



City of Duluth

411 West First Street
Duluth, Minnesota 55802

Master

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**Agenda
Section:**

Committee: Finance

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Title: AN ORDINANCE REPLACING ORDINANCE NO. 9223, FILE NO. 94-0042, AND GRANTING MINNESOTA POWER , A DIVISION OF ALLETE, INC., A FRANCHISE TO CONSTRUCT AND MAINTAIN AN ELECTRIC DISTRIBUTION SYSTEM WITHIN THE CITY

Internal Notes:

Sponsors:

Enactment Date: 09/22/2016

Attachments: Sample Minnesota Power Bill (Duluth Resident), Duluth City Ordinance No. 9223 - Minnesota Power Franchise Agreement (19..., Electric Utility Franchise Fee Overview

Enactment Number: 10473

Recommendation:

Hearing Date:

Drafter: shanke@duluthmn.gov

Effective Date:

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	09/12/2016	read for the first time				
1	City Council	09/22/2016	adopted				Pass

Text of Legislative File 16-061-O

AN ORDINANCE REPLACING ORDINANCE NO. 9223, FILE NO. 94-0042, AND GRANTING MINNESOTA POWER , A DIVISION OF ALLETE, INC., A FRANCHISE TO CONSTRUCT AND MAINTAIN AN ELECTRIC DISTRIBUTION SYSTEM WITHIN THE CITY

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Ordinance No. 9223, on file in the office of the city clerk as File No. 94-0042, titled "AN ORDINANCE GRANTING MINNESOTA POWER AND LIGHT

COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO CONSTRUCT AND MAINTAIN AN ELECTRICAL DISTRIBUTION AND TRANSMISSION SYSTEM WITHIN THE CITY OF DULUTH”, is hereby repealed in its entirety.

Section 2. There is hereby granted to Minnesota Power, a division of ALLETE, Inc., its successors and assigns, collectively hereinafter referred to as “Minnesota Power”, for the period ten (10) years from and after passage of this ordinance, a franchise right to enter upon and construct, operate and maintain upon the streets, highways and public grounds of the city, poles, wires, cross arms, braces, lamps, conduits and other usual appurtenances and appliances for transmitting and distributing electricity for light, heat, and power purposes.

Section 3. All poles, wires and other appliances constructed or maintained by Minnesota Power shall be constructed and maintained in a safe and secure manner and so as not unnecessarily to interfere with the public use of the said streets and public grounds, and shall at all times be subject to the reasonable regulations of the city and clearance for the moving of buildings and other objects shall be made immediately by Minnesota Power when permission to move through the streets is given to anyone by the city. If the city desires to place facilities on or otherwise use Minnesota Power’s poles, the city shall enter into an agreement for pole attachment and/or usage with Minnesota Power containing terms and conditions substantially similar to those contained in other such agreements that Minnesota Power has with other governmental entities. Such requests by the city shall not unreasonably be denied by Minnesota Power.

Section 4. The city shall in no way be liable or responsible for any accident, injury, or damage that may occur in the construction, operation or maintenance by Minnesota Power of its lines and appurtenances hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of Minnesota Power to indemnify said city and hold city harmless against any and all liability, loss, cost, damage, or expense which may accrue to said city by reason of the neglect, default or misconduct of the said Minnesota Power in the construction, operation, and maintenance of its lines and appurtenances hereunder.

Section 5. This ordinance shall not be considered as granting to Minnesota Power any exclusive franchise to provide energy for light, heat, and power purposes, or granting Minnesota Power exclusive privilege of erecting poles and stringing wires in the streets or public grounds of said city.

Section 6. Minnesota Power shall furnish twenty-four (24) hours continuous electrical service from its electrical system to all consumers in the city including said city and shall furnish such service to all desiring the same.

Section 7. Minnesota Power is committed to cooperate with the city in support of the city’s efforts to achieve mutual energy goals.

Section 8. Minnesota Statutes Section 216B.36 authorizes a municipality to charge a public utility, such as Minnesota Power, furnishing service within a municipality, fees to raise revenue and defray increased and accruing municipal costs due to utility

operations.

Section 9. Pursuant to Minnesota Statutes Section 216B.36, the city hereby requires a franchise fee be paid and collected by Minnesota Power on its operations within the city.

- (a) Said franchise fee shall apply to all electric service within the city, except electric service to property owned by the city. This franchise fee shall be added to each Minnesota Power customer's monthly electric service bill, except bills for service to the city;
- (b) The amount of the franchise fee to be assessed shall be the applicable assessment rate multiplied by the customer's bills for electric service. The applicable assessment rate shall be three percent (3%) of Minnesota Power's gross electric sales for service within the city and as applied to customers' bills for electric service through Minnesota Power's Rider for city of Duluth Franchise Fee as approved by the Minnesota Public Utilities Commission;
- (c) The annual assessment rate determined above shall be applicable to all bills in Minnesota Power's billing cycles of the year;
- (d) One hundred percent (100%) of the city's franchise fee assessment collected by Minnesota Power shall be paid to the city; and
- (e) The franchise fee collected by Minnesota Power shall be payable to the city monthly with each payment due on the first day of the month.

Section 10. In the event the city reasonably determines that it is necessary for Minnesota Power to move any part of its Electric Facilities (defined as Electric transmission and distribution substations, towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Minnesota Power for the purpose of providing electric energy for public or private use) because the city has determined to change, move or improve its Public Ways (defined as any street, alley and other public rights-of-way within the city) or that the Electric Facilities have become or will become a substantial impairment to the existing or imminent public use of Public Ground (defined as all real property owned by or dedicated to 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), upon reasonable Notice by the city to Minnesota Power, then Minnesota Power will move its Electric Facilities at its sole cost. The city shall consider reasonable alternatives in designing its public works projects so as not to arbitrarily cause Minnesota Power unreasonable additional expense in exercising its authority under this Section 10. This Section 10 shall not constitute a taking by the city nor be construed as a waiver or modification of any easement or prescriptive rights acquired by Minnesota Power independent of and without reliance by Minnesota Power on this Franchise.

Section 11. Pursuant to section 82 of the Home Rule Charter of the city of Duluth, this ordinance shall be published verbatim in the official paper of the city of Duluth once a week four successive weeks after its passage and shall take effect January 1, 2017; provided however, that this ordinance shall not become effective unless Minnesota Power has filed a signed written acceptance of the terms and conditions of this ordinance with the city clerk prior to January 1, 2017.

STATEMENT OF PURPOSE: This ordinance replaces the City's 1994 franchise ordinance and agreement with Minnesota Power prior to its expiration. The 1994 ordinance and agreement has a twenty-five (25) year term set to expire January 15, 2020. The current Franchise fee is a flat fee of \$1.1M annually. The history of franchise fees imposed by the City for Minnesota Power electric service is as follows:

Duluth Franchise Fee Summary 1955-

Ordinance	<u>Amount Paid to</u>	
	<u>Year</u>	<u>City of Duluth</u>
7003	1955	\$ 40,000.00
	1956	\$ 67,008.00
	1957	\$ 94,487.00
	1958	\$ 100,721.00
	1959	\$ 109,223.00
	1960	\$ 113,847.00
	1961	\$ 116,913.00
	1962	\$ 118,523.00
	1963	\$ 124,185.00
	1964	\$ 123,156.00
	1965	\$ 127,874.00
	1966	\$ 129,412.00
	1967	\$ 132,580.00
	1968	\$ 141,684.00
	1969	\$ 155,896.00
	1970	\$ 172,747.00
	1971	\$ 189,099.00
	1972	\$ 197,025.00
	1973	\$ 214,169.00
	1974	\$ 249,882.00
	1975	\$ 289,122.00
	1976	\$ 305,168.00
	1977	\$ 332,597.00
	1978	\$ 381,627.00
	1979	\$ 472,510.00
	1980	\$ 447,026.00
Ordinance	% of Customer Bill	
8550	1981 3.23	\$ 1,128,928.00
	1982 2.76	\$ 1,031,113.00
	1983 3.44	\$ 1,107,703.00
	1984 3.77	\$ 1,181,659.00
Ordinance		
8714	1985 1.94	\$ 750,000.00
	1986 1.88	\$ 750,000.00
	1987 1.85	\$ 750,000.00
	1988 1.44	\$ 750,000.00
	1989 1.17	\$ 750,000.00

1990	1.39	\$	750,000.00
Ordinance			
extension	1991	1.18	\$ 700,000.00
8714	1992	1.23	\$ 700,000.00
1993		\$	700,000.00
1994		\$	700,000.00
1995		\$	700,000.00
Ordinance			
9223	1996	\$	937,500.00
1997		\$	937,500.00
1998		\$	937,500.00
1999	1.67	\$	937,500.00
2000	1.63	\$	1,100,000.00
2001	1.35	\$	1,100,000.00
2002	1.55	\$	1,100,000.00
2003	1.48	\$	1,100,000.00
2004		\$	1,100,000.00
2005		\$	1,100,000.00
2006		\$	1,100,000.00
2007		\$	1,100,000.00
2008		\$	1,100,000.00
2009	1.20%	\$	1,100,000.00
2010	1.43%	\$	1,100,000.00
2011	0.91%	\$	1,100,000.00
2012	0.96%	\$	1,100,000.00
2013	1.00%	\$	1,100,000.00
2014	1.10%	\$	1,100,000.00
2015	0.99%	\$	1,100,000.00
2016	0.99%	\$	1,100,000.00
2017		\$	1,100,000.00
2018		\$	1,100,000.00
2019		\$	1,100,000.00
2020		\$	1,100,000.00

Other municipalities in Minnesota currently have franchise fee agreements with Minnesota Power in the amounts further-described in the attached Electrical Utility Franchise Fee Overview. Also attached are copies of the City's current Minnesota Power Franchise Fee Ordinance and a current Minnesota Power bill for a Duluth resident.