

ORDINANCE #03-16

CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

AN ORDINANCE GRANTING TO CENTERPOINT ENERGY, MINNEGASCO, A DIVISION OF CENTERPOINT ENERGY RESOURCES CORPORATION, A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF RAMSEY, MINNESOTA, A GAS DISTRIBUTION SYSTEM INCLUDING NECESSARY GAS PIPES, MAINS AND APPURTENANCES, FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TRANSMITTING GAS INTO AND THROUGH THE CITY, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES.

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 Ramsey, County of Anoka, State of Minnesota.

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.

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.

Company. CenterPoint Energy, Minnegasco, a division of CenterPoint Energy Resources Corporation, a Delaware Corporation, 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.

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.

Gas. Natural gas, manufactured gas, mixture of natural gas and manufactured gas or other forms of gas energy.

Non-Betterment Costs. Costs incurred by Company from relocation, removal or rearrangement of Gas Facilities that do not result in an improvement to the Gas Facilities.

Notice. A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy Minnegasco, V.P., Regulatory & Supply Service, 800 LaSalle Avenue, Minneapolis, MN 55402. Notice to the City shall be mailed to the City Administrator, City of Ramsey, 15153 Nowthen Boulevard NW, Ramsey, MN 55303-6140.

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

Public Way. Public right-of-way within the City as defined in Minnesota Statute 237.162, subd.3.

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.

SECTION 2. ADOPTION OF FRANCHISE.

- 2.1 **Grant of Franchise.** City hereby grants Company, for a period of 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. This right includes the provision of Gas that is (i) manufactured by the Company or its affiliates and delivered by the Company, (ii) purchases and delivered by the Company or (iii) purchased from another source by the retail customer and delivered by the Company. 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 lawful regulations as may be adopted by separate ordinance and as currently exist under City Right of Way (ROW) Ordinance 01-10. The Company shall be notified 60 days in advance of proposed changes to City Ordinance (ROW) 01-10.
- 2.2 **Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after 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, or otherwise places the City on written notice, before that time, that the Company does not accept all terms of this franchise, the City Council by resolution may revoke this Ordinance or seek its enforcement in a court of competent jurisdiction.
- 2.3 **Service and 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.** The expense of publication of this Ordinance shall be paid 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 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 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 Company serves written Notice to the other party of its intention to allow the franchise to expire, but in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Section 2.1.

SECTION 3. LOCATION, OTHER REGULATIONS.

- 3.1 **Location of Facilities.** Subject to regulation under City Code (ROW) 4.10, Gas Facilities in the Public Way shall be located, constructed, and maintained so as not to disrupt normal operation of any City Utility System. Gas Facilities may be located on Public Grounds as determined by the City.
- 3.2 **Restoration of Public Ways and Public Ground.** Restoration of the Public Way shall be subject to City Code (ROW) 4.10. After completing work requiring the opening of Public Ground, the Company shall restore the 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. 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 and after demand to Company to cure, City shall, after passage of a reasonable period of time following the demand, but not to exceed five days, have the right to make the restoration of the Public Ground at the expense of the Company. Company shall pay to the City the cost of such work done for or performed by the City, including its administrative expense and overhead, plus ten percent additional as liquidated damages. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section.
- 3.3 **Avoid Damage to Gas Facilities.** Nothing in this Ordinance relieves any person, including Company, from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities or other persons or property while performing any activity.

SECTION 4. RELOCATIONS.

- 4.1 **Relocation of Gas Facilities.** Relocation of Gas Facilities in Public Ways shall be subject to City Code (ROW) 4.10. City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Grounds 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 Grounds. Relocation Gas Facilities in Public Ground shall comply with applicable City ordinances consistent with law.
- 4.2 **Projects with Federal Funding.** Relocation, removal, or rearrangement of any 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, as supplemented or amended. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which if

financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable Non-Betterment Costs of such relocation and the loss and expense resulting there from are paid to Company when available to the City. The City need not pay those portions of such for which reimbursement to it is not available.

- 4.3 **No Waiver.** The provisions of Section 4 apply only to Gas Facilities constructed in reliance on a permit or franchise from City and Company does not waive its rights under an easement or prescriptive right or State or County permit.

SECTION 5. 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 6. FRANCHISE FEE.

- 6.1. **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 retain customers within the City or on some other similar basis, or (iii) a fee 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 and implementing 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 each review will not delay the implementation of the City-imposed fee.
- 6.2. **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 same of gas energy within the City by any other gas energy supplier, provided that, as to such supplier, the City has the authority or contractual right to require a franchise fee or similar fee through a previously agreed upon franchise.
- 6.3. **Terms Defined.** The term "gross revenues" means all sums, excluding any surcharge or similar addition to the Company's charges to customers for the purpose of reimbursing the Company for the cost resulting from the franchise fee, received by the Company from the sale of natural gas to its retail customers within the corporate limits of the City.
- 6.4. **Collection of the Fee.** The franchise fee shall be payable not less often than monthly, and shall be based on the gross revenues of the Company during complete billing months during the period for which payment is to be made. The percent fee may be changed from time to time; however, each change shall meet

the same notice requirements and the percentage may not be changed more often than annually. Such fee shall not exceed any amount which the Company may legally charge to its customers prior to payment to the City by imposing a surcharge equivalent to such fee in rates for its gas service. The Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles or customer refunds. The Company agrees to make its gross revenues records available for inspection by the City at reasonable times.

- 6.5 **Conditions on the Fee.** The fee shall not be effective against the Company unless it lawfully imposes and the City quarterly or more often collects a fee or tax of the same or greater percentage on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The franchise fee, or tax, shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, as well as to the supply of energy needed to run machinery and appliances on premises located within or adjacent to the City, but shall not apply to energy sales for the purpose of providing fuel for vehicles.

SECTION 7. INDEMNIFICATION.

- 7.1 **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.
- 7.2 **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. 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 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 8. ABANDONED FACILITIES.

The Company shall comply with City ordinances, Minnesota Statutes, Section 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 Gas 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 Gas Facilities.

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, 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.
- 9.2 **Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and its successors and the Company and its successors and permitted assigns, as the only parties. 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. 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 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 60 days after the effective day of the amendatory ordinance.

SECTION 11. PREVIOUS FRANCHISES SUPERCEDED.

This franchise supercedes any previous gas franchise or agreements, verbal or written, granted to the Company or its predecessor.

SECTION 12. ORDINANCE SUMMARY FOR PUBLICATION

The following official summary of Ordinance #03-16 has been approved by the City Council of the City of Ramsey as clearly informing the public of the intent and effect of the Ordinance:

It is the intent and effect of Ordinance #03-16 to grant CenterPoint Energy, Minnegasco, a Delaware Corporation, a natural gas distributor, their successors and assigns, permission to construct, operate, repair and maintain in the City of Ramsey, Minnesota, a gas distribution system, for the furnishing of natural gas energy to the City, its inhabitants and others and to use public ways and public grounds of the City for such purposes.

A printed copy of Ordinance #03-16 is available for inspection by any person at the Ramsey Municipal Center.

SECTION 14. EFFECTIVE DATE.

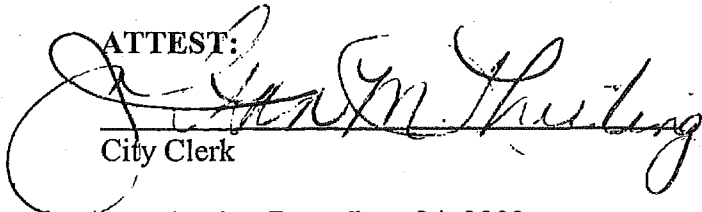
This Ordinance becomes effective upon its passage and thirty (30) days after its publication according to law.

PASSED by the City Council of the City of Ramsey, Minnesota, this the 8th day of July, 2003.



Mayor

ATTEST:



City Clerk

Introduction Date: June 24, 2003

Posting Date: June 24 – July 9, 2003.

Adoption Date: July 8, 2003

Publication Date: July 11, 2003

Effective Date: August 11, 2003