

ORDINANCE NO. 167

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTIAN IN THE CITY OF BIRD ISLAND, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, POLE LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF SAID CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF BIRD ISLAND, RENVILLE COUNTY, MINNESOTA, DOES ORDAIN:

Section 1. There be and hereby is granted to Northern States Power Company, a Minnesota corporation, its successors and assigns, hereinafter referred to as "Company", during the period of 20 years from the date hereof, the right and privilege of constructing, operating, repairing, and maintaining, in, on, over, under, and across the streets, alleys and public grounds of the City of Bird Island, Renville County, Minnesota, hereinafter referred to as "City" an electric distribution system and electric transmission lines, including poles, pole lines, and fixtures and appurtenances, usually conveniently, or necessarily used in connection therewith, for the purpose of transmitting and furnishing electric energy for light, heat, power and other purposes for the public and private use in and to said City and the inhabitants thereof, and others, and for the purpose of transmitting into and through said City such electric energy, provided that such electric distribution system and transmission lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along and over said streets, alleys, and public grounds, and provided that Company, in the construction, operation, repair and maintenance of such poles, pole lines, and fixtures and appurtenances, shall be subject to such reasonable regulation as may be imposed by the City Council.

Section 2. The service to be provided and the rates to be charged by Company for electric service in the City shall be subject to the jurisdiction of the Public Utilities Commission of this State. Company shall provide reasonably efficient and adequate service to member of the public within the City who apply for such service in accordance with the rules and regulations of Company.

Section 3. There is also granted to Company, during the term hereof, permission and authority to trim all trees and shrubs in the streets, alleys, and public grounds of said City which may interfere with the proper construction, operation, repair, and maintenance of any poles, pole lines, and fixtures and appurtenances, installed in pursuance of the authority hereby granted, provided that Company shall save said City harmless from any liability in the premises.

Section 4. Company shall indemnify, keep and hold City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair or operation of Company's electric facilities located in, on, over, under, or across the public ways and public grounds of City, unless such injury or damage grows out of the negligence of City, its employees, or agents, or results from the performance in a proper manner of acts reasonably deemed hazardous by Company, but such performance is nevertheless ordered or directed by City after notice of Company's determination. In the event a suit shall be brought against City under circumstances where the above agreement to indemnify applies, Company at its sole cost and expense shall defend 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 such notice is not reasonably given as hereinbefore provided, Company shall have no duty to indemnify or defend. If Company is required to indemnify and defend, it will thereafter have complete control of such litigation, but Company may not settle such litigation without the consent of 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 City; and

Company, in defending any action on behalf of City shall be entitled to assert in any action every defense or immunity that City could assert in its own behalf.

Section 5. The City shall give the Company at least two weeks prior written notice of a proposed vacation of a public way. Except where required solely for a City improvement project, the vacation of any public way, after the installation of electric facilities, shall not operate to deprive Company of its rights to operate and maintain such electric facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to the Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

Section 6. Company shall have full right and authority to assign to any person, person, firm, or corporation all the rights conferred upon it by this Ordinance, provided that the assignee of such rights, by accepting such assignment, shall become subject to the terms and provisions of this Ordinance.

Section 7. Company shall, if it accepts this Ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Clerk within ninety (90) days after the final passage and any required publication of this Ordinance.

Section 8. This Ordinance shall be in full force and effect from and after its passage, any publication required by law, and acceptance by Company.

Section 9. Where a provision of any other Ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail. Notice to Company shall be mailed to the Area Manager thereof at 3515 – 3rd Street, North, St. Cloud, Minnesota, 56301 and any notice to City shall be mailed to the CITY CLERK.

Passed and approved March 12, 1990.

Mayor Maurice Woelfel

Deb Lingl, City Clerk