



Legislation Text

File #: Ord 13-43, **Version:** 1

Amending Appendix F, District Heating Franchise-District Energy St. Paul, Inc., to extend the term of the franchise to September 1, 2033.

THE COUNCIL OF THE CITY OF SAINT PAUL DOES HEREBY ORDAIN:

Section 1

Appendix F is hereby amended to read as follows:

Section 1. Franchise granted.

The District Heating Development Company d/b/a District Energy St. Paul, Inc., a nonprofit Minnesota corporation, hereinafter referred to as "District Energy," is hereby granted a franchise to use and occupy the streets and other public property within the City of Saint Paul for the purpose of constructing, maintaining and operating a district heating system and fiber optic network for District Energy and governmental use by the City of Saint Paul, the State of Minnesota, the County of Ramsey, and by other government entities as may hereafter be approved by city council resolution. 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; provided, however, that this sentence shall not apply to revenue bonds issued to finance construction or expansion of the district heating system.

Section 2. Use of public property.

The franchise granted herein shall extend to the construction of the district heating system and a fiber optic network for governmental use by District Energy in the City of Saint Paul. District Energy shall, prior to commencement of any construction or usage of the public streets or other public property within the City of Saint Paul, file with the City of Saint Paul a detailed routing map showing the construction of the district heating system and fiber optic network. Such franchise to use the streets and other public property located in such 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 a district heating system and a fiber optic network for use by only the City of Saint Paul, the State of Minnesota and the County of Ramsey, and other government entities as may hereafter be approved by City Council resolution. Expansion of the district heating system beyond that contained in said routing map shall be governed by and in accordance with the applicable provisions of the Hot Water Delivery Agreement. All of the foregoing are subject to the provisions of Section 5 hereof.

Section 3. Location of facilities.

In locating its district heating facilities, District Energy shall not 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 District Energy 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, District Energy shall, when so advised by the city, remove and relocate said facilities without cost to the city, and shall place the streets or other public property in the same condition as they were prior to said removal or relocation. Any relocation or removal of District Energy's facilities made necessary because of the extension through or into the city of a federally aided state trunk highway, included within the National System of Interstate Highways, shall be governed by the provisions of the Minnesota Statutes 1981, Section 161.46.

Section 4. City regulations apply.

District Energy in the installation, maintenance and operation of its facilities shall be subject to such reasonable regulations, not inconsistent with this ordinance, as may be provided by the city. No pipe or other appurtenance shall hereafter be installed or laid by District Energy 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, and written permission therefor granted by said department or person.

Section 5. Franchise fees.

During the term of the franchise hereby granted, District Energy shall pay the city an annual district heating franchise fee in the amount of eight (8) percent of District Energy's annual gross earnings, except as further provided in this section. Said payments shall be made in monthly installments.. The payment shall be due on or before the twenty-fifth calendar day of the month in which payment is made. The payment obligation shall be met if the payment is mailed and postmarked on or before the due date. "Gross earnings" for the purposes of this ordinance, shall mean all sums received or receivable by the company from the sale of hot water to customers of District Energy and all sums collected by District Energy for routine maintenance or use of the fiber optic network serving the State of Minnesota, the County of Ramsey, and other government entities as approved by the City. District Cooling St. Paul, Inc. shall not be deemed a customer of District Energy nor shall District Energy be deemed a customer of District Cooling St. Paul, Inc. Section 6. Rates and regulation.

(a) All rates made, demanded or received by District Energy 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 District Energy 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, including those bonds issued for financing the system; to pay the debt service on such bonds; and to provide for improvements, enlargements and extensions necessary to adequately service the territory of the city, including the principal and interest to become due on obligations issued or to be issued therefor. Provided, however:

(1) District Energy customer buildings with demand of one hundred (100) kilowatts or less may be charged a combined demand/energy rate to be called the single rate. Said customers eligible for the single rate shall be known as "small customers." The single rate shall be charged according to thermal energy usage as metered or otherwise determined by District Energy. The single rate shall be computed by dividing twelve (12) monthly installments of demand charge per kilowatt by one thousand seven hundred (1,700) and adding that result to the energy charge per kilowatt hour;

(2) District Energy may enter into agreements with Incentive Program customers and small customers, the terms of which may vary from material terms of the Uniform Hot Water Delivery Agreement; and

(3) Incentive Program customers' terms may vary for demand charges only to the extent of the discount and in all other respects demand charges shall be calculated and applied in a manner consistent with non-Incentive Program customers.

(b) The rates, together with rules and regulations governing hot water heating service not inconsistent with the Hot Water Delivery Agreement, contained in Schedule "A" attached to this ordinance and incorporated herein by reference, shall remain and continue in force until amended or changed as provided herein.

(c) District Energy shall not directly or indirectly charge, demand, collect or receive from any consumer or person a 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 District Energy for a compensation greater or less than that prescribed in Schedule A. District Energy 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. Nothing contained in this subsection shall be construed to impair the tax-exempt status of bonds issued to finance the system. "Service," as used herein, does not include customer connection charges and practices.

(d) District Energy 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) After thirty (30) days' notice to the city, District Energy may file in the office of the city clerk a new or amended Schedule A, containing new or amended rates, rules or regulations, together with rules and regulations governing hot water heating service not inconsistent with the Hot Water Delivery Agreement. Such notice is jurisdictional to a change in Schedule A and shall include statements of 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 District Energy 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 until approved or denied by 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 proposed changes shall be approved by the City Council if they are just, reasonable and nondiscriminatory within one hundred eighty (180) days of the filing of said application. Such 180-day period may be extended by mutual agreement of District Energy and the city. If no action is taken by the city council on an application filed by District Energy within one hundred eighty (180) days of filing, the application is deemed approved. The city and District Energy shall work to assure an orderly, timely and cost efficient process for reviewing the proposed changes. The city shall be required to take into account the need of District Energy for revenue sufficient to enable it to meet the cost of furnishing the service; to provide for the timely and orderly retirement of debt; including those bonds issued for financing the initial system; to pay the debt service on such bonds; and to provide for improvements, enlargements and extensions necessary to adequately service the territory of the city, including the principal and interest to become due on obligations issued therefor. The city shall also be required to take into account the operation of the terms and conditions of the Hot Water Delivery Agreement, including Sections 6.7, 7.3 and 21.2 thereof, which is the uniform contract entered into by District Energy and District Energy customers providing for a detailed method of charges for demand and energy related costs. The uniform Hot Water Delivery Agreement shall be filed in the office of the city clerk at the same time as the written acceptance required by Section 13 herein. Amendments to the Hot Water Delivery Agreement shall be filed with the city clerk at least ten (10) days prior to the effective date of such an amendment or amendments; provided, however, that no amendments to Sections 6.7, 7.3 or 21.2 of said agreement shall be effective unless and until approved by the city council by resolution. Amendments to other sections of said agreement are effective without approval ten (10) days after filing.

(g) At the request of District Energy 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 District Energy within ten (10) days of District Energy'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 within 180 days of the filing of District Energy's application. If no such action is taken by the city within 180 days of the filing of District Energy's application or thirty (30) days after receipt of the hearing examiner's recommendations, whichever is greater, 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 District Energy to refund or credit to its customers any increases in rates which are in excess of the lawful and reasonable rates as finally determined. Section 7. City attorney assistance.

For the purpose of assisting the city in the regulations of the activities and rates of District Energy as provided

in this franchise, the city attorney shall appoint an assistant or other attorney to perform the duties that such regulation necessitates.

Section 8. Regulatory fee.

District Energy shall pay the city during the term hereof an annual amount of twenty-nine thousand seven hundred twenty-five dollars (\$29,725.00) payable on October 1 of each year herein, which sum shall be used to pay that part of the annual salary of the individual appointed by the city attorney, his assistant or assistants, clerical help and office expenses, outside accountants, hearing examiner, attorneys, advisors and consultants' fees reasonably related to the regulation of District Energy, 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 District Energy in the City of Saint Paul. Such sum shall be increased each year by a dollar amount expressed in percentages equal to the percentage increase in the Consumer Price Index (or its successor index) for that year, the increases to be cumulative and based on the amount of such sum plus the previous years' increases.

Section 9. Public reporting.

District Energy shall file during each month with any person designated by the city, a report of 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.

District Energy shall also file with such person as may be designated by the city within three (3) months after October 1 of each year, a complete detailed statement on forms to be approved by said person, covering the utility operations within the City of Saint Paul for the preceding year, including all revenues, expenses and plant investment, together with such breakdown and analysis of operating statements as the said person may request. The said person designated by the city shall have the right to require additional information concerning operations under this ordinance from time to time in such form as may be prescribed by said person.

Any person or persons designated for that purpose by the city 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, sales and other transactions bearing on and relevant to the rates District Energy charges and the service it provides to its customers in the City of Saint Paul.

Section 10. Notice and publication.

Before this ordinance or any amendments thereto 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. District Energy shall bear the costs of publication of the franchise ordinance or any amendments thereto and shall make a sufficient deposit with the city clerk to guarantee publication before the ordinance or amendments are published.

Section 11. Indemnification and insurance

District Energy shall defend, indemnify and save the city whole and harmless from any and all damages or claims for injury or damage to persons or property occasioned by or arising out of the construction, maintenance, operation or repair of District Energy's business in the city. District Energy shall insure its obligations in this section with an insurer authorized to do business in the State of Minnesota in form, coverage and limits approved by the city attorney and the director of the department of finance and management services.

Section 12. 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.

Section 13. Approval, publication and filing.

District Energy shall, within thirty (30) days after the passage, approval and publication of this ordinance or of any amendments thereto, 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 the terms, limitations, conditions and provisions of this ordinance and any such amendments.

Section 14. Nonexclusive franchise.

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 District Energy to comply with the terms, limitations or conditions hereof.

Section 15. Term of franchise.

~~This franchise is granted for a term and period of twenty (20) years, beginning on the effective date of this ordinance.~~ The term of this franchise shall be effective until September 1, 2033.

Section 2

The terms of the existing Schedule A of Appendix F currently on file with the City shall not be amended by this ordinance, and shall remain in full force and effect unless amended in accordance with the terms of this ordinance.

Section 3

This ordinance shall take effect 30 days from the date of approval by this council.