

ELECTRIC FRANCHISE

ORDINANCE NO. 68

CITY OF NEW MUNICH, STEARNS COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF NEW MUNICH, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING ELECTRIC ENERGY INTO AND THROUGH THE CITY AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF NEW MUNICH, STEARNS COUNTY, MINNESOTA, ORDAINS:

SECTION 1. Definitions

Subd. 1. "City" means the City of New Munich, County of Stearns, State of Minnesota.

Subd. 2. "City Utility System" means the facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

Subd. 3. "Company" means Northern States Power Company, a Minnesota corporation, its successors and assigns.

Subd. 4. "Notice" means a writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to the General Counsel, Law Department, 414 Nicollet Mall, Minneapolis, MN 55401. Notice to City shall be mailed to the City Clerk, Box 93, New Munich, MN 56356. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

Subd. 5. "Public Ground" means land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

Subd. 6. "Public Way" means any street, alley, walkway or other public right-of-way within the City.

SECTION 2. Grant of Franchise

City hereby grants Company, for a period of 20 years from the date 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 City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain electric distribution system and electric transmission lines, including poles, lines, fixtures, and any other necessary appurtenances in, on, over, under and across the Public Ways and Public Grounds of City. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to the further provisions of this franchise agreement.

SECTION 3. Restrictions

Subd. 1. Company facilities included in such electric distribution system, transmission lines and appurtenances thereto, shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over said Public Ways. Company's construction, operation, repair, maintenance and location of such facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground electric facilities in place, provided at City's request Company removes abandoned metal or concrete encased conduit interfering with a City improvement project to the extent such conduit is uncovered as part of the City improvement project.

Subd. 2. Company shall not construct any new installations within or upon any Public Grounds without receiving the prior written consent of an authorized representative of City for each such installation.

Subd. 3. In constructing, removing, replacing, repairing, or maintaining said poles, lines, fixtures and appurtenances, Company shall, in all cases, place the Public Ways in, on, under or across which the same are located in as good condition as they were prior to said operation and maintain any restored paved surface in such condition for two years thereafter. 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 a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

SECTION 4. Tree Trimming

Company is also granted the permission and authority to trim all trees and shrubs in the Public Ways and Public Grounds of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any poles, lines, fixtures or appurtenances installed in pursuance of the authority hereby granted, provided that Company shall save City harmless from any liability in the premises.

SECTION 5. 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 Public Utilities Commission of this State or its successor agency.

SECTION 6. Relocating

Subd. 1. Whenever City at its cost shall grade, regrade or change the line of any Public Way, or construct or reconstruct any City Utility System therein and shall, in the proper exercise of its police power, and with due regard to seasonable working conditions, when necessary, and after approval of its final plans have been obtained, order Company to relocate permanently its lines, services and other property located in said Public Way, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any Public Way or to construct or reconstruct any City Utility System therein. However, after Company has so relocated, if a subsequent relocation or relocations shall be ordered within five years from and after first relocation, City shall reimburse Company for such non-betterment relocation expense which Company may incur on a time and material basis; provided, if subsequent relocations are required because of the extension of City Utility System to previously unserved areas, Company may be required to relocate at its own expense at any time.

Subd. 2. Nothing contained in this franchise shall require Company to relocate, remove, replace or reconstruct at its own expense its facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

Subd. 3. Any relocation, removal, or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46 as supplemented or amended; and further, it is expressly understood that the right herein granted to Company is a valuable property right and City shall not order Company to remove or relocate its facilities without compensation when a Public Way is vacated, improved or re-aligned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Company.

Subd. 4. The provisions of this franchise 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 Way or Public Ground was established, or Company's rights under state or county permit.

SECTION 7. Indemnification

Subd. 1. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the

construction, maintenance, repair, inspection, the issuance of permits, or the operation of the electric facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence 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.

Subd. 2. 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; and 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.

SECTION 8. Vacation of Public Ways

The City shall give 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 electric 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 Company for failure to specifically preserve a right-of-way, under Minnesota Statutes, Section 160.29.

SECTION 9. Written Acceptance

Company shall, if it accepts this Ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Clerk after the final passage and any required publication of this Ordinance. The City by Council resolution may revoke this franchise agreement if Company does not file a written acceptance within 90 days after publication.

SECTION 10. General Provisions

Subd. 1. 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.

Subd. 2. 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 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.

Subd. 3. 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.

Subd. 4. 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.

Subd. 5. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Company's facilities while performing any activity.

SECTION 11. Publication Expense

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

SECTION 12. Effective Date

This Ordinance is effective as provided by statute or charter and upon acceptance by Company as provided in Section 9.

Passed and approved: March 6, 2000

Harold Klaybake
Mayor

Attest:

Kelly V. L.
City Clerk

EXCERPTS OF MINUTES OF March MEETING

OF THE CITY COUNCIL

OF THE

CITY OF NEW MUNICH, STEARNS COUNTY, MINNESOTA

March 6, 2000

A Regular meeting of the City Council of the City of New Munich, Minnesota, duly called, convened, and held in accordance with law, was called to order by Mayor Harold Klaphak on the 6 day of March, 2000, at 6:38 o'clock P.m. at the Council Chamber in the City.

The following members, constituting a legal quorum, were present:

Harold Klaphak, Ray Painter, Jim Rielland
Charles Borgerding, Larrie Rosen

Councilmember Harold Klaphak introduced a certain Ordinance No. 68 entitled:

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF NEW MUNICH, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING ELECTRIC ENERGY INTO AND THROUGH THE CITY AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES.

and on motion made, seconded, and duly adopted, the above-entitled Ordinance was read.

Thereafter a motion was made by Councilmember Larrie Rosen and seconded by Councilmember Jim Rielland that the above-entitled Ordinance be adopted as read and in its entirety.

On roll call the vote was as follows:


AYES Ray Painter, Jim Rieland

Charles Bergerding, Larrie Rosen

NAYS N/A

The Mayor then declared said motion duly carried and the above-entitled Ordinance duly passed and adopted, and ordered the City Clerk to publish the same in accordance with the law in such case made and provided.

I DO HEREBY CERTIFY that I am City Clerk of the City of New Munich, Stearns County, Minnesota, and that I am custodian of its records, that the above is a true and correct copy of a part of the minutes of the March meeting of the City Council of the City held on March 6, 2000



City Clerk