

ORDINANCE NO 384
FRANCHISE ORDINANCE

A franchise granting to Northern States Power Company, a Wisconsin Corporation and wholly-owned subsidiary of Xcel Energy Inc., its successors and assigns, the right to acquire, construct, maintain and operate in the highways, streets, alleys, bridges and public places in the City of Bessemer, County of Gogebic, State of Michigan, and its successors, a system for the purposes of operating, repairing and maintaining the necessary gas pipes, mains and appurtenances for the transmission and distribution of gas, and to transact a local business in the City of Bessemer and for the transmission and distribution of gas within, through or across said City of Bessemer.

BE IT RESOLVED by the City Council of the City of Bessemer, County of Gogebic, State of Michigan, and it is hereby ordained by authority of the same that:

Section I.

Northern States Power Company, a Wisconsin Corporation, hereinafter called the “Grantee”, is hereby granted the right, privilege, franchise and authority to acquire, construct, operate and maintain in, above, under, across and along the highways, streets, alleys, bridges and other public places (as the same now exist or may hereafter be laid out) of the City of Bessemer, County of Gogebic, State of Michigan, mains, pipes, appliances and appurtenances (“Gas Facilities”), for the distribution and transmission of gas energy by means of underground pipes for the purpose of supplying gas energy to public and private consumers in said City and beyond the limits thereof for any purpose or purposes for which gas energy is now or may hereafter be used and said Grantee is hereby granted a franchise to transact a local public utility business in said City.

The rights, privileges and franchise hereby granted shall be in force and effect for a period of 20 years beginning on the effective date on which it is granted.

Section II.

Whenever said Grantee shall begin the installation, maintenance or repair of any Gas Facilities, it shall diligently prosecute the work to completion and shall leave the highways, streets, alleys and public places where such work is done in as good condition of repair as before such work was commenced, but the City hereby waives any requirement for Grantee 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 highway, street, alley or public place in the performance of any such work the Grantee shall not unnecessarily obstruct the highways, streets, alleys or other public places but it may use the same in such manner as may be necessary in the performance of such work. The right of the City to the reasonable control of its highways, streets, alleys, bridges and public places is specifically reserved to the City. Grantee may abandon underground gas facilities in place, provided, at City's request, Grantee will remove abandoned metal pipe interfering with a City improvement project, but only to the extent such metal pipe is uncovered by excavation as part of the City's improvement project.

Section III.

If the said Grantee shall permit its Gas Facilities to be and remain in an unnecessarily dangerous condition and shall not rectify or remove said conditions upon notice of the City Council so to do, within a reasonable time after receipt of such notice, the City Council may take such steps as may be necessary to rectify or remove any such dangerous conditions and the said Grantee shall reimburse the said City for the expenditures necessarily incurred for that purpose.

Section IV.

The City must give Grantee reasonable notice of plans for improvements to highways, streets, alleys, bridges and other public places where the City has reason to believe that the Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature

and character of the improvements; (ii) the highways, streets, alleys, bridges and other public places 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 highway, street, alley, bridge or and other public place is involved, the order in which the work is to proceed. The notice must be given to Grantee a sufficient length of time in advance of the actual commencement of the work to permit Grantee to make any necessary additions, alterations or repairs to its Facilities. The City shall give Grantee reasonable notice of a proposed vacation of any highway, street, alley, bridge and other public place in which Grantee's Facilities are located.

Section V.

Grantee shall hold the City harmless from any and all claims and demands for damages on account of injury to persons and damage to property arising from the negligence of the Grantee, its agents or employees in the erection, operation, maintenance and repair of said pipes, appliances and appurtenances. To protect and indemnify the said City against any and all damage or liability arising as a result of the negligence of the Grantee and to implement the above covenants, Grantee agrees that it will defend in the name of the City any action or suit in equity so arising and the City agrees to furnish promptly to the Grantee certified copies of all claims, notices of suit, or other legal proceedings for which it seeks to be held harmless under this Section.

Section VI.

If Grantee desires to accept the provisions of this franchise, it shall, within ninety (90) days from and after the passage thereof file with the Clerk of said City of Bessemer, its formal acceptance thereof in writing, assenting to and agreeing to the provisions and restrictions herein contained.

Section VII.

The provisions of this franchise apply only to Gas Facilities constructed in accordance with a franchise from the City and shall not be construed to waive or modify any rights obtained by Grantee for installations within a Grantee right-of-way acquired by easement or prescriptive right, or Grantee's rights under state or county permit.

Section VIII.

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.

Section IX.

This Ordinance constitutes a franchise agreement between the City and Grantee 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 X.

Whenever in this franchise reference is made to the City or to the Grantee, it shall be deemed to include their respective successors or assigns and all rights, privileges and obligations of said City or of said Grantee, shall be binding upon and inure to the benefit of the respective successors or assigns of said City, or of said Grantee, whether so expressed or not.

Section XI.

This franchise shall take effect and be in force upon its passage and approval in the manner provided by law.

Passed this 26th day of June, 2023.

In the presence of:

Witness

Bessemer Mayor

Witness

Bessemer City Clerk

Accepted this ____ day of _____, _____.

In the presence of:

NORTHERN STATES POWER COMPANY

Witness

President

Witness

Asst. Corporate Secretary