

**ORDINANCE  
of the  
CITY OF MINNEAPOLIS**

**By Gordon**

**Amending the Minneapolis Code of Ordinances by adding a new Appendix C-1 relating to Centerpoint Energy Resources Corp., d/b/a Centerpoint Energy Minnesota Gas, Gas 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 C-1 to read as follows:

An ordinance granting Centerpoint Energy Resources Corp., d/b/a Centerpoint Energy Minnesota Gas ("Centerpoint Energy"), 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 Minneapolis, Hennepin County, Minnesota, for such purpose, and prescribing certain terms and conditions thereof.

**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 gas retail rates now vested in the Minnesota Public Utilities Commission.

1.3 Company. CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas ("CenterPoint Energy") 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.

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

1.5 Gas Energy. Gas Energy includes both retail and wholesale natural, manufactured or mixed gas.

1.6 Gas Facilities. Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company in the City for the purpose of providing Gas Energy for retail or wholesale use.

1.7 Gross Revenues. All gas distribution revenues received by the Company from retail customers of the Company who purchase, receive, or transport Gas Energy from or through the Company's

Gas Facilities within the City. For Gas Energy transported but not sold by the Company, gross revenues shall include only the revenues for the Company's transportation of gas energy and not the revenues for a third party's sale of gas energy to customers within the City. Gross Revenue for the purposes of calculating the franchise fee imposed by Section 8, shall be subject to adjustment only as specifically provided in Section 8.3.

1.8 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 CenterPoint Energy, Minnesota Division Vice President, 800 LaSalle Avenue, Minneapolis, Minnesota 55402. 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.

1.9 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.

1.10 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.

## **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, but not before January 1, 2015, the right to import, manufacture, 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 Way and Public Ground, 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, other 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 Public Ground by the 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. This Ordinance is intended to cover only the right of the Company to the use of the Public Way and the Public Ground for the purposes set for in Section 2.1. 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 be hereafter 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.

2.4 Not Exclusive. This Franchise is not exclusive.

2.5 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.

2.6 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 provide to City reporting information on service reliability, infrastructure investments, capital improvements, customer usage and program participation, and other measures, as may be beneficial and mutually agreeable, the exact format and content of which shall be mutually agreed to by the City and Company.

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

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

2.9 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. Gas Facilities shall be located, constructed, and maintained in as safe and secure a manner as reasonably possible; in such a manner so as to not unnecessarily interfere with the safety and convenience of ordinary travel along and over Public Way or the public or governmental use thereof or the public or governmental use of Public Grounds; and so as not to disrupt normal operation of any City Utility System. Gas Facilities may be located on Public Grounds in a location accepted by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities shall be subject to the provisions of Chapters 429 – 430 of the Minneapolis Code of Ordinances and any other provisions of the Code as may be applicable and as they may be amended from time to time, and to such other regulations of the City consistent with authority granted the City to manage its Public Way and Public Ground under state law. 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 provisions, the terms of this Franchise shall govern.

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, Minnesota Rules, and City Ordinance Chapter 429.90.

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. 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 subcontractors have 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 or storm restoration.

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 Gas Facilities to remedy a situation that jeopardizes the public health or safety. 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. Subject to the City’s right to restore the Public Way or Public Ground pursuant to Code of Ordinances, Section 430.70, and after performing the Work, the Company shall promptly and diligently restore the Public Ground or Public Way, including paving and its foundation, to the same condition that existed before the commencement of the work, removing all dirt, rubbish, equipment, and material, and maintaining any paved surface in good condition for one year thereafter (the “Restoration Work”). Company shall notify the City upon completion of the Restoration Work. If Company fails to promptly and fully 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, including the City’s administrative expenses and overhead.

3.6 Avoidance of Damage. The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Gas 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 Gas Facilities. The Company shall provide notice to the City in the event that any City Utility System is damaged in performing the Work or the Restoration Work.

3.7 Public Improvements. The City must give Company reasonable advance notice of plans for improvements to Public Ground or Public Way when the City has reason to believe that Gas 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 Compliance with Laws. Company shall not bring into the Public Way or Public Ground or permit to be brought into 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 government, or any other government authority with jurisdiction ("Hazardous Substances"). In the event Company brings Hazardous Substances into the Public Way or Public Ground (with or without the permission of the City), Company shall comply with all applicable laws, regulations, and lawful governmental orders of federal, state, and local governmental agencies related to such Hazardous Substances. The Company shall remove or remediate any Hazardous Substances caused or permitted by the Company to be located on, in, or surrounding 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. 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 based upon the terms and conditions imposed upon the Company under this Section 3.8 or which arise from or are related to the Company's acts or failure to act in compliance with any law, rule, regulation, or lawful order governing Hazardous Substances. The Company and City acknowledge that the intended purpose of this agreement is to authorize the Company to transport natural gas through its distribution system in the city of Minneapolis. Accordingly, to the extent that natural gas is transported through the Company's distribution system without spill, release or disposal in the Public Way or Public Ground, it shall not be considered a "Hazardous Substance" as defined herein.

#### **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 Section 4.1 shall not constitute a taking by the City nor 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. Notwithstanding the foregoing, a right-of-way user is not required to remove or relocate its facilities from a right-of-way that has been vacated in favor of a nongovernmental entity unless and until the reasonable costs to do so are first paid to the right-of-way user.

**4.2 Relocation Within Five Years.** Except in the event of a natural disaster, if the City orders a relocation of Gas Facilities within five years of ordering relocation of the same Gas 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 Gas Facilities at its expense.

**4.3 State Highway Projects.** Relocation of Gas 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. Indemnification.**

5.1 Indemnification. The Company will defend, indemnify, and hold harmless the City from all liability or claims of liability for bodily injury or death to persons, or for property damage, in which the claim alleges a negligent, wrongful act or omission of the Company or its employees, agents, or independent contractors in installing, maintaining, operating, or repairing the Company's facilities; and alleges that the City is liable, without alleging any independent negligent, wrongful, act or omission on the part of the City. Further, the Company will defend, indemnify, and hold harmless the City from all liability or claims of liability for bodily injury or death to persons, or for property damage, in which the claim is based on the City's negligent, wrongful act or omission in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition, or purpose of the permit granted to the Company. However, the Company is not required to indemnify the City for losses or claims occasioned by the negligent or otherwise wrongful act or omission of the City.

5.2 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 6. Vacation of Public Way and Public Ground.**

The City and the Company shall comply with Minneapolis Code of Ordinances 429.140 with respect to any request for vacating Public Way and Public Ground.

## **Section 7. Assignment.**

Neither party may assign this Franchise without the prior approval of the other party, which will not be unreasonably withheld. Notwithstanding the foregoing, if the Company merges with, is acquired by, or acquires another company, it reserves the right to assign this franchise.

## **Section 8. Franchise Fee.**

8.1 Franchise Fee. As a condition of the Franchise, City imposes on the Company the obligation to pay a franchise fee to City. The franchise fee may be expressed (i) as a percentage of the Gross Revenues received by the Company for its operations within the City, or (ii) a flat fee per meter or (iii) in such other manner or fashion that is mutually acceptable to both the City and Company and shall be applied in a manner that does not place the Company at an economic disadvantage with another public utility as defined in Minnesota Statutes, Chapter 216B.

8.2 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:

For Residential service customers, four and one-half percent (4.5%) of Gross Revenues

For Large Volume Firm and Large Volume Dual Fuel customers, three percent (3%) of Gross Revenues

For all other customers, five percent (5%) of Gross Revenues.

- a. For Large Volume Firm and Large Volume Dual Fuel) customers, in the event that the City imposes a franchise fee or tax on all alternate, competing fuels, including but not limited to fuel oil, propane and coal, then the City may, with notice to Company, and without the Company's consent raise the franchise fee payable to the City to the same level as the franchise fee or tax imposed on alternate competing fuels, but in no event more than 5% of Gross Revenues;
- b. This franchise fee shall be paid to the City in lieu of any other permit or licensing fees, charges, or costs imposed on the Company for providing gas service or performing work necessary to providing gas service in the City's Public Ground or Public Way during the term of this Franchise. Company shall pay fees as provided in Section 3.3.

8.3 Fee Payment. The franchise fee shall be payable monthly and shall be based on the complete billing month for which payment is due. The payment shall be due 25 days after the end of the month for which the payment is due. The Company shall pay the City the franchise fee based upon the prevailing rate and as billed to the customer, but subject to subsequent adjustment in any of the following events: (i) if any amount so billed subsequently becomes uncollectible after reasonable efforts of collection by the Company or (ii) customer refunds incurred by the Company or any amounts the Company is unable to collect under Commission Rules or Order.

8.4 Separate Ordinance. (a) The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council (the "Fee Ordinance").

(b) 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 gas 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.

(c) 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 gas 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.

(d) The City may waive the requirement under paragraph (b) 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.

(e) The franchise fee 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. The effective date of the franchise fee ordinance shall be no less than sixty (60) days after written Notice enclosing a copy of the duly adopted and approved ordinance has been served upon the Company by Certified mail. The Company is not required to collect a franchise fee if the terms of the Fee Ordinance are inconsistent with this Franchise or state law, provided the Company notifies the City Council of the same within the sixty (60) day period.

8.5 No Waiver or Release. No acceptance of any payment shall be construed as an accord that the payment made is in fact the correct amount, nor shall such acceptance of the payment be construed as a release of any claim that the City may have for further sums payable under the provisions of this Ordinance. All amounts paid shall be subject to audit and re-computation by the City.

8.6 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 automatically, and without further action by the City, be reduced to the maximum amount or rate permitted by law.

8.7 Challenge to Fee. If any person challenges the collection or any aspect of the franchise fee or payment made to the City pursuant to this Franchise, the Company shall promptly provide notice of such challenge to City and shall, in any event, continue to diligently exercise its efforts to sustain the franchise fee and remitting of payments.

## **Section 9. Abandoned Facilities.**

Company shall notify the City of Company's intent to abandon or no longer use any Gas Facilities in the Public Way or Public Ground, including, but not limited to, any vaults or similar facilities. Company shall remove, at Company's sole expense, such abandoned or unused Gas Facilities when work is performed, if required in conjunction with other right-of-way, repair, excavation or reconstruction work, unless this requirement is waived by the City, unless the City Engineer or his or her designee provides written approval of such Gas Facilities remaining in place, upon such terms and conditions as the City deems appropriate.

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

10.1 City shall have access at all reasonable times to inspect, examine or audit such accounts, books, records, reports, contracts, documents and papers of the Company relating to its utility operations in the City as necessary to verify the accuracy of the Company's franchise fee payments.

10.2 The Company shall provide to the City the annual information it provides to the Commission regarding customer complaints.

## **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.

11.2 Limitation on Applicability. This Ordinance constitutes a 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 Early Termination. The City may terminate the Franchise before the term provided in Section 2.1 only as provided in this Section. If the City asserts that Company is not working in good faith to honor its obligations under the Clean Energy Partnership Memorandum of Understanding (“MOU”) incorporated by reference, the City shall notify Company in writing of the specific facts supporting its allegation, as well as the desired remedy (“Notice of Concerns”). Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the issues identified in the Notice of Concerns are not resolved within one hundred eighty days of Company’s receipt of the Notice of Concerns, the parties must promptly and jointly select a mediator to facilitate further discussion and conduct non-binding mediation. The parties will equally share the fees and expenses of this mediator. If the parties are unable to resolve the issues identified within three hundred sixty-five days after Company’s receipt of the Notice of Concerns, the City may terminate this Franchise by providing written notice of intent to terminate to Company at least twelve months before the effective termination date, provided that earliest date that the notice of intent to terminate may be sent is January 1, 2019. 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.

## **Section 13. Previous Franchises Superseded.**

This Ordinance supersedes any previous gas franchise granted to Company or its predecessor but not before January 1, 2015.