

**ORDINANCE NO. 48, 5th Series**

**AN ORDINANCE GRANTING TO MINNESOTA POWER, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF INTERNATIONAL FALLS, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, 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 PURPOSES.**

**The City Council of International Falls, 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 International Falls, Koochiching County, State of Minnesota.

**City Utility System.** Facilities used for providing public utility service owned or operated by the City or an 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.** Minnesota Power, an operating division of ALLETE, Inc., a Minnesota corporation, its successors and assigns including all successors or assignees that own or operate any part or parts of the Electric Facilities subject to this franchise.

**Company Service Area.** Those areas within the City to which the Company has been assigned the right to provide electric service, as in effect on the Effective Date or as may be hereafter revised.

**Electric Facilities.** Electric transmission and distribution substations, towers, poles, lines, guylines, anchors, conduits, fixtures, and necessary appurtenances owned or operated by the Company for the purpose of providing electric energy for public or private use.

**Notice.** A writing served by any party or parties on any other party or parties. Notice to the Company shall be mailed to Attn: Vice President of Customer Experience, 30 West Superior Street, Duluth, MN 55802. Notice to the City shall be mailed to 600 4<sup>th</sup> Street International Falls, MN 56649. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.

**Public Way.** Any public right-of-way within the City as defined by Minnesota Statutes, Section 237.162, subd. 3.

**Public Ground.** Real Property owned or otherwise controlled by the City with respect to which the City holds the legal right or title to grant or withhold easement, leasehold or occupancy rights or servitudes and not a Public Way.

## **SECTION 2. ADOPTION OF FRANCHISE.**

2.1. **Grant of Franchise.** The City hereby grants the Company, for a period of 10 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 Company Service Area. For these purposes, the Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds, within the Company Service Area, subject to the provisions of this Ordinance. The 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 or permit requirements and to the further provisions of this franchise agreement.

2.2. **Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by the Company. If the Company does not file a written acceptance with the City within 60 days after the date the City Council adopts this Ordinance. If such acceptance is not filed within said period, the Company, by its continuing operations, shall be deemed to have accepted the terms and conditions of this Franchise and any amendment hereto, except with respect to any particulars as it may successfully challenge under the Rejection procedures specified in Section 2.8.

2.3. **Service, Rates and Area.** The service to be provided and the rates to be charged by the Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which the Company may provide electric service is subject to the provisions of Minnesota Statutes, Sections 216B. 37 - .40.

2.4. **Publication Expense.** The Company shall pay the expense of publication of this Ordinance.

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 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 thirty (30) days of the date of 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 seek a resolution from the Commission of disputes regarding franchise fees, tariffs, or other issues within the Commission's jurisdiction, or, for disputes outside of the Commission's purview,

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 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. However, in no event shall this franchise continue for more than one year after expiration of the 10 year term set forth in Section 2.1.

**2.7 Assignment.** The company may assign this Franchise without the prior approval of, but upon not less than thirty (30) days' prior Notice to, the City. Such Notice shall include the identity of and contact information for, the assignee and the statement of the assignee's plans and intentions for the operation of the Electric Facilities under this Franchise.

**2.8 Rejection Procedures.** A rejection of this Franchise or any amendment hereto may be made by the Company only upon the grounds that the terms and conditions hereof or of such amendment exceed the lawful authority of the City under the Constitutions or Laws of the United States or the State of Minnesota or are otherwise unlawful. Any rejection shall be submitted in writing to the City, stating with particularity the points and authorities of law upon which the Company relies. If the City fails to amend this Franchise or otherwise satisfy the Company's objections as stated within thirty (30) days of its receipt of the Company's rejection, the Company shall have the right thereafter to seek appropriate judicial or administrative relief based solely upon those provisions it has alleged are unlawful in its rejection notice. If the Company fails to initiate such legal action within thirty (30) days from the expiration of the aforementioned thirty (30) day period provided for the City's amendment or cure, the Company shall be deemed to have waived its objections and to have accepted the terms of this Franchise or any amendment hereto.

### **SECTION 3. LOCATION, OTHER REGULATIONS.**

**3.1. Location of Facilities.** Electric 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 or interfere with the normal operation of any City Utility System. Electric Facilities may be located on Public Grounds as determined by the City. The Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Electric Facilities shall be subject to other reasonable regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this franchise agreement.

**3.2. Street Openings.** The Company shall not open or disturb the surface of any Public Way or Public Ground 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. Permit conditions imposed on the Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. The Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Electric Facilities and (ii) the Company gives telephone notice to the City

before, if reasonably possible, commencement of the emergency repair. Within two business days after commencing the repair, the Company shall apply for any required permits and pay any required fees.

**3.3. Restoration.** After undertaking any work requiring the opening of any Public Way, the Company shall restore the Public Way in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with law. The Company shall restore Public Ground to as good a condition as formerly existed. All 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 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 ten days, the right to make the restoration of the Public Ground at the expense of the Company. The 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. The Company shall also post a construction performance bond consistent with provisions of the Minnesota Rules, parts 7819.3000 and 7819.0100, subpart 6.

**3.4. Shared Use of Poles.** If the City desires to place facilities on the Company's poles, the City shall enter into a License Agreement for Pole Attachment Rental with the Company containing terms and conditions substantially similar to those contained in other such Agreements that the Company has with other governmental entities.

**3.5. Avoid Damage to Electric Facilities.** The Company must take reasonable measures to prevent the Electric Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Electric Facilities from damage that could be inflicted on the Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Electric Facilities, if given reasonable notice by the City of such work prior to its commencement.

**3.6. Notice of Improvements.** The City must give the Company reasonable written Notice of plans for improvements to Public Ways and Public Ground in the Company Service Area where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways and/or Public Ground 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 Way is involved, the order in which the work is to proceed. The notice must be given to the Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit the Company to make any additions, alterations or repairs to its Electric Facilities the Company deems necessary.

**3.7. Mapping Information.** The Company must provide mapping information for any of its underground Electric Facilities in accordance with Minnesota Rules, parts 7819.4000 and 7819.4100 when requested by the City within a reasonable amount of time. The period of time will be deemed reasonable if it meets the requirements of the one call excavation notice system

as now provided in Minnesota Statutes, chapter 216D (commonly known as of the Effective Date as the “Gopher State One Call’ system).

3.8 **Utility Registration.** The Company must comply with City of International Falls Right-of-Way Ordinance (Chapter 7, Section 7-7), as adopted following final reading on April 15, 2019 and publication on April 20, 2019.

#### **SECTION 4. FACILITIES RELOCATION.**

4.1. **Relocation in Public Ways.** The Company shall comply with Minnesota Rules, part 7819.3100 and applicable City ordinances consistent with law.

4.2. **Relocation in Public Grounds.** The City may require the Company at the Company’s expense to relocate or remove its Electric Facilities from Public Ground upon a finding by the City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground. Such relocation shall comply with applicable ordinances consistent with law. The City shall consider reasonable alternatives in designing its public works projects so as not to arbitrarily cause the Company unreasonable additional expense in exercising its authority under this Section.

4.3. **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Electric Facilities made necessary because of the extension into or through the City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46.

#### **SECTION 5. TREE TRIMMING.**

Unless otherwise provided in any permit or other reasonable regulation required by the City under separate ordinance, the Company may trim all trees and shrubs in the Public Ways and Public Grounds within the Company Service Area to the extent the Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that the Company shall hold the City harmless from any liability arising therefrom.

#### **SECTION 6. INSURANCE AND INDEMNIFICATION.**

6.1. **Insurance.** The Company is required to maintain Commercial General Liability Insurance protecting it from claims for damages for bodily injury, including death, and for claims for property damage, which may arise from operations under this Ordinance. Insurance minimum limits are as follows:

- \$2,000,000 – per occurrence
- \$4,000,000 – annual aggregate

The following coverages shall be included: Premises and Operations Bodily Injury and Property Damage; Personal and Advertising Injury Blanket Contractual Liability and Products and Completed Operations Liability.

The City must be endorsed as an Additional Insured.

Company insurance limits may be satisfied through combination of self-insurance and excess policies to meet its obligation under this Ordinance. In such event, the Company shall submit to the city a Certificate of Self-Insurance or other documents showing proof of its financial responsibility.

**6.2. Indemnity of City.** The Company shall indemnify and hold the City 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 the Company's plans or work, or for any actions taken by the Company pursuant to directions of the City if performed within the scope of the City's directions without negligence by the Company.

**6.3. Defense of City.** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, the Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to the Company within a period wherein the Company is not prejudiced by lack of such notice. If the Company is required to indemnify and defend, it will thereafter have control of such litigation, but the 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 the 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 on its own behalf. 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 7. VACATION OF PUBLIC WAYS.**

The City shall give the Company at least four weeks prior written notice of a proposed vacation of a Public Way. The City and the Company shall comply with Minnesota Rules, 7819.3200 and applicable ordinances consistent with law. Except where ordered pursuant to Section 4.2, the vacation of any Public Way after the installation of Electric Facilities shall not operate to deprive the 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 the Company.

#### **SECTION 8. ABANDONED FACILITIES.**

The Company shall comply with City ordinances, Minnesota Statutes, Sections 216D.01 et seq. and Minnesota Rules, part 7819.3300, as they may be amended from time to time. The Company shall maintain records describing the exact location of all abandoned and retired Facilities within the City, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Facilities, including abandoned and retired Facilities.

## **SECTION 9. 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 10. FRANCHISE FEE.**

10.1. **Form.** During the term of the franchise hereby granted, and in addition to permit fees being imposed or that the City has a right to impose, the City may charge the Company a franchise fee. The fee may be (i) a percentage of gross revenues received by the Company for its operations within the City, or (ii) a flat fee per customer based on metered service to retail customers within the City or on some other similar basis, or (iii) a fee based on units of energy delivered to any class of retail customers within the corporate limits of the City. The formula for a franchise fee based on units of energy delivered may incorporate both commodity and demand units. The method of imposing the franchise fee, the percentage of revenue rate, or the flat rate based on metered service may differ for each customer class or combine the methods described in (i) - (iii) above in assessing the fee. The City shall seek to use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. If the Company claims that the City-required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company shall provide a formula that will produce a substantially similar fee amount to the City and reimburse the City's reasonable fees and costs in reviewing the formula. The City will attempt to accommodate the Company but is under no franchise obligation to adopt the Company-proposed franchise fee formula and such review will not delay the implementation of the City-imposed fee.

10.2. **Separate Ordinance.** The franchise fee shall be imposed by separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least sixty (60) days following the Company's filing notifying the Commission of such fee and including a copy of Company's tariff sheet for the franchise fee. The Company will thereby pass along the costs of such fee to the Company's customers located within the City. The Company agrees to use its commercially reasonable efforts to obtain such Commission authorization.

10.3. **Condition of Fee.** The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of electric energy within the City by any other electric energy supplier, provided that, as to such supplier, the City has the authority to require a franchise fee.

10.4. **Collection of Fee.** The franchise fee shall be payable not less than monthly during complete billing months of the period for which payment is to be made, with the payment due within 45 days after the end of the month. The franchise fee formula may be changed from time to time; however, the change shall meet the same notice requirements and the fee may not be changed more often than annually. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. Such fee is subject to subsequent reductions to account for uncollectibles and customer refunds incurred by the Company. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments. The Company

may, in its sole discretion, impose a surcharge equivalent to the franchise fee in its rates for electric service.

**10.5. Continuation 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 notwithstanding the franchise expiration as provided in section 2.6 above.

#### **SECTION 11. SERVICE RELIABILITY, INFRASTRUCTURE REPORTING.**

The Company and the City shall meet annually at a mutually convenient time to discuss items of concern or interest relating to the Company's service reliability in the previous year compared to other service areas, infrastructure plans for the coming year, and other matters raised by the City or the Company. Upon request, the Company shall produce reports comparing its service record in the City to other service areas and provide, among other reasonably required data, System Average Interruption Duration Index (SAIDI), Customers Experiencing Multiple interruptions (CEMI) and municipal pumping station and general customer outage data for the previous year.

#### **SECTION 12. PROVISION OF ORDINANCE.**

**12.1. 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; provided, however, that if the City is unable to enforce its franchise fee provisions for any reason the City will be allowed to amend the franchise agreement to impose a franchise fee pursuant to statute. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

**12.2. Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and the 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 13. 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 the Company's written consent thereto with the City Clerk after City Council adoption of the amendatory ordinance. This amendatory procedure is subject, however, to the City's police power and franchise rights under Minnesota Statutes, Sections 216B.36 and 301B.01, which rights are not waived hereby.

Passed its first reading this 21st day of August, 2023.

Passed its second and final reading this 5th day of September, 2023.

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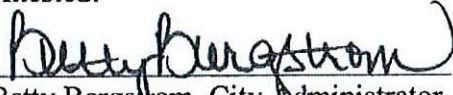


CITY OF INTERNATIONAL FALLS



Harley M. Droba, Mayor

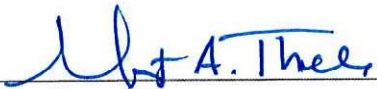
Attested:



Betty Bergstrom, City Administrator

MINNESOTA POWER

By:   
Its Vice President – Customer Experience

By:   
Its Secretary

