franchise, any such rights; this ordinance is a continuation of the agreement to forebear the assertion and adjudication of certain claims during the term of the franchise granted, as originally agreed to between City and Company by that certain ordinance passed December 23, 1954, and published December 31, 1954, and as continued by ordinance adopted March 12, 1971; and as continued by ordinance adopted March 8, 1991, and the enactment of this Ordinance shall not be considered in any way a relinquishment or surrender by the City of the power it claimed to have at the time prior to December 23, 1954, agreement to impose upon the Company a charge for the use of the City's streets, alleys and public grounds, except for the period and on the terms set forth in this Ordinance.~~

~~All rights and obligations under this Ordinance shall extend to the successors and assigns of the Company.~~

Section 4.

~~During the franchise term and in lieu of any other franchise or permit fees being imposed upon Company in relation to its operations as a public utility, the Company agrees to pay the City a percentage of the Company's gross revenues as defined and scheduled below.~~

~~The term "gross revenues" shall mean all sums received by the Company from the sale of electricity to its retail customers within the corporate limits of the City, excluding the surcharge for collecting the franchise fee herein imposed or sales or other tax collected by the Company from the customer. The Company may pay the City the fee based upon the surcharge billed, subject to subsequent reductions to account for uncollectibles or customer refunds. If the Public Utilities Commission orders a refund to customers, the City will be debited with the overpayment~~

~~to the City caused by the Commission order. The Company is entitled to an on-going adjustment for uncollectibles for which a fee payment was made to the City based on uncollected bills. The amount of the franchise fee payable on the 25th day of the month will be based upon the Company's gross revenues for the preceding billing month to the extent required by the following schedule for each listed customer classification:~~

- ~~1. For residential service customers, the fee will be:
 - ~~a. Five percent (5%) of gross revenues for the period of January 1, 1994, through December 31, 2012.~~
 - ~~b. Four and one-half percent (4.5%) of gross revenues for the period January 1, 2013, through December 31, 2014.~~~~
- ~~2. For large (100kW or greater) commercial and industrial customers served at primary or higher voltages, the fee will be:
 - ~~a. Five percent (5%) of gross revenues for the period of January 1, 1994, through December 31, 1997.~~
 - ~~b. Four and one-half percent (4.5%) of gross revenues for the period of January 1, 1998, through December 31, 2000.~~
 - ~~c. Three and three-tenths percent (3.3%) of the gross revenues for the period of January 1, 2001, through December 31, 2004.~~
 - ~~d. Three percent (3%) of gross revenues for the period of January 1, 2005, through December 31, 2014.~~~~
- ~~3. For all small (less than 100kW) commercial and industrial customers, large (100kW or greater) commercial or industrial customers served at secondary voltage, and all remaining miscellaneous classifications, the fee will be:
 - ~~a. Five and seventy-five hundredths percent (5.75%) of gross revenues for the period of January 1, 1994, through December 31, 2004.~~
 - ~~b. Five percent (5%) of gross revenues for the period of January 1, 2005, through December 31, 2014.~~~~

~~At the time of each monthly payment, the Company shall file with the Finance Officer of the City a statement showing the amount of its gross revenues for the preceding billing month as a basis for the calculation of the sum of money due; and the Company shall furnish to said Finance Officer, not later than April 1st of the year, 1994 and of each year thereafter, a statement, certified by the Company's Controller or another officer of the Company, of the amount of the Company's gross operating revenues for the preceding calendar year. The City, at its option and expense, may verify through an independent auditor the information provided by such annual statement.~~

~~The foregoing franchise fee shall be paid to City in lieu of any other permit or licensing fees, charges, or costs imposed on Company for providing electric service or performing work necessary to provide electric service in the City during the term of this Ordinance. The Company shall be required to pay only such other fees, charges, costs or taxes which are generally required to be paid by other businesses or persons in the City.~~

Section 5.

~~The City has stated its intent to accommodate an objective of attempting to establish uniform fees or charges for the use of city streets for installing new facilities used to deliver electricity, gas, steam, hot water or other forms of energy to customers within the City. In no event shall NSP be required to collect a franchise fee from any class of customers in a greater amount than~~

~~the permit fee or franchise fee percentage rate of the same or similar class of customers imposed by the City in any new franchise, or in any amendment of an existing franchise, granted to another energy supplier after the Commencement Date. Except as provided in this section and section 6, the provisions of Section 4 and the franchise fee schedule set forth therein shall prevail over any other provisions of this Ordinance.~~

~~The City is not bound to impose the scheduled franchise fees on the Company where the City finds, by resolution, in its sole discretion, that waiver of part or all of the fees are necessary to encourage economic development within the City or for other public purposes. Once fees are waived, the City, in its sole discretion, may reinstate part or all of the franchise fees in accordance with the above schedule.~~

Section 6.

~~The Company has agreed to collect and pay the franchise fee, set forth in Section 4, on the condition that the fee will not cause a customer to cease or reduce its electric energy purchases from the Company by modifying equipment, or installing new equipment, to use a form of energy (including electricity not purchased from Company) subject to a lesser or no fee payable by the energy supplier to City. It is agreed by City that Company, at its discretion and upon 20 days prior written notice to City, may agree with any customer to eliminate or reduce the franchise fee Company would otherwise collect to the amount, if any, of the fee imposed by City on the supplier of the energy the customer would use if certain specified equipment were used, modified or installed, but only to the extent the customer agrees to use electricity purchased from Company in lieu of such other energy available to the customer which is not subject to a City fee or which is subject to a lesser City fee.~~

~~The proposed reduction or elimination of the fee may become effective 20 days after the date of the above notice, unless the City Finance Officer delivers to Company, prior to such 20th day, a written statement objecting to the Company's proposed reduction or elimination of the fee. In the event the Finance Officer issues such a written statement of objection, the Company may appeal the objection to City Council by written notice to the City Clerk. Within 30 days of the Company's appeal, the City Council shall consider the City Finance Officer's objection and determine by resolution either to confirm or withdraw the Finance Officer's objection. If any reduction in fees occurs under this Section, the basis for the reduction may be reviewed annually at the request of City to assure such reduction continues to be warranted.~~

Section 7. Vacation of public ways.

~~The City shall give the Company at least two 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 electric facilities, shall not operate to deprive Company of its rights to operate and maintain such electrical 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, Section 160.29.~~

Section 8. Tree trimming.

~~Company is also granted the permission and authority to trim all trees and shrubs in the streets, alleys and public ways of City as may be necessary to avoid interference with the proper construction, operation, repair and maintenance of any poles, pole lines, and fixtures or appurtenances installed in pursuance of the authority hereby granted, provided that the Company shall obtain such further permission or authority from the Minneapolis Park and~~

~~Recreation Board (the "Park Board") as shall be required from time to time and provided that the Company shall save the City and Park Board harmless from any liability in the premises.~~

Section 9.

~~Upon this Ordinance becoming effective, the ordinance passed March 8, 1991, entitled:~~

~~"An ordinance relating to the right of Northern States Power Company, a Minnesota Corporation, its successors and assigns, to construct, install, enlarge, operate, repair and maintain in the City of Minneapolis, Minnesota, its electric distribution system and electric transmission lines, including necessary poles, pole lines, towers, structures, wires, cables, conduits, and other fixtures and appurtenances, for the furnishing of electricity from, into and through the City, and to use the streets, alleys and public grounds of said City for such purposes and repealing a certain ordinance passed March 12, 1971",~~

~~shall be hereby repealed and the Company shall be relieved and discharged of any and all obligations and liabilities which may have arisen or accrued thereunder after payment of the final franchise fee collected thereunder on February 25, 1994, it being the intent of the City and the Company that this Ordinance shall in all respects replace said ordinance of March 8, 1991.~~