

ACCEPTANCE OF ORDINANCE NO. 2009-15

CITY OF ARDEN HILLS, RAMSEY COUNTY, MINNESOTA

ACCEPTANCE OF GAS FRANCHISE:

WHEREAS, the City Council of the City of Arden Hills, Ramsey County, Minnesota, on the 30th day of November, 2009, passed and adopted Ordinance No. 2009-15, entitled:

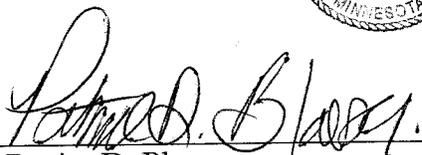
AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF ARDEN HILLS, MINNESOTA THE NECESSARY GAS PIPES, LINES AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANCE AND OTHERS, AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND, TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

which Ordinance was duly published according to law on the 9th day of December, 2009, in the *Shoreview Bulletin*, a newspaper circulated in and serving as the legal newspaper for the City of Arden Hills, County of Ramsey, and State of Minnesota, and which Ordinance is not effective unless accepted in writing by Northern States Power Company, a Minnesota corporation.

NOW THEREFORE, Northern States Power Company, a Minnesota corporation, for itself and its successors and assigns, does hereby accept all the terms and conditions of said Ordinance.

IN WITNESS WHEREOF, Northern States Power Company, a Minnesota corporation has caused this document to be executed in its corporate name by its duly authorized persons and its corporate seal to be hereto affixed this 20th day of January, 2010.

Attest:



Patrice D. Blaeser
Assistant Secretary



Northern States Power Company, a Minnesota corporation

By: 

Laura McCarten, Authorized Agent
Regional Vice President, NSP - Minnesota

**CITY OF ARDEN HILLS
RAMSEY COUNTY, MINNESOTA**

ORDINANCE NO. 2009-015

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF ARDEN HILLS, MINNESOTA THE NECESSARY GAS PIPES, LINES AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANCE AND OTHERS, AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND, TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

THE ARDEN HILLS CITY COUNCIL 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 Arden Hills, County of Ramsey, State of Minnesota.
- 1.2 **City Utility System.** Facilities used for providing public utility service owned or operated by City or 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.
- 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, d/b/a Xcel Energy, its successors and assigns including all successors or assignees that own or operate any part or parts of the Gas Facilities subject to this franchise.
- 1.5 **Gas Facilities.** Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing gas energy for public or private use.
- 1.6 **Notice.** A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to the Company shall be mailed to the General Counsel, 414 Nicollet Mall, Fifth Floor, Minneapolis, Minnesota 55401. Notice to the City shall be mailed to the City Administrator, City Hall, 1245 West Highway 96, Arden Hills, Minnesota 55112. Either

party may change its respective address for the purpose of this Ordinance by written notice to the other party.

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

1.8 **Public Way.** Any street, alley 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 twenty (20) years from the date this Ordinance is passed and approved by the City, the right to import, manufacture, distribute and sell gas 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. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways and Public Grounds, 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 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 Company. If Company does not file a written acceptance with the City within 60 days after the date the City Council adopts this Ordinance, the City Council by resolution may revoke this franchise or seek its enforcement in a court of competent jurisdiction.

2.3. **Service and Gas 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.** City shall pay the expense of publication of this Ordinance and shall be reimbursed 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 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 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 the expiration of the terms set forth 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 or interfere with the normal operation of any City Utility System. Gas Facilities may be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas 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. Company may abandon underground Gas Facilities in place, provided at City's request, Company at its own expense, removes abandoned Gas Facilities or other Facilities interfering with a City improvement project, but only to the extent such Gas Facilities are uncovered as part of the City's improvement project.

3.2. **Street Openings.** 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 Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. 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 Gas Facilities and (ii) Company gives telephone notice to the City before, if reasonably possible, commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, 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. Company shall restore Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six (6) months thereafter. 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 five days, the right to make the restoration of the Public Ground at the expense of Company. 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.

3.4 **Performance Security.** City hereby waives any requirement, in the normal course of Company operations, for Company 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 Public Way or the Public Ground.

Notwithstanding the foregoing, the City reserves the right to require a performance bond for new installation, replacement, or repairs, when the Company's completion of its work is required in order for the City to proceed with its work for constructing a public improvement to the Public Way.

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 Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Gas Facilities, if given reasonable notice by the City of such work prior to its commencement.

3.6 **Notice of Improvements to Streets.** The City must give Company reasonable written Notice of plans for improvements to 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 and character of the improvements, (ii) the Public Ways 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 Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary.

3.7 **Mapping Information.** The Company must promptly provide complete and accurate 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 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.** 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. Such relocation shall comply with applicable city ordinances consistent with law.

4.3. **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46. It is expressly understood that the right herein granted to Company is a valuable property right. City shall not order Company to remove or relocate its facilities without compensation when a Public Way is vacated, improved or re-aligned because of a renewal or a redevelopment plan 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 paid to Company. The

City is obligated to pay Company, however, 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.

4.4 **No Waiver.** By entering this or any prior franchise agreement with the City, Company does not waive its rights under an easement or prescriptive right or State or County permit.

SECTION 5. INDEMNIFICATION.

5.1. **Indemnity of City.** 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 Gas 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, Company's plans or work.

5.2. **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 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 6. VACATION OF PUBLIC WAYS.

The City shall give Company at least two 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 required solely 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 first paid to Company. In no case, however, shall the City be liable to Company for failure to specifically preserve a right-of-way, under Minnesota Statutes, Section 160.29. In accordance with Minnesota Rules, Part 7819.3200, if the city's order directing vacation of the Public Way does not require relocation of the Company's Gas Facilities to prevent interference with a current public improvement, the vacation proceedings shall not be deemed to deprive Company of its right to continue to use the right-of-way of the former Public Way for its Gas Facilities installed prior to such order of vacation.

SECTION 7. 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 8. FRANCHISE FEE.

8.1. At the time of adopting this franchise, the City does not desire to impose a franchise fee on the Company. If the City seeks a franchise fee from the Company, the City shall notify Company in writing of such intent to modify this franchise agreement and impose a franchise fee which shall be by separate ordinance. Promptly thereafter, City and Company shall negotiate in good faith mutually acceptable terms, conditions and amount of such fee. If City and Company are unable to agree on any term or condition of the fee, all disputes shall be resolved pursuant to Section 2.5 of this ordinance. The parties do not waive hereby, any rights they have under law.

SECTION 9. PROVISIONS OF ORDINANCE.

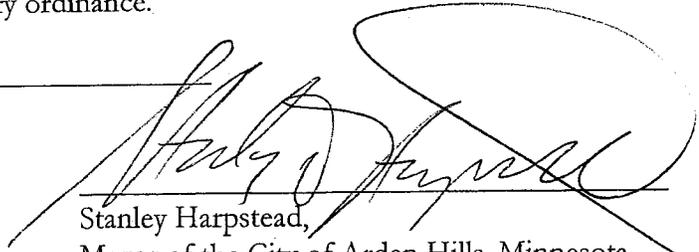
9.1. **Severability.** Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part; provided however, if any provision is held invalid, the parties agree to negotiate in good faith to substitute, to the extent reasonably possible, amended provisions that validly carry out the primary purpose of the invalid provisions. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

9.2. **Limitation on Applicability.** This Ordinance constitutes a franchise agreement 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.

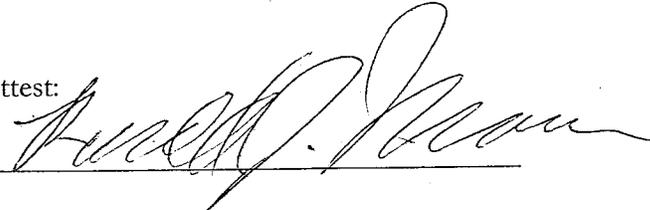
SECTION 10. AMENDMENT PROCEDURE.

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 Company's written consent thereto with the City Clerk within sixty (60) days after the effective date of the amendatory ordinance.

Passed and approved: 11-30-09


Stanley Harpstead,
Mayor of the City of Arden Hills, Minnesota

Attest:



City Clerk, Arden Hills, Minnesota

XCEL APPROVAL DATE: January 20, 2010, 2009

PUBLICATION DATE: Published on the 9th day of December, 2009.

EFFECTIVE DATE: This Ordinance shall be effective on the _____ day of
January 20, 2010, 2009.

Affidavit of Publication

City of Arden Hills

State of Minnesota }
County of Ramsey } SS

ANNE THILLEN, being duly sworn, on oath, says that he/she is the publisher or authorized agent and employee of the publisher of the newspaper known as SHOREVIEW BULLETIN, and has full knowledge of the facts which are stated below:

(A) The newspaper has complied with all of the requirements constituting qualification as a qualified newspaper, as provided by Minnesota Statute 331A.02, 331A.07, and other applicable laws, as amended.

(B) The printed SUMMARY OF ORDINANCE NO. 2009-015 which is attached was cut from the columns of said newspaper, and was printed and published once each week, for 1 successive weeks; it was first published on WEDNESDAY, the 9TH day of DECEMBER, 20 09, and was thereafter printed and published on every _____ to and including _____, the _____ day of _____, 20____; and printed below is a copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of the notice:

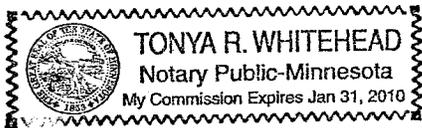
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BY: Anne M. Thillen
TITLE LEGAL COORDINATOR

Subscribed and sworn to before me on this 9TH day of DECEMBER, 20 09.

Tonya R. Whitehead
Notary Public

*Alphabet should be in the same size and kind of type as the notice.



RATE INFORMATION

- (1) Lowest classified rate paid by commercial users for comparable space..... \$24.00 per col. inch
- (2) Maximum rate allowed by law for the above matter..... \$23.25 per col. inch
- (3) Rate actually charged for the above matter \$ per col. inch

**CITY OF ARDEN HILLS
COUNTY OF RAMSEY
STATE OF MINNESOTA
SUMMARY OF**

ORDINANCE NO. 2009-015

On the 30th day of November, 2009, the Arden Hills City Council adopted Ordinance No. 2009-015, and by at least four/fifths affirmative votes pursuant to Minn. Stat. §412.191, Subd. 4, directed that a summary of Ordinance 2009-015 be published.

Ordinance 2009-015 is a 20-year franchise agreement granting Northern States Power Company, D/B/A Xcel Energy, permission to construct, operate, repair and maintain a gas distribution system for the purpose of transmitting and distributing natural gas for public and private use within City of Arden Hills.

A full copy of Ordinance 2009-015 is available for inspection by any person during regular business hours at the office of the City Administrator, 1245 West Highway 96, Arden Hills, Minnesota 55112. The Ordinance is also available online at <http://www.ci.arden-hills.mn.us>.

(Bulletin: Dec. 9, 2009)

**CITY OF ARDEN HILLS
COUNTY OF RAMSEY
STATE OF MINNESOTA**

SUMMARY OF ORDINANCE NO. 2009-015

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