

Introduced by Guy E. Martin

Seconded by Tom N. Vedbraaten

ORDINANCE NO. 19, 3RD SERIES

AN ORDINANCE OF THE CITY OF CROOKSTON, MINNESOTA GRANTING TO RED LAKE ELECTRIC COOPERATIVE, INC., A MINNESOTA COOPERATIVE, ITS SUCCESSORS AND ASSIGNS PERMISSION TO CONSTRUCT, OPERATE, REPAIR, AND MAINTAIN IN THE CITY OF CROOKSTON, MINNESOTA AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES.

BE IT ORDAINED BY THE CITY OF CROOKSTON, as follows:

Section 1. Definitions.

Subd. 1. "City" means the City of Crookston, Minnesota.

Subd. 2. "City Utility System" refers to the facilities used for providing any public utility service owned or operated by City or an agency thereof, including sewer and water service.

Subd. 3. "Company" means Red Lake Electric Cooperative, Inc., a Minnesota cooperative, its successors and assigns.

Subd. 4. "Notice" means a writing mailed either to the Company's at P.O. Box 430, Red Lake Falls, Minnesota 56750 or to the City Clerk, City Hall, 124 North Broadway, Crookston, Minnesota 56716.

Subd. 5. "Public Grounds" means City parks and squares as well as land held by the City for the purpose of open space.

Subd. 6. "Public Ways", means streets, avenues, alleys, parkways, walkways, and other public rights of way within the City.

Subd. 7. "Gross Revenues" means all sums, excluding any surcharge or similar addition to Company's charges to customers for the purpose of reimbursing Company for the cost resulting from the franchise fee, received by Company from the sale of electric energy to its retail customers within the corporate limits of the City.

Subd. 8. "City Charter" means the Home Rule Charter for the City of Crookston, Minnesota, as supplemented or amended.

## **Section 2. Franchise.**

**Subd. 1. Grant of Franchise.** City grants Company, for a period ending December 31, 2013, the right to transmit and furnish electric energy for light, heat, power, and other purposes for public and private use within and through the limits of 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 Electric Facilities in, on, over, under, and across the Public Ways and Public Grounds of City. Company may do all reasonable things necessary or customary to accomplish these purposes.

**Subd. 2. City Charter; Other Regulations.** The privileges and responsibilities of Company under this franchise ordinance are subject to the terms of the City Charter, zoning ordinances, other applicable ordinances, permit procedures, and all reasonable ordinances and regulations passed pursuant to this franchise ordinance or City Charter.

**Subd. 3. Effective Date; Written Acceptance.** This franchise ordinance is effective upon its passage and its acceptance by Company, and its publication according to the provisions of the City Charter. A written acceptance by Company must be filed with the City Clerk within thirty (30) days after passage.

**Subd. 4. Publication Expense.** The expense of publication of this franchise ordinance must be paid by Company.

**Subd. 5. Default.** If either City or Company asserts that the other party is in default in the performance of any obligation under this franchise ordinance, the complaining party will give notice to the other party of the default and the desired remedy. If the dispute is not resolved within thirty (30) days of the notice, either party may commence an action in District Court to interpret and enforce this franchise ordinance or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

**Section 3. Maintenance.** Company will, during the term of this franchise ordinance, maintain its system for supplying electric energy to City and its inhabitants, including, but not limited to, its Electric Facilities, in a state of good repair and operating efficiency. Company will, during the term of this franchise ordinance, continuously supply, furnish, and distribute electric energy to City and its inhabitants desiring such energy in adequate quantities for their respective needs at all places within a reasonable distance of Company's Electric Facilities. Company, in supplying, furnishing, and distributing electric energy, will not be liable for any partial or total interruptions of service caused by strikes, malicious interference, Court orders, acts of God, unavoidable accidents, or other causes beyond Company's control.

#### **Section 4. Location; Other Regulations.**

**Subd. 1. Location of Facilities.** Electric Facilities will be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and they will be located on Public Grounds as determined by City. Company's construction, reconstruction, operation, repair, maintenance, and location of Electric Facilities is subject to other reasonable regulations of City.

**Subd. 2. Field Locations.** Company will provide field locations for any of its underground Electric Facilities within a reasonable period of time on request by City. The period of time will be considered reasonable if it compares favorably with the average time required by the cities in the same county to locate municipal underground facilities for Company.

**Subd. 3. Street Openings.** Company will not open or disturb the paved surface of any Public Way or Public Ground for any purpose without first having obtained permission from City, for which City may impose a reasonable fee. Permit conditions imposed on Company will not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb the paved surface of any Public Way or Public Ground without permission from City where an emergency exists requiring the immediate repair of Electric Facilities. In such event, Company will notify City by telephone to the office designated by City before opening or disturbing a paved surface of a Public Way or Public Ground. Not later than the second working day thereafter, Company will obtain any required permits and pay any required fees.

**Subd. 4. Restoration.** After undertaking any work requiring the opening of any Public Way or Public Ground, Company will restore the same, including paving and its foundation, to as good condition as formerly existed, and will maintain the same in good condition for two (2) years thereafter. The work will be completed as promptly as weather permits, and if Company does not promptly perform and complete the work, remove all dirt, rubbish, equipment, and material, and put the Public Way or Public Ground in the said condition, City has, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five (5) days, the right to make the restoration at the expense of Company, Company will pay to City the cost of such work done for or performed by City, including its administrative expense and overhead, plus ten percent (10%) additional as liquidated damages. This remedy is in addition to any other remedy available to City.

**Subd. 5. Shared Use of Poles.** Company will make space available on its poles or towers for City fire, water utility, police or other City facilities whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, City will pay for added costs incurred by Company because of such use by City.

## **Section 6. Relocations.**

**Subd. 1. Relocation of Electric Facilities in Public Ways.** Except as provided in Subd. 3. of this Section, if City determines to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Electric Facilities located therein. Company will relocate its Electric Facilities at its own expense. City will give Company notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way, or to construct or reconstruct any City Utility System. If a relocation is ordered within five (5) years of a prior relocation of the same Electric Facilities, which was made at Company expense, City will reimburse Company for non-betterment expenses on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this franchise ordinance requires Company to relocate, remove, replace, or reconnect at its own expense its facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

**Subd. 2. Relocation of Electric Facilities in Public Ground.** Except as may be provided in Subd. 3. of this Section, City may require Company to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment of the public use to which the Public Ground is or will be put. The relocation or removal will be at Company's expense. The provisions of this Subdivision apply only to Electric Facilities constructed in reliance on a franchise and Company does not waive its rights under an easement or prescriptive right.

**Subd. 3. Projects with State or Federal Funding.** Relocation, removal, or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally-aided highway project is governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the right granted to Company under this franchise ordinance is a valuable right. City will not order Company to remove, or relocate its facilities when a Public Way is vacated, improved, or realigned 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 and the loss and expense resulting therefrom are first paid to Company, but City need not pay those portions of such for which reimbursement to it is not available.

**Subd. 4. Liability.** Nothing in this franchise ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

**Section 7. Tree Trimming.** Company may trim all trees and shrubs in the Public Ways and Public Grounds of City interfering with the proper construction, operation, repair and maintenance of any Electric Facilities installed under this franchise ordinance, provided that Company will save City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by City.

**Section 8. Indemnification.**

**Subd. 1. Indemnify; Hold Harmless.** Company will 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, inspection, issuance of permits, or the operation of the Electric Facilities located in City. City will not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. City will not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination-

**Subd. 2. Defend.** In the event a suit is brought against City under circumstances where this agreement to indemnify applies, Company, at its sole cost and expense will defend City in such suit if 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 City, which consent will not be unreasonably withheld. This Subdivision 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, will be entitled to assert in any action every defense or immunity that City could assert in its own behalf.

**Section 9. Vacation of Public Ways.** City will give Company at least two (2) weeks' prior notice of proposed vacation of a Public Way. Except where required for a City street or other improvement project, the vacation of any Public Way, after the installation of Electric Facilities, will 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, will City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

**Section 10. Change in Form of Government.** Any change in the form of government of City will not affect the validity of this franchise ordinance. Any governmental unit succeeding City will, without the consent of Company, succeed to all of the rights and obligations of City provided in this franchise ordinance.

**Section 11. Franchise Fee.**

**Subd. 1. Fee.** During the term of this franchise ordinance, City imposes on Company a franchise fee of not less than five percent (5%) of Company's Gross Revenues.

**Subd. 2. Collection of Fee.** The franchise fee is payable not less often than quarterly.

**Subd. 3. Annual Report of Earnings.** During the third week in January in each and every year, Company will make and file with the City Clerk-Treasurer an accurate and sworn statement and report on the gross and net earnings of Company for the year immediately preceding.

**Section 12. Severability.** If any portion of this franchise ordinance is found to be invalid for any reason, the validity of the remainder will not be affected.

**Section 13. Amendment.** This franchise ordinance may be amended at any time by City passing a subsequent ordinance declaring the provisions of the amendment. The amendment will become effective upon the filing of Company's written consent thereto with the City Clerk and its publication according to the provisions of the City Charter.

Upon a call of ayes and nays as to the passage of this ordinance, the vote stood as follows:

Voting in the negative:


Voting in the affirmative:

Johnson, Mjoen, Melbye, Stainbrook,  
Vedbraaten, Lindgren and Martin

Upon this vote, the ordinance was declared Passed  
by the Mayor.

Passed this 28<sup>th</sup> day of April, 2009.

Approved this 28<sup>th</sup> day of April, 2009.

  
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Mayor

Attest:   
City Clerk-Treasurer

Published: May 1, 2009.