

CITY ORDINANCE

NO. 149

**AN ORDINANCE GRANTING TO MINNESOTA
POWER, ITS SUCCESSORS AND ASSIGNS, A
FRANCHISE TO CONSTRUCT AND MAINTAIN AN
ELECTRIC DISTRIBUTION AND/OR TRANSMISSION
SYSTEM WITHIN THE CITY OF FINLAYSON,
MINNESOTA**

SECTION 1. ADOPTION OF FRANCHISE

- 1.1 Grant of Franchise. The City of Finlayson hereby grants to Minnesota Power, its successors and assigns, (hereinafter referred to as "Company") the right to enter upon and construct, operate and maintain upon the streets, alleys, highways and public grounds of the City, poles, wires, conductors, lines, cables, insulators, communication lines, bases, crossarms, braces, lamps, conduits, underground cables, transformers, and other usual appurtenances and appliances for transmitting and distributing electric power and energy, and for other compatible uses and applications, including but not limited to transmission of data and other information, telecommunications, and electric load dispatch and control. This Ordinance shall remain in effect for a period of twenty (20) years from and after passage of this Ordinance.
- 1.2 Extension of Franchise. The term of this franchise will automatically extend for successive one (1) year periods unless written notice of termination is provided by either party to the other at least ninety (90) days before the end of the then-current term.

SECTION 2. OPERATIONS; REGULATIONS.

- 2.1 Provision of Service. In consideration for the right to use the streets, alleys, highways and public grounds, the Company shall be prepared to and shall furnish twenty-four (24) hour, continuous electric service to consumers in that part of the Company's service territory that is located within the City, including the City, unless prevented by causes not within the Company's reasonable control.
- 2.2 Regulations. The services to be provided and the rates to be charged by the Company are subject to the laws of the State of Minnesota; and the rates, rules and regulations established from time to time by the Company, federal laws and regulations, and/or the Minnesota Public Utilities Commission (the "Commission").
- 2.3 Standard of Care. All poles, wires and other appliances shall be constructed and maintained by Company in as safe and secure a manner as reasonably possible; in such a manner so as not to unnecessarily interfere with the public use of the said streets, alleys, highways and public grounds; and subject to reasonable regulation by the City.

- 2.4 Tree Trimming. The Company may trim, remove, or apply herbicides to, any trees, shrubs and other vegetation in the streets, alleys, highways and public grounds of the City that interfere with the proper construction, operation, repair or maintenance of any of the Company's facilities.
- 2.5 Notice of Improvements. The City will give the Company reasonable advance written notice of plans for improvements to streets, alleys, highways or public grounds of the City where the City has reason to believe that the Company's facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the streets, alleys, highways and public grounds of the City 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) the order in which the work is to proceed.
- 2.6 Vacation of Public Ways. The City must give the Company at least two (2) weeks notice, or such other notice as required by Minnesota law, of the proposed vacation of a public street, alley, or highway. The vacation of a public street, alley, or highway does not deprive the Company of its rights to operate and maintain the Company's facilities until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company by City. The City has the option, but not the obligation to specifically preserve a right-of-way in the manner permitted by Minnesota Statutes Section 160.29.
- 2.7 Other Property Rights of Company. The provisions of this Ordinance apply only to Company facilities constructed in reliance on this franchise and the Company does not waive or modify its rights under any easement, prescriptive right, state or county permit, or other real property interests that Company may have in any public way or in any public ground.

SECTION 3. INDEMNIFICATION

- 3.1 Liability of the City. The City shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation and maintenance by the Company of its lines and appurtenances hereunder, except to the extent caused by the City.
- 3.2 Indemnification by Company. The acceptance of this Ordinance shall be deemed an agreement on the part of the Company to indemnify the City and hold it harmless against any and all liability, loss, damage or expense which may accrue to the City by reason of the neglect, default or misconduct of the Company in the construction, operation or maintenance of its facilities hereunder.

SECTION 4. FRANCHISE FEE

- 4.1 Separate Ordinance. During the term of the franchise hereby granted the City may require a franchise fee to be paid by the Company on its retail operations within the City in accordance with Minn. Stat. Section 216B.36. In the event the City determines that it wishes to proceed to implement such a fee, the City shall notify the Company and arrange to meet with representatives of the Company to discuss its plans for doing so and shall provide such representatives an opportunity to explain the impacts that such a fee would have on each rate

class within the City. Any franchise fee must be imposed by a separate ordinance adopted by the City Council, which ordinance may not become effective until at least thirty (30) days after the issuance of a written order from the Commission authorizing the Company to incorporate such fee within its rate schedule and thereby pass along the costs of such fee to Company's customers located within the City. The Company agrees to use its commercially reasonable efforts to obtain such Commission authorization.

- 4.2 Calculation of Fee. The City may impose the franchise fee as a flat fee per customer per premise based on metered service to retail customers within the corporate limits of the City.
- 4.3 Collection of the Fee. The franchise fee will be payable not less often than quarterly during complete billing months of the period for which payment is to be made. The total amount of the franchise fee may not exceed the total amount that the Company may legally collect from its customers in relation thereto. The amount and origin of the fee will be separately identified on the Company's bills to its customers. The Company shall pay the City the franchise fee based upon the surcharge billed, subject to subsequent reductions to account for uncollectibles or customer refunds and as also reduced by the Company's reasonable out-of-pocket expenses incurred in connection with the imposition and collection of the franchise fee. The time and manner of collecting the franchise fee are subject to the approval of the Commission. The Company agrees to make available for inspection by the City at reasonable times, upon fifteen (15) business days' prior notice from the City, all records necessary to audit the Company's determination of the franchise fee payments.
- 4.4 Change in Fee. The franchise fee formula may be changed by ordinance from time to time; however, each change must meet the procedural requirements of Section 4.1 and may not be made more often than once every five (5) years.
- 4.5 Continuation and Discontinuation of Franchise Fee. If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any, being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon. If another company provides electric service to any customer located within the City without paying a franchise fee to the City, then Company shall no longer be required to pay any franchise fee. The requirement that the Company pay a franchise fee will be reinstated only when equivalent franchise fees are imposed upon all electric service providers within the City. Company shall not be required to retroactively bill customers or otherwise compensate City for any fees which, but for this Section 4.5, would have been collected.

SECTION 5. PREVIOUS FRANCHISES SUPERSEDED

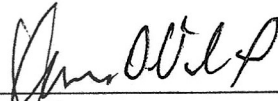
This Ordinance supersedes and cancels the City of Finlayson Ordinance No. 39, dated October 9, 1989, granting a permit to Company, which Ordinance was entitled "An Ordinance granting to Minnesota Power & Light Company, its successors and assigns, the right to construct and maintain an electric distribution and transmission system within the City of Finlayson, Minnesota." In the event that a provision of any other city ordinance conflicts with the provision of this Ordinance, the provisions of this Ordinance shall prevail.

SECTION 6. MEDIATION

The parties agree to promptly submit to mediation (within ten (10) working days of reaching an impasse) any dispute or controversy arising under this agreement that cannot be resolved by the parties through direct communication without mediation. The parties further agree to mediate in good faith. The mediator to be selected shall be listed on the Minnesota Roster of Neutrals and shall either be selected by the mutual agreement of the parties or by each party submitting a list of up to three (3) qualified mediators and then alternately striking names. The parties shall flip a coin to determine which party shall strike the first name. The parties shall equally share the costs of mediation. This procedure shall be followed before either party may file an action/complaint with a court of competent jurisdiction or any regulatory agency.

PASSED AND APPROVED by the City Council of the City of Finlayson this 14th day of September, 2009.

CITY OF FINLAYSON

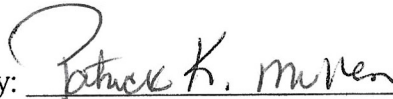
By: 
Mayor

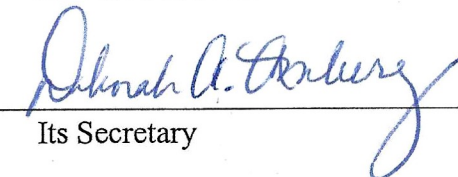
By: 
City Clerk

The provisions of the foregoing Ordinance are hereby accepted:

DATED _____, 2009.

MINNESOTA POWER

By: 
Its Vice President

By: 
Its Secretary