

**ORDINANCE**  
**CITY OF SAINT PAUL, MINNESOTA**

Presented by \_\_\_\_\_

Referred To \_\_\_\_\_ Committee Date \_\_\_\_\_

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An ordinance granting the Energy Park Utility Company Franchise, held by the Saint Paul Port Authority for March 1, 2011 through February 28, 2031 except as provided in Section 1)

THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN:

Section. 1.

That the Saint Paul Legislative Code be amended by repealing Appendix G.

Section 2.

That the Saint Paul Legislative Code be amended by adding thereto a new Appendix G to read as follows:

**APPENDIX G. ENERGY PARK UTILITY COMPANY FRANCHISE—PORT AUTHORITY**

**Cross reference(s)**—General franchise requirements, Charter Chapter 16.

**Sec. 1. Grant of Franchise.**

The Port Authority of the City of Saint Paul, a body politic and corporate under the laws of the State of Minnesota, hereinafter designated as “company”, owns the Energy Park Utility Company, an integrated community energy system demonstrating innovative technologies and techniques in energy production, energy conservation and energy management which applies new and emerging technology to the task of providing efficient and economical delivery of heating, cooling and other energy services. The company is hereby granted a nonexclusive franchise to use the streets and other public property located in such city for such purpose for a term extending from the effective date of this ordinance as provided in Section 14 to February 28, 2031, provided the energy system is converted to a four-pipe system. If the conversion to a four-pipe system does not occur, the franchise grant via this ordinance will be extended only to September 30, 2013. Said franchise may not be sold, transferred, assigned, pledged, mortgaged or in any way disposed of or encumbered without the consent of the City by ordinance, any of the foregoing to be treated as a modification of this franchise.

**Sec. 2. Use of Right-of-Way.**

The franchise granted herein shall extend to the company's use of all streets and public property now being used by the company in connection with such service and of such other streets and public property as may from time to time be designated by the City Council. Such franchise to use the streets and other public property located in the City shall include such use for the purpose of constructing, maintaining and operating a system of pipes, subways and manholes with all other necessary appurtenances for carrying on the business of conveying hot and cold water for consumers for all purposes.

### **Sec. 3. Location of Facilities.**

In locating its energy system facilities, the company shall in no way unreasonably interfere with the safety and convenience of ordinary travel along and over said streets and public property nor interfere with other uses to which such places may be put by the City of Saint Paul, and in the event it shall become necessary during the term of this franchise to remove or relocate the physical property of the company located within or upon any of the streets or public property in the City of Saint Paul, because of such interference or use by the city, or as a result of any public improvement undertaken by the City, the company shall, when so advised by the Council, remove and relocate said facilities without cost to the City of Saint Paul, and shall place the streets or public property in the same condition as they were prior to said removal or relocation. All restorations within the right-of-way shall conform to the "City of Saint Paul, Minnesota, Department of Public Works, Standard Specifications for Street Openings," as amended. Any relocation or removal of the company's facilities made necessary because of the extension through or into the City of a federally aided trunk highway, included within the National System of Interstate Highways, shall be governed by the provisions of the Minnesota Statutes 2003, Section 161.46; provided, that the City shall not bear any cost or expense as a result of the application by the company and for assistance under said section, and the streets and public property shall be restored as required even though federal or state assistance is not available for any reason under said section.

### **Section 4. Installation, Maintenance and Operation, Contractors Subject to Franchise.**

The company in the installation, maintenance and operation of its facilities shall be subject to such reasonable regulations as may be provided by the council, and no pipe or pipes or other appurtenances shall hereafter be installed or laid by the company upon the streets and public property of the City, except upon application to the Department of Public Works or other persons designated by the City Council, and written permission granted by said department or person. The company may enter into contracts and agreements to provide for the installation, construction, reconstruction, maintenance and operation of the energy systems. Existing and future contracts for the operation and management of the utility (1) shall be subject to the terms and conditions of this franchise; (2) shall be for a term not to exceed ten years, and shall be subject to revision or renewal at the expiration of the term, with a copy of such revision or renewal to be provided to the City within thirty (30) days; (3) shall require any contractor to comply with all terms and conditions of the franchise, including without limitation reporting requirements and rate regulation, as if said contractor were the company; and (4) shall not relieve or be construed to relieve the company from its obligations under this franchise.

### **Sec. 5. Franchise Fees.**

- (a) During the term of the franchise hereby granted, the company shall pay into the treasury of the City of Saint Paul, a yearly franchise fee of:

- i) if the energy system remains a two-pipe system (no conversion to a four-pipe system is completed), the franchise fee remains at 8% based on the energy system's gross earnings ~~during the preceding year~~ through September 30, 2013 when this Franchise Ordinance would expire. In such an event, the final payments ~~would be~~ made under this Ordinance would be for the month of September 2013 with payment due no later than December 25, 2013.~~on September 30, 2014.~~
- ii) if, however, the conversion to a four-pipe system is completed, the franchise fee would be 8% ~~through September 25, 2012~~ based on the energy system's gross earnings through September 30, 2011~~during the preceding year~~, and thereafter the franchise fee would be 6.8% based on the energy system's gross earnings ~~in the preceding year~~ but the annual yearly franchise fee amount shall not be less than \$159,000 beginning 2011.

The franchise fee payment shall be paid in monthly installments commencing and continuing through the term of the franchise. The installment payment for each month ~~must be received shall be due~~ on or before the 25<sup>th</sup> day of the third following month. When the initial franchise was granted, payment of the monthly franchise fee was deferred for one year. Deferral of these fees will no longer be permitted and payment of the deferred amount is due by February 25, 2011. The deferred payment amount will include all months up to and including November, 2010. Thereafter, the monthly fee shall be remitted in accordance with the above subsection. The first such payment will be for the month of December, 2010 with payment due no later than March 25, 2011. ~~The company's payment obligation shall be met if payment is mailed and postmarked on or before the due date.~~

- (b) The amount of the franchise fee shall be allowed as an operating expense to the company attributable solely to the company's operations within the City of Saint Paul, and in calculating such amount, "gross earnings" shall be held to mean and include all sums receivable by the company from the sale of hot water and cold water distributed and used within the City limits of the City of Saint Paul. In no event shall the company be required to pay a franchise fee in excess of the amount which it can legally collect from its customers in the City by means of a surcharge on its rate schedules for the purpose of collecting the franchise fee. The terms "sale of hot (and) cold water" include the heating or cooling therefrom.
- (c) The City and company hereby agree that company shall be deemed a public utility for purposes of applying the provisions of Laws of Minnesota for 1984, Chapter 548, to residential customers. For as long as this law remains in effect, the City and company shall not impose or collect a franchise fee from residential customers for the billing months of January, February, March, April, November and December. Company agrees that it will also abide by the provisions of Minn. Stat. Section 216B.097, as if it were a municipal utility, so long as the statute remains in effect.

## Sec. 6. Rates and Regulation.

- (a) All rates made, demanded or received by the company shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial or discriminatory,

but shall be sufficient, equitable and consistent in application to a class of consumers. Rates shall generate sufficient revenue to allow the company to recover its reasonable operating costs and expenses; to provide for the timely and orderly payment of costs and expenses; to provide for the timely and orderly retirement of debt; and to provide for improvements, enlargements and extensions necessary to adequately service the territory of the City authorized herein or later designated by the City pursuant to Section 2.

- (b) The rates contained in Schedule A, incorporated herein by reference, shall remain and continue in force until amended or changed as provided herein.
- (c) The company shall not directly or indirectly charge, demand, collect or receive from any consumer or person in greater or less compensation for any service rendered or to be rendered by it than that prescribed in Schedule A; nor shall any person knowingly receive or accept any service from the company for compensation greater or less than that prescribed in Schedule A. The company shall not, as to rates or service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.
- (d) The company shall keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the City, and shall comply with all directions of the City relating to these books, accounts, papers and records, including furnishing of such information or compilations and permitting an audit of the books, accounts, papers and records, as may be requested by the City.
- (e) The company may, with the approval and concurrence of its governing board and after sixty (60) days' notice to the City, file in the office of the City Clerk a new or amended Schedule A, containing new or amended rates, rules or regulations. Such notice shall include statements or facts, substantiating documents and exhibits supporting the changes requested, and further shall state the changes proposed to be made in the rates then in force, and the time when the changes will go into effect. Such new or amended rates shall be effective and may be charged on the tenth day (or such later date that the company shall designate on its filing) after the filing of the new or amended Schedule A in the office of the City Clerk, and shall continue in effect for a period not to exceed 4 years until approved or denied by City Council resolution, or until deemed approved, pursuant to the terms of this ordinance and the Charter, which Charter requires a public hearing after proper notice.
- (f) The City shall be required to take into account the operation of the terms and conditions of the customers' Hot and Chilled Water Service Agreement, including Parts 4, 5 and 10 thereof, which is the uniform contract entered into by the company and its customers providing for a detailed method of charges for demand and commodity related costs. The customer service agreement shall be filed in the office of the City Clerk at the same time as the written acceptance required by Section 14 herein. Amendments to the customer service agreement shall be filed with the City Clerk and Office of Financial Services at least thirty (30) days prior to the effective date of such an amendment or amendments; provided, however, that no amendment to Parts 4, 5 and 10 of said agreement, pertaining to heating demand, cooling demand and rate changes, shall be effective unless and until approved by the City Council by resolution. Any amendment to other sections of the customer service agreement shall be effective sixty (60) days

after filing in the absence of a resolution by the City Council disapproving such amendment.

- (g) At the request of the company and in order to assist in determining whether the proposed changes in Schedule A shall be approved or denied, the City may require a public hearing before a hearing examiner who shall be selected by mutual agreement of City and the company within ten (10) days of the company's request. The hearing examiner shall hold a hearing as a contested case and make recommendations to the City. Upon receipt of such recommendations, the City shall by resolution approve or deny the proposed changes in Schedule A. If no such action is taken by the City within thirty (30) days after receipt of the hearing examiner's recommendations, such proposed changes are deemed approved.
- (h) Proposed changes to Schedule A can only be approved, approved in part if severable, or denied; and cannot be modified or amended. The City may notwithstanding require the company to refund or credit to its customers any increase in rates which are in excess of the lawful and reasonable rates as finally determined.

### **Sec. 7. Appointment of City Staff.**

For the purpose of assisting the Council in the regulation of the activities and rates of the company as provided in this franchise, the Office of Financial Services shall provide sufficient staff resources for the regulatory effort and the office of the City Attorney shall designate an individual on its staff to serve to perform the duties that such regulation necessitates.

### **Sec. 8. Company to Pay Regulation Costs.**

The company shall pay the City, during the term hereof, an annual amount of twenty-seven thousand, twenty-nine dollars (\$27, 029.00). This fee shall be payable annually on May 1, beginning May 1, 2011, based on the adjusted cost equal to the percentage increase or decrease in CPI for the latest twelve-month period as defined further below, and shall be used solely to pay the cost of regulation, which is not limited to, but may include, that part of the salary and expenses of the individual appointed by the Financial Services Director and the City Attorney, their assistant or assistants, clerical help and office expenses, outside accountants, attorneys, advisors and consultants' fees reasonably related to the regulation of the company, its rate schedules and other matters and operations under this franchise. The amount of such payment or payments shall be allowed as an operating expense of the company in the City of Saint Paul. Such sum shall be adjusted each year by a dollar amount expressed in percentages equal to the percentage increase or decrease in the All Urban Consumers; Area: Minneapolis/St. Paul index (or its successor index) for the latest twelve-month period, the adjustment to be cumulative and based on the amount of the latest adjustment plus the previous year's payment.

### **Sec. 9. Reports to be Filed.**

The company shall file during each month, with the Director of the Office of Financial Services Director for the City, a report containing such information as may be directed by the Director including, but not limited to, the number of customers, sales and revenues by classes of service for the preceding month based upon its utility operations within the City of Saint Paul, and energy usage, a comparison of actual and projected revenues.

The company shall also file with the Director within six (6) months after January 1 of each year, a complete detailed and audited financial statement covering the utility operations within the City of Saint Paul for the preceding year, including all revenues, expenses and plant investment. In addition the company will provide an Income and Expense report on the accrual basis that includes a budget to actual comparison for the year and a reconciliation to the audited financial report, in a format approved by the Director and the company. The Director shall have the right to require additional information concerning operations under this ordinance from time to time in such form as may be prescribed.

The Director or his or her designee shall have the right, at all reasonable times and upon reasonable notice, to examine the books of account, records, vouchers, disbursements, rates, revenues, contracts, purchases, sale and other transactions bearing on and relevant to the rates the company charges and the service it provides to its customers in the City of Saint Paul.

#### **Sec. 10. Publication; Adoption of Ordinance.**

Before this ordinance shall be finally adopted by the Council, a public hearing shall be held upon ten (10) days' published notice in the official newspaper and after said hearing the Council may pass this ordinance, revise or amend the same. The company shall bear the costs of publication of the franchise ordinance and shall make a sufficient deposit with the City Clerk to guarantee publication before the ordinance is passed.

#### **Sec. 11. Indemnification; Insurance.**

The company shall defend, indemnify and save the City whole and harmless from any and all claims for injury or damage to persons or property occasioned by or arising out of the construction, maintenance, operation or repair of said transmission and distribution system or by the conduct of the company's business in the City; and shall insure the obligations in this section with an insurer authorized to do business in the State of Minnesota in form approved by the City Attorney and the Director of the Office of Financial Services.

#### **Sec. 12. Severability Clause.**

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.

#### **Sec. 13. Police Power Reserved.**

The company shall have the right to promulgate, from time to time, such rules, regulations, terms and conditions governing the conduct of its business, not in conflict with this franchise ordinance, as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under this franchise ordinance, and to assure safe, adequate and continuous service to its customers. Nothing herein shall be construed as a limitation upon, or as a bar to the future exercise of, proper and lawful action in the exercise of the City's police or any other legitimate municipal legislative or administrative powers.

#### **Sec. 14. Passage; Effect of Ordinance.**

The company shall, within thirty (30) days after the passage, approval and publication of this ordinance, file with the City Clerk of said City its written acceptance thereof in form to be approved by

the City Attorney, and therein shall agree to abide by, keep and perform all of the terms, limitations, conditions and provisions of this ordinance. This ordinance shall take effect and be in force after the public hearing prescribed in Section 10 and thirty (30) days after its passage, approval and publication, and upon its acceptance, as provided herein.

## Section 15. Franchise Not Exclusive.

This franchise herein granted shall not be exclusive nor irrevocable, but may be terminated and forfeited after notice and hearing for any breach or failure by company to comply with the terms, limitations or conditions hereof.

## Sec. 16. Company Charges to Customer.

### A. Types of Charges

Company charges shall be established in Schedule A and adopted by the City in the form of a resolution, which shall be subject to a public hearing before the City Council. Charges shall be limited to the following:

*Fixed Customer Charge:* that part of the charge that is a flat fee charged to customers for access to the Energy Park Utility Company service.

*Demand Charge:* that part of the rate schedule to be paid by customers which relates to the maximum amount of energy in BTUs added to or removed during a one-hour period from Central Energy Plant Chilled or Hot Water. The demand charge is equal to the following expenses and costs divided by the projected energy production, as measured in BTUs produced hourly. The demand charge shall exclude fuel and water treatment costs.

i) budgeted operating expenses,~~excluding fuel and water treatment costs,~~

ii) all debt service costs and amounts required to meet minimum financial coverage requirements,

iii) , plus a fixed reimbursement of \$270,000, which will decrease to \$170,000 annually beginning January 1, 2012 through December 31, 2013, ~~and adjusted each year thereafter, divided by projected energy production, as measured in BTUs produced hourly. An additional amount of not less than 5% will be included for capital improvement reserve.~~ Beginning January 1, 2014, the fixed reimbursement will be adjusted each year by a dollar amount expressed in percentages equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers in the Minneapolis-St. Paul area (or its successor index) for the latest twelve-month period, the adjustments to be cumulative and based on the amount of the latest adjustment plus the previous year's payment ~~and adjusted each year thereafter, divided by projected energy production, as measured in BTUs produced hourly.~~

iv) an additional amount of not less than 5% will be included for a capital improvement reserve.

*Commodity Charge:* that part of the rate schedule to be paid by customers which relates to the amount of fuel used to produce hot and chilled water. Commodity charges are intended to cover the cost of fuel to operate the plant and water treatment.

*Fuel Adjustment Charge:* that part of the rate based on the variation of the estimated commodity revenues developed in an annual projection and actual commodity related costs

incurred by the company. The fuel adjustment charge is intended to be used from time to time to compensate the company for revenue shortfalls, typically attributable to higher than anticipated fuel costs.

*Administrative Services Charge:* that part of the rate schedule to 1) offset administrative and overhead costs to the Saint Paul Port Authority, which shall be \$30,575 per year payable on July 1, 2010 and be adjusted each year by a dollar amount expressed in percentages equal to the percentage increase or decrease in the All Urban Consumers; Area: Minneapolis/St. Paul index (or its successor index) for the latest twelve-month period, the adjustments to be cumulative and based on the amount of the latest adjustment plus the previous year's payment; and to 2) be paid by customers who desire to have their total monthly bill subdivided and billed directly to tenants based on allocation factors and submeters. Such service includes the cost of preparing and mailing statements, automatically reading submeters, and prorating total bills to tenants based on allocation factors provided by each customer.

*Late Fee:* the company may charge a late payment penalty of five (5) percent of the total amount due which may be added to bills which are not paid within twenty-one (21) days of the billing date.

*Surcharge:* that part of the charge used to cover company costs associated with the franchise fee, state and local taxes.

## **B. Off Season Customer Sales**

Company charges to customer for heated water generated during the cooling season, and cooled water generated during the heating season, or to operate chilling or heating equipment as appropriate for the efficient and economical distribution of off-season by-product energy shall not be less than the operating costs incurred by the company in distributing such water, but shall not be greater than the commodity charge. However, company and customer may agree upon a flat monthly or annual rate for off-season byproduct energy or a reservation of off-season byproduct energy as long as the rate is not less than the above-mentioned costs of company.

## **C. Reports**

Unless delayed by causes beyond the company's reasonable control, the company shall deliver to its customers within 120 days after the end of each calendar year a written statement setting out in reasonable detail the amount of actual demand-related expenses and actual energy demand for the preceding calendar year. If the aggregate of monthly demand-related expense payments actually paid by customers to the company during each such period differs from the amount budgeted demand-related expenses for the same time period as per the above schedule, or if the actual energy demand during each such period differs from the amount of budgeted energy demand for the same time period as per the above schedule, such actual amounts shall be used to calculate a revised demand charge, and customers shall pay or the company shall refund the difference (as the case may be) without interest within thirty days after the date of delivery of said statement.



### Section 3.

This ordinance shall take effect and be in force thirty (30) days following its Passage, approval and publication.