

**XCEL ENERGY  
GAS FRANCHISE ORDINANCE**

**ORDINANCE NO. 2025-04**

**CITY OF LAKE ELMO, 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 LAKE ELMO, MINNESOTA, FACILITIES AND EQUIPMENT FOR THE TRANSPORTATION, DISTRIBUTION, MANUFACTURE AND SALE OF GAS ENERGY, AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.**

**THE CITY COUNCIL OF THE CITY OF LAKE ELMO, MINNESOTA, ORDAINS:**

**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 Lake Elmo, County of Washington, State of Minnesota.
- 1.2 **City Utility System.** 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.
- 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.
- 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, mains, ducts, regulators, fixtures and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing Gas Energy for retail or wholesale use.
- 1.7 **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 to the General Counsel, 401 Nicollet Mall, 8<sup>th</sup> Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, 3880 Laverne Ave. N., Lake Elmo, MN 55042. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

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

1.9 **Public Way.** Any street, alley, walkway 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 20 years from the date passed and approved by the City, the right to 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 ("Franchise"). For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Grounds and Public Ways of City, 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 ordinance and to the further provisions of this Franchise.

2.2 **Effective Date; Written Acceptance.** This Franchise shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City, by Council resolution, may revoke this Franchise if Company does not file a written acceptance with the City within 90 days after publication.

2.3 **Service and Rates.** The service to be provided and the rates to be charged by Company for gas service 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 Notice 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 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.

2.6 **Continuation of Franchise.** If the City and 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 Company serves written Notice to the other party of its intention to allow the Franchise to expire. However, in no event shall this Franchise continue for more than one year after expiration of the 20-year term set for 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 shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Gas 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. Company may abandon underground Gas Facilities in place, provided that at the City's request Company will remove abandoned Gas Facilities that are uncovered or will be uncovered by excavation in conjunction with a City improvement project, or that City demonstrates will interfere with a City improvement project despite not being uncovered by such 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~~ utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Gas Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. 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, including paving and its foundation, in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances not inconsistent with state law and this Ordinance. Company shall restore any Public Ground to as good a condition as formerly existed, and shall maintain any paved 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.

3.5 Avoid Damage to Gas Facilities. 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. Per Minnesota Statute § 216D.05, the City must take protective measures when it performs work near the Gas Facilities.

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 of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the time when the City will start the work, and (iv) if more than one Public Ground or Public Way is involved, the order in which the work is expected to proceed. The Notice must be given to Company a sufficient length of time 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. The Company shall provide mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules Parts 7819.4000 and 7819.4100.

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

4.1 Relocation of Gas Facilities in Public Ways. 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 provided, however, that if a relocation is ordered within three (3) years of a prior relocation of the same Gas Facilities made at Company expense, the City shall reimburse the Company for non-betterment costs on a time and materials basis except for a relocation required to accommodate the extension of a City Utility System to serve an unserved area.

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. 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 first 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. Relocation, removal or rearrangement of any Company Gas Facilities made necessary because of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

4.4 No Waiver. 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 Ground or Public Way was established, or Company's rights under state or county permit.

#### **SECTION 5. [INTENTIONALLY OMITTED]**

## **SECTION 6. INDEMNIFICATION.**

6.1 Indemnity of City. 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 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 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, nor for injury or damage resulting from the Company's performance in a proper manner, of acts reasonably deemed hazardous by Company and such performance is nevertheless ordered or directed by City after at least three (3) days' prior Notice of Company's determination is provided to the City.

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 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. This Franchise shall not 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. 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, 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 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 Company, in lieu of any right-of-way permit fee, a franchise fee as indicated in a Fee Schedule set forth in a separate ordinance, as may be amended or superseded from time to time. Such fee shall not exceed any amount that the Company may legally charge to its customers and

shall be imposed consistent with any applicable Commission order or tariff establishing franchise fee filing requirements.

9.2 **Separate Ordinance.** The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 30 days after Notice enclosing such proposed ordinance has been provided to the Company. The fee shall not become effective until the beginning of a Company billing month at least 90 days after Notice enclosing such adopted ordinance has been provided to Company. 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.

9.3 **Collection of the Fee.** The franchise fee shall be payable as provided in the separate fee ordinance. The franchise fee shall be payable quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for gas service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually. The time and manner of collecting the franchise fee is subject to the approval of the Commission. 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 in each applicable class of customers by imposing a surcharge in Company's applicable rates for gas service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times provided that the City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers.

9.4 **Equivalent Fee.** The separate ordinance imposing the fee shall not be effective against Company unless City lawfully imposes an equivalent franchise fee on the sales of energy by any other franchised energy supplier operating in the City.

## **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 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 may at any time propose that the agreement be amended. If an amendment is agreed upon, 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.

**SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.**

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

Passed and approved: March 4, 2025.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
City Clerk

ACCEPTED: This Franchise is accepted and the undersigned agrees to be bound by its terms.

Dated: \_\_\_\_\_, 2025.

NORTHERN STATES POWER COMPANY D/B/A XCEL ENERGY

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date Published: \_\_\_\_\_