

ORDINANCE NO. 9223

BY COUNCILOR DAHLBERG:

AN ORDINANCE GRANTING MINNESOTA POWER AND LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO CONSTRUCT AND MAINTAIN AN ELECTRIC DISTRIBUTION AND TRANSMISSION SYSTEM WITHIN THE CITY OF DULUTH.

The city of Duluth does ordain:

Section 1. There is hereby granted to Minnesota Power and Light Company, a Minnesota corporation, its successors and assigns (hereinafter "company") for the period of 25 years commencing January 1, 1996, the right to enter upon and construct, operate and maintain upon the streets, alleys, highways, and public grounds of the city of Duluth, poles, conductors, wires, cross-arms, bases, lamps, insulators, conduits and other usual appurtenances and appliances for transmitting and distributing electricity for light, heat and power and other purposes.

Section 2. All poles, wires and other appliances constructed and maintained by the company, its successors and assigns, shall be constructed and maintained in a safe and secure manner and so as not unnecessarily to interfere with the public uses of streets, alleys, highways and public grounds, and shall at all times be subject to the reasonable regulation of the city council. Clearance for the moving of buildings and other objects shall be provided within a reasonable period of time by the company when permission to move through the streets is given anyone by the city, provided that the cost to the company is guaranteed to the satisfaction of the company.

Section 3. 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, and the company, its successors and assigns, shall indemnify the city and hold it harmless against any and all liabilities, loss, cost, damage, or expense which may accrue to the city by reason of the neglect, default or misconduct of the company in the construction, operation and maintenance of its lines and appurtenances hereunder.

Section 4. This ordinance shall not be considered as granting to the company, its successors and assigns, any exclusive privilege of erecting poles and stringing wires in the streets, alleys, highways or public grounds of the city for electric power distribution.

Section 5. For the use of the streets, alleys, highways and public grounds of the city of Duluth for its electric transmission and distribution lines and system for the period of 25 years commencing January 1, 1996, the company shall pay the city as full compensation therefor a franchise fee in the following amounts:

Calendar Years 1996 - 1999	-	\$ 937,500
Calendar Years 2000 - 2020	-	\$1,100,000

71
7
1

Such annual franchise fee shall be payable by the company in 12 equal monthly installments on the first day of each month.

Section 6. Recognizing that changing residential, commercial, and industrial patterns will require that certain existing electric facilities will have to be relocated from time to time, the cost of these relocations shall be apportioned as follows:

(a) When the relocation of facilities is made necessary by construction or reconstruction of city streets, city sewers or other city-owned public utilities, the entire cost of relocation of facilities shall continue to be the obligation of the company;

(b) When the relocation of facilities is made necessary by:

(1) Street or other easement vacation or replatting which is petitioned for by the city;

(2) A development or construction project sponsored by or carried out by the city, the Duluth economic development authority, or other city-authorized body or commission; or

(3) Construction or reconstruction described in paragraph 1 affecting preexisting easements of the company obtained other than under this ordinance, the city and the company shall enter into a specific written agreement before the start of such project whereby the costs of relocation of facilities shall be apportioned as follows: the company shall pay 50 percent of the relocation costs up to an accumulated maximum payment by the company of \$65,000 in any January 1 through December 31 period. The city shall be responsible for any and all additional costs of relocation for such year. "Development or construction project" for the purpose of this paragraph shall include, but not be limited to, any construction or reconstruction undertaken for the purposes of promoting economic development or tourism, revitalization of specific areas of the city, or job creation. "Relocation costs" for the purpose of this paragraph shall be the actual cost of the relocated facility, including, but not limited to, the materials, labor and applicable overheads associated with the removal of the old facility and the land acquisition, clearing and construction of the new facility, less used life credit of the removed facility, less system betterment of the new facility, less accumulated salvage of the old facility. The relocation costs for each project shall be allocated to the calendar year(s) in which the company actually performs the relocation work.

The annual accumulated maximum relocation costs to be borne by the company shall be adjusted annually beginning January 1, 1997, in accordance with changes in the Handy-Whitman Index of Public Utility Construction Costs. The Handy-Whitman Index of Public Utility Construction Costs shall mean the index for Total Distribution Plant, Cost Trends of Electric Utility Construction, North Central Region, compiled and published by Whitman, Requart and Associates, 1304 Saint Paul Street, Baltimore, Maryland. In the event that said index as herein defined is unavailable or is substantially changed in its method of calculation, then a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining said index shall be used in lieu of the Handy-Whitman Index of Public Utility Construction Costs as herein defined.

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To determine the annual accumulated maximum relocation costs to be borne by the company after the initial calendar year period of this franchise, the Handy-Whitman Index of Public Utility Construction Costs for the current January 1 shall be divided by such index for the preceding January 1, and the result multiplied by the preceding calendar year's accumulated maximum. The product shall be the accumulated maximum relocation cost figure to which the company shall be subject during the then current year. The parties shall determine the accumulated maximum figure each year and confirm it by letter agreement. It is understood by the parties that determination of the accumulated maximum figure will have to be delayed each year until the index for January 1 of that year is published.

Section 7. The rights of the company hereunder are in all respects subject to, and the company shall keep, perform and observe all the terms, provisions and limitations of the Home Rule Charter of the city of Duluth, and in particular those of Chapter XI of said Charter (except to the extent such provisions are preempted by state law), which said Charter and Chapter XI thereof are hereby expressly referred to and made a part hereof, as fully as though the same were incorporated in this ordinance, and all rights reserved by the city by said Charter shall be exercised in the manner and be subject to the limitations prescribed by such Charter; provided, however, that if the provisions of said Charter are amended or repealed during the term of this franchise, such changes shall be deemed applicable to the company upon its filing of a written consent thereto with the city clerk, and provided further, that if any of the provisions of said Charter are made inapplicable to or declared unenforceable against publicly owned electric utilities because of state legislation or judicial decision, such provisions shall no longer be deemed to be part of this agreement. The company reserves the right, during the term of this agreement, to seek amendments to said Charter, to seek state legislation preempting the application of the provisions of such sections to publicly owned electric utilities and to engage in or support judicial action aimed at having the provisions of such sections declared unenforceable against publicly owned electric utilities. The company further reserves all rights which it may have under any prior statute or other legal grant regarding franchise rights, but hereby stipulates and agrees not to exercise such rights, if any, during the term of this franchise.

Section 8. Pursuant to Section 82 of the City Charter, this ordinance shall be published verbatim in the official paper of the city of Duluth once a week for four successive weeks after its passage and shall take effect 30 days from and after its last publication; provided, however, that this ordinance shall not

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become effective unless the company has filed a written acceptance of terms and conditions of such ordinance with the city clerk prior to such effective date. (Effective date: January 15, 1995)

Councilor Dahlberg moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Atkins, Dahlberg, Downs, Hardesty, Keenan, Prettner, Wheeler and President Talarico -- 8

Nays: Councilor Bohlmann -- 1

Passed November 14, 1994
Approved November 14, 1994
GARY L. DOTY, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing ordinance passed by the city council on the 14th day of November, 1994, with the original in my custody as city clerk of said city, and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 15th day of November, 1994.

JEFFREY J. COX
City Clerk

by

Zelda Cherne

Deputy

CITY OF DULUTH, MINNESOTA



COUNCIL COPY

94-1219-08

minnesota power / 3215 arrowhead road / duluth, minnesota 55811 / telephone 218-720-2796

December 14, 1994

FILED IN
OFFICE OF THE CITY CLERK
DULUTH, MINN.

'94 DEC 15 AM 11:19

Mr. Jeffrey J. Cox
City Clerk
City of Duluth
410 City Hall
Duluth, MN 55802-1198

Dear Mr. Cox:

Minnesota Power herewith files its written acceptance of the terms and conditions of City of Duluth Ordinance No. 9223 (File No. 94-0042) as approved November 14, 1994.

Very truly yours,

Roger P. Engle
Vice President, Customer Operations

RPE:jj

cc: William P. Dinan
City Attorney
410 City Hall
Duluth, MN 55802

ALWAYS AT YOUR **SERVICE**