

**CITY OF MOOSE LAKE, MINNESOTA
ORDINANCE NO. 81B**

AN ORDINANCE GRANTING TO MINNESOTA ENERGY RESOURCES, A SUBSIDIARY OF WEC ENERGY GROUP, A WISCONSIN CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF MOOSE LAKE, MINNESOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANTS, AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF MOOSE LAKE DOES ORDAIN THAT:

SECTION 1. Definitions.

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- 1.1 **City or Grantor.** The City of Moose Lake, Carlton County, State of Minnesota.
- 1.2 **City Utility System.** Facilities used for providing public utility service owned or operated by City or an agency thereof, including sewer, storm sewer, street lighting and traffic signals, and water service, but excluding facilities for providing heating, lighting or other forms of energy.
- 1.3 **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all or part of the authority to regulate Gas retail rates now vested in the Minnesota Public Utilities Commission.
- 1.4 **Company or Grantee.** Minnesota Energy Resources, a subsidiary of WEC Energy Group, a Wisconsin corporation, its successors and assigns including all successors or assignees that own or operate any part or parts of the Gas Facilities subject to this franchise.
- 1.5 **Gas.** “Gas” as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy as provided by a “public utility” as defined under Minnesota Statutes, Chapter 216A.02.
- 1.6 **Gas Facilities.** Gas transmission and distribution pipes, mains, regulators, and other necessary equipment and appurtenances owned or operated by Company for the purpose of providing gas service for public use.
- 1.7 **Notice.** A writing served by one party or parties on the other party or parties. Notice to Company shall be mailed to the Minnesota Energy Resources, 2685 145th Street,

Rosemount, MN 55068. Notice to the City shall be mailed to the City Administrator, 412 4th Street, P.O. Box 870, Moose Lake, MN 55767. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.8 **Public Ground.** Land owned or otherwise controlled by the City for park, open space or similar purpose, which is held for use in common by the public.

1.9 **Public Way.** Any street, alley, walkway or other public right-of-way within the City.

SECTION 2. **Adoption of Franchise.**

2.1 Grant of Franchise. Grantor hereby grants a non-exclusive franchise to Company, its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are now within the present or future limits of said Grantor, a natural gas distribution system and Gas Facilities necessary for the purpose of supplying natural gas or processed gas for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such Gas Facilities shall include, but not be limited to, all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business, subject however to all applicable law, including but not limited to State and Federal pipeline safety regulations, and such reasonable regulations as may be imposed by the City pursuant to ordinance or permit requirements.

2.2 Term. The rights and privileges granted by this Ordinance shall remain in effect for a period of twenty (20) years from the effective date of this Ordinance.

2.3 Publication Expense. The expense of publication of this Ordinance will be paid by Grantor and reimbursed to Grantor by Grantee.

2.4 Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the date of written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used, or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court in Carlton County, Minnesota to interpret and enforce this Franchise or for such other relief as may be permitted by law or equity, or either party may take any other action permitted by law.

2.5. Continuation of Franchise. If the City and the Company are unable to agree on the terms of a new franchise by the time this Franchise expires, this Franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of its intention to allow the Franchise to expire. However, in no event shall this Franchise continue for more than one year after expiration of the term set forth in paragraph 2.1 of this section.

SECTION 3. Government Rules and Regulations.

3.1 Regulation. This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by State or Federal law and such reasonable regulations as may be imposed by the City pursuant to ordinance or permit requirements.

3.2 Service and Rates. The service to be provided and the rates to be charged by Grantee for Gas service in City are subject to the jurisdiction of the Commission. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken, so as to attempt in good faith to allow Grantee, going forward, to recover from its customers the cost associated with future services provided hereunder. Grantor does not guarantee, financially or otherwise, that Grantee will be able to recover any cost from its customers for services provided hereunder. In determining the rights and duties of the Grantee, the terms of this Franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the Grantor.

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee, and shall otherwise comply with applicable law.

SECTION 4. Construction and Maintenance of Gas Facilities.

4.1 Location of Facilities. Gas Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt, to the extent reasonably practicable, normal operation of any City Utility System. Gas Facilities shall be located on Public Grounds as determined by the City. Company

may abandon underground gas facilities in place, provided at the City's request, Company, at its own expense, will remove abandoned metal pipe or concrete encased conduit or other Facilities interfering with a City improvement project, but only to the extent such metal pipe or conduit is uncovered as part of the City improvement project.

4.2 Field Locations and Mapping Information. Grantee shall provide field locations for its underground Gas Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D. At the Grantor's request, Grantee must promptly provide mapping information for any of its underground Gas Facilities in accordance with Minnesota Rules parts 7819.4000 and 7819.4100, as the same may be amended from time to time.

4.3 Construction and Maintenance. Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and to the general public as is reasonably necessary; and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this Franchise, it will use its best efforts to maintain Gas Facilities and equipment sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its Gas Facilities and equipment, Grantee shall not open or disturb the surface of any Public Ground or Public Way for any purpose without first having obtained a permit from the City, or otherwise complying with the requirements of City ordinances, except that in emergency situations requiring the immediate repair of Gas Facilities, Grantee shall take immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible. In a reasonable time thereafter, Grantee shall seek from Grantor any required permits and shall pay any required permit fees. Permit conditions imposed on Grantee shall not be more burdensome than those imposed on other utilities for similar facilities or work.

4.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same in accordance with Minnesota Rules, part 7819.1100, as the same may be amended from time to time, and applicable City ordinances to the extent consistent with law. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed ten days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City or its designee. This remedy shall be in addition to any other remedy available to the City for noncompliance with this paragraph.

4.5 Avoid Damage to Gas Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity.

4.6 Notice of Improvements. Grantor will give Grantee reasonable notice of plans for improvements within the Public Grounds or Public Ways where the improvement and any paving or resurfacing of a permanent nature may affect Grantee's Gas Facilities. The notice shall contain the nature and character of the improvements, the Public Grounds and Public Ways upon which the improvements are to be made, the extent of the improvements and the time when the Grantor will start the work, and, if more than one Public Ground or Public Way is involved, the order in which this work is to proceed. The notice shall be given to the Grantee a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit the Grantee to make any additions, alterations, or repairs to its Gas Facilities.

4.7 Extension of Gas Facilities. Upon receipt and acceptance of a valid application for service from a prospective customer, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its Gas Facilities to serve customers located within the current or future corporate limits of City.

SECTION 5. Relocation of Gas Facilities.

5.1 Relocation of Gas Facilities in Public Ways and Public Grounds. The Grantee shall comply with Minnesota Rules, part 7819.3100 and applicable law, and any applicable City ordinances consistent with law regarding relocation of Gas Facilities in Public Ways and Public Grounds. If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, if such removal is necessary to prevent interference and not merely for the convenience of the Grantor, at the cost and expense of Grantee.

5.2 Relocation Requests and Notice. If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and not merely for the convenience of the Grantor or other right-of-way user, Grantee shall receive payment for the cost of such relocation as a precondition to relocating its Gas Facilities or equipment.

Any person or corporation desiring to move a building or other structure along, or to make any unusual use of any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the Gas Facilities or equipment of the Grantee, shall first give notice to the Grantor and the Grantee and pay a sum sufficient to cover the expense and damage incident to the moving of Grantee's Gas Facilities and equipment.

5.3 Projects with Federal Funding. Relocation, removal or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended.

SECTION 6. Vacation of Public Ways.

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Pursuant to Minnesota Rules, Part 7819.3200, if the City vacates a Public Way that contains Gas Facilities of Company and the vacation requires the relocation of the Company's Gas Facilities, payment of the relocation costs must be determined as follows: (1) if the vacation proceedings are initiated by the Company, the Company must pay the relocation costs; (2) if the vacation proceedings are initiated by the City for a public project, the Company must pay the relocation costs unless otherwise agreed to by the City and Company; or (3) if the vacation proceedings are initiated for the purpose of benefiting a person other than the Company, the benefited person must pay the relocation costs. Except where required for a City project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same are first paid to Company by the nongovernmental entity in favor of whom the vacation was granted. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29. The City and the Company shall comply with Minnesota Rules, 7819.3200 and applicable ordinances consistent with law applicable to right-or-way vacation.

Vacating of a public right-of-way shall not deprive the Grantee of its right to operate and maintain existing Gas facilities, until the reasonable cost of relocating the same are first paid to the Grantee. In accordance with Minnesota Rules, Part 7819.3200, if the City vacates a Public Way, which contains Gas Facilities of Company and the vacation does not require relocation of Company's Gas Facilities, the vacation proceedings shall not be deemed to deprive Company of its right to continue to use the right-of-way of the former Public Way for its Gas Facilities installed prior to such order of vacation.

SECTION 7. Indemnification.

7.1 Hold Harmless. Grantee, during the term of this Ordinance, agrees to indemnify, save and hold harmless Grantor from and against all claims, demands, losses and expenses on account of injury to persons or damage to property arising directly out of the negligence of Grantee, its employee or agents in the constructing, operating, inspecting and maintaining of the Gas Facilities or appliances of Grantee located in the Public Grounds and Public Ways; provided, however, that Grantee need not indemnify, save and hold harmless Grantor from claims, demands, losses and expenses directly arising out of the negligence of Grantor, its officials, employees or agents.

7.2 Defense of City. 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 the 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 the City and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This Franchise Agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunities or limitations on liability under Minnesota Statutes, Chapter 466.

SECTION 8. **Franchise Fee.**

8.1 Fee Schedule. During the term of the Franchise hereby granted, and in addition to any permit or other fees being imposed on Company, the City may impose on Company a Franchise Fee by separate franchise fee ordinance.

8.2 Separate Ordinance. The Franchise Fee ordinance or changes thereto shall not be adopted until at least 90 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The Franchise Fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually. The time and manner of collecting the Franchise Fee is subject to the approval of the Commission. No Franchise Fee shall be payable by Company if Company is legally unable to first collect an amount equal to the Franchise Fee from its customers in each applicable class of customers by imposing a surcharge in Company's applicable rates for gas service. Notwithstanding the forgoing, the City's current Franchise Fee ordinance, namely, Ordinance No. 164, passed and approved by the City of Moose Lake City Council on December 12, 2018, shall continue in force and effect until repealed, replaced, or amended pursuant to the terms of this Agreement.

8.3. Continuation of Franchise Fee. If this Franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the Franchise Fee, if any being imposed by the City at the time this Franchise expires, will remain in effect until a new franchise is agreed upon, notwithstanding the term set forth in paragraph 2.2 of Section 2.

SECTION 9. **Provisions of Ordinance.**

9.1 Severability. If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

9.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties, and no provision of this Franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

9.3 Confidential Information. Grantor is subject to the Minnesota Government Data Practices Act (the "Act"). To the extent the following is in compliance with the Act as determined on a case by case basis, Grantor acknowledges that certain information it might request pursuant to this Franchise may be of a proprietary and confidential nature. Subject to the Act, if Grantee requests that any information provided by Grantee to Grantor be kept confidential due to such proprietary or commercial value, Grantor and its employees, agents, and representatives shall maintain the confidentiality of that information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such confidential information, Grantor shall promptly notify Grantee of such request or requirement

so that Grantee may seek an appropriate protective order or other relief. Grantor, to the extent permitted by the Act, shall use all reasonable efforts to ensure that the confidentiality of Grantee's confidential information is maintained.

9.4 Force Majeure. It shall not be a breach or default under this Franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance; provided, however, that this provision shall not obligate a party to settle any labor strike.

9.5 Hold Harmless. Grantee, during the term of this Ordinance, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in the constructing, operating, and maintaining of distribution and transmission facilities or appliances of Grantee; provided, however, that Grantee need not save harmless Grantor from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

9.6 Non-Waiver. Any waiver of any obligation or default under this Franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

9.7 Effect and Interpretation of Ordinance. The captions which precede each section of this Ordinance are for convenience in reference only and shall not be taken into consideration in the interpretation of any of the provisions of this Ordinance.

SECTION 10. Amendment Procedure.

Either party to this Franchise Agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

SECTION 11. Previous Franchises Superseded.

This Ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to this franchise and the same shall

supersede all prior ordinances pertaining to this franchise agreement, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 81A of the City of Moose Lake Minnesota, is hereby repealed as of the effective date hereof.

SECTION 12. Effective Date and Acceptance.

This Ordinance shall become effective and be a binding contract between the Grantor and Grantee, upon its final passage and approval by Grantor, in accordance with applicable laws and regulations, and upon acceptance by Grantee by written instrument within sixty (60) days of passage by the governing body, and filed with the City Clerk of the City of Moose Lake, Minnesota. The City Clerk shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. If Grantee does not, within sixty (60) days following passage of this Ordinance express in writing its objections to any terms or provisions contained therein, or reject this ordinance in its entirety, Grantee shall be deemed to have accepted this ordinance and all of its terms and conditions.

Passed and approved by the City Council of the City of Moose Lake, Minnesota, on this _____ day of _____, 2021.

Ted Shaw, Mayor

ATTEST:

Katie Bloom, City Administrator