

ELECTRIC ORDINANCE

ORDINANCE NO. 607

CITY OF SHAKOPEE, SCOTT COUNTY, MINNESOTA

AN ORDINANCE GRANTING NORTHERN STATES POWER COMPANY D/B/A XCEL ENERGY, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN FACILITIES AND EQUIPMENT IN THE CITY OF SHAKOPEE, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PRUPOSES.

THE CITY COUNCIL OF THE CITY OF SHAKOPEE, SCOTT COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

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

City. The City of Shakopee, County of Scott, State of Minnesota.

City Utility System. Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.

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.

Company. Northern States Power Company, dba Xcel Energy, its successors and assignees that own or operate any part or parts of the Electric Facilities subject to this franchise.

Electric Facilities. Electric transmission and distribution towers, poles, conductors, guys, anchors, conduits, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing electric energy for public or private use.

Non-Betterment Costs. Costs incurred by Company from relocation, removal or rearrangement of Electric Facilities that do not result in an improvement to the Electric Facilities.

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, Law Department, 414 Nicollet Mall, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Manager, City of Shakopee, 129 Holmes

Street South, Shakopee, MN 55379-1328. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

Public Way. Public right-of-way within the City as defined in Minn. Stat. § 237.163 subd. 3.

Public Ground. Land owned or otherwise controlled by the City for park, open space or similar public purpose, which is held for use in common by the public.

SECTION 2. ADOPTION OF FRANCHISE.

2.1. **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date this Ordinance is passed and approved by the City, the right to transmit and furnish electric energy for light, heat and power 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, Company may construct, operate, repair and maintain Electric 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 lawful regulations as may be adopted by separate ordinance and as currently exist under City Ordinance 570, codified as Section 7.17. ("Section 7.17"). The Company shall be notified 60 days in advance of proposed changes to Section 7.17. The City and Company shall negotiate in good faith to reach mutually acceptable changes. If the City and Company are unable to agree, disputes will be handled under the terms of Section 2.4 of this Ordinance. If a provision of Section 7.17 conflicts with a provision on the same subject in this Ordinance, this Ordinance will control.

2.2. **Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after its passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 90 Days after the date the City Council adopts this Ordinance, or otherwise places the City on written notice, at any time, that the Company does not accept all terms of this franchise, the City Council by resolution may either repeal this ordinance or seek its enforcement in a court of competent jurisdiction.

2.3. **Publication Expense.** The expense of publication of this Ordinance shall be paid by Company.

2.4. **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 District Court to interpret and enforce this franchise or for such other relief as may be permitted by law.

2.5. **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 90 days after the City or the Company serves written Notice to the other party of its intention to allow the franchise to expire.

SECTION 3. LOCATION, OTHER REGULATIONS.

3.1 **Location of Facilities.** Subject to regulation under Section 7.17, Electric Facilities in the Public Ways shall be located, constructed, and maintained so as not to disrupt normal operation of any City Utility System. Electric Facilities may be located on Public Grounds as determined by the City.

3.2. **Restoration of Ways and Public Ground.** Restoration of the Public Way shall be subject to Section 7.17. After completing any work requiring the opening of Public Ground, the Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six (6) months thereafter. All work shall be completed as promptly as weather permits. If Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition and after demand to Company to cure, City shall, after passage of a reasonable period of time following the demand, but not to exceed five days, have the right to make the restoration of the Public Ground 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.

3.3. **Waiver of Performance Security.** 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 Section 7.17 currently or in the future. The City reserves all other rights under Section 7.17 to enforce Company performance requirements for work in the Public Way or Public Ground.

3.4. **Shared Use of Poles.** Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities whenever such use will not interfere with the use of such poles or towers by the 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 any proportionate cost or any added cost incurred by Company and accept any additional liability because of such use by the City.

3.5. **Avoid Damage to Electric Facilities.** Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

SECTION 4. RELOCATIONS.

4.1. **Relocation of Electric Facilities.** Relocation of Electric Facilities in Public Ways shall be subject to Section 7.17. City may require Company at Company's expense to relocate or remove its

Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Grounds. Relocation of Electric Facilities in Public Ground shall comply with applicable City ordinances consistent with law.

4.2. **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Company Electric 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. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned 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 agreement is made that the reasonable Non-Betterment Costs of such relocation and the loss and expense resulting therefrom will be paid to Company when available to the City. The City need not pay those portions of such for which reimbursement to it is not available.

4.3. **No Waiver.** The provisions of Section 4 apply only to Electric Facilities constructed in reliance on a permit or franchise from City and Company does not waive its rights under an easement or prescriptive right or State or County permit.

SECTION 5. TREE TRIMMING.

Unless otherwise provided in any permit or other reasonable regulation required by the City under separate ordinance, Company may 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 Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom.

SECTION 6. 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 7. FRANCHISE FEE.

7.1. **Reservation of Rights.** The City reserves all rights under Minn. Stat. § 216B.36, to require a franchise fee at any time during the term of this franchise. If the City elects to require a franchise fee it shall notify Company and negotiate in good faith to reach a mutually acceptable fee agreement, which shall be set forth in a separate ordinance and not adopted until at least 60 days after Notice enclosing such proposed ordinance has been served upon the Company by certified mail. If the City and Company are unable to agree on a franchise fee or on any terms related thereto, each hereby consents to the jurisdiction of State District Court, Scott County, to construe their respective rights under the law, subject to all rights of appeal.

SECTION 8. LIMITATION ON APPLICABILITY; NO WAIVER.

This Ordinance constitutes a franchise agreement between the City and its successors and the Company and its successors and permitted assigns, as the only parties. 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. 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 9. 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 60 days after the effective date of the amendatory ordinance.

Passed and approved: August 7, 2001.

Jon Buckhe
Mayor of the City of Shakopee, Minnesota

Attest:

Judith J. Cox
City Clerk, Shakopee, Minnesota