

CHAPTER 23

WATER, SEWERS AND UTILITIES

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ARTICLE I. WATER, SEWERS, AND UTILITIES

Sec. 23-01. Authority and Purpose. This Chapter is adopted by the City of Oakdale because it is necessary for the efficient, economic, and safe operations of the municipal water treatment, distribution system, and sanitary collection system for the protection of the health, safety, and general welfare of the public in the Oakdale area. It is further intended to provide an adequate amount of potable water to the community through the regulation and control of connection to and the use of the system.

Sec. 23-02. State Plumbing Code Adopted. The provisions of Minnesota Statutes, Sections 326.37 to 326.45, as applied to the State Plumbing Code, as well as all rules and regulations adopted by the State Commissioner of Health pursuant to Minnesota Statutes, Section 326.37, are hereby adopted by reference and made a part of this Chapter as if fully set out herein.

Sec. 23-03. Jurisdiction of City Council. The city may delegate such authority to city employees, as the City Council shall provide by resolution.

Sec. 23-04. Implied Consent to Rules, Regulations, Rates. Every person applying for water or sewer service, every owner of property for which any such application is made, every person accepting water or sewer service, and every owner of property where such service is accepted subsequent to June 24, 1969, and the city plumbing ordinances, shall be deemed upon making such application or accepting such service to consent to all rules, regulations, and rates as established by this Chapter and as may hereafter be set forth and adopted by the City Council by resolution or ordinance. Mandatory emergency water conservation measures shall be implemented based upon the declaration of a critical water deficiency by the governor.

Sec. 23-05. Right to Enter to Inspect. The city, by any authorized employee or agent, shall have the right to enter and be admitted to any lands or property in the city for the purpose of inspection of storm water management features, materials, plumbing work, and fixtures of all kinds used by or in connection with the water and sewer systems.

Sec. 23-6. Water Conservation Regulations.

- a) **Lawn Sprinkling.** Watering or sprinkling of lawns and/or gardens shall be permitted on even numbered days for property with even numbered addresses and on odd numbered days for property with odd numbered addresses. Exemptions allowed are for new sod and seed on landscaping for the first three weeks and for businesses where the use of water is an essential element of their business.
- b) **Declaration of Critical Water Deficiency.** Upon the declaration of a critical water deficiency by the governor, the city shall immediately post notice of the emergency declaration at City Hall and on the city's web site.

- c) **Mandatory Emergency Water Conservation Measures.** Upon declaration of a critical water deficiency and notification to the public, the following prohibition of nonessential municipal water use shall be enforced: (1) Irrigation of non-agricultural lands, (2) washing or spraying of paved areas, except for washing associated with public health and safety, (3) the outdoor use of any water-based play apparatus, (4) the filling of swimming pools or other water features, and (5) the washing of automobiles or mobile equipment, except for vehicles requiring frequent washing to protect public health, safety, and welfare.
- d) **Penalty.** If any customer violates the provisions of this section, said customer shall be charged with sums as established by resolution adopted by the City Council. Such charges shall be added to the next water bill of the customer of record. Each day of violation shall be deemed a separate violation. Continued violation shall be cause for discontinuing water service.
- e) **Exceptions.** The City Council may grant exceptions to this section for reasons involving public health and safety, where strict application of its provisions would result in serious hardship.

Sec. 23-07. Responsibility for Repairs. Persons taking water from the distributing pipes must keep their service pipe and fixtures connected therewith in good repair and protected from frost at their own expense and must prevent all unnecessary waste or the water will be turned off. No abatement shall be allowed from the prices charged or agreed upon by reason of the breaking of the service pipe.

Sec. 23-08. Leaking Service Lines. Any owner, occupant or user of a premise who shall discover a leak in a service line to the premises shall notify the city within twenty-four (24) hours. Any water wasted due to failure of such person to comply with this regulation shall be estimated by the city and be charged for against the owner at such premises at the established rate.

Sec. 23-09. Manner of Doing Work; Testing of Meters.

- (a) All installation work or repair of connection to the water and sewer systems, including grades, bends and backfilling shall be performed under the direction and supervision of the Building Official. No work shall be covered or backfilled until directed by said inspector. All work and excavations shall be protected by barricades and warning markers and lights reasonable and suitable to the purpose. The city shall be held harmless of any claim or loss or injury caused by or arising by reason of such work being performed; and the applicant causing such work to be done shall give undertaking to the city with respect thereto.
- (b) No digging in any permanent type street shall be permitted without a permit issued by the city.
- (c) Whenever a water user questions the accuracy of the meter, and desires that the meter be tested, the user shall pay a fee determined by the City Council, if the meter test accurate within a range of minus three (3) percent to plus one and one-half (1 1/2) percent. If it is not accurate within this range, no charge will be made for testing and an adjustment on the water bill will be made for the period of time that the meter is assumed to be inaccurate, not to exceed two (2) billing periods.

Sec. 23-10. Curb Stops. There shall be a brass curb stop in each service pipe and the same shall be under the exclusive control of the governing body and the Public Works Director/City Engineer. Said curb stop is to be placed in the pipe one foot out from the street side of the property line and no person who is not a direct employee of the governing body shall open or close or otherwise interfere with said

curb stop. Such curb stop shall be provided with a box or tube of Minneapolis pattern 5627-5628-5631 or equal.

The top of each box or tube shall be placed on a level with the grade of the sidewalk or surrounding area. Curb valves up to and including one inch shall be Mueller H-15150 or approved equal. Curb valves over one inch shall be "O" ring type ball valves. There shall be no drain back type curb valves allowed in the City of Oakdale.

Sec. 23-11. Private Water not Permitted in City System. Whenever any premises are connected to the city water system, there shall be maintained a complete physical separation between the city water supply system and the private water supply system so that it is impossible to intentionally or unintentionally allow any water produced by a private system to be introduced in the supply line from the city system.

Sec. 23-12. Back Flow Prevention. Any person or local government unit proposing to take water from the distribution system in such a manner as to possibly introduce a "pollutant" as defined hereafter into the city water system must install a double check valve assembly type backflow preventer in the plumbing system of the premise. If any person or local government unit is proposing to use water in such a manner as to possibly introduce a "contaminant" as defined hereafter into the city water system must install a reduced pressure principal type of backflow preventer in the plumbing system of the premise.

- (a) **Contaminant** - A foreign agent introduced into the water system that will cause a health problem if consumed.
- (b) **Pollutant** - A foreign agent introduced into the water system that will cause an aesthetic condition but not cause a health problem.

The backflow preventer is to be owned, periodically tested and maintained by the persons or government agency taking water from the system.

All Reduced Pressure Zone Backflow Preventers (RPZ) shall be tested at least once a year and overhauled at least once every five (5) years, in accordance with M.S.B.C. 4715.2161. Testing shall be performed by persons certified in RPZ testing by the Minnesota Department of Health. Records relating to the testing and maintenance shall be established and maintained by the city. Failure to comply with the RPZ program may result in water service being discontinued.

Sec. 23-13. Connection Applications; Permits; Fees. No person shall make any type of connection to the water system, sanitary sewer system or storm sewer system except upon making an application on a form provided by the city and receiving a permit issued by the city for such purposes. At the time of taking such application, there shall be paid to the Finance Director various fees for the following purposes:

- (a) No connection shall be made with respect to any sanitary sewer, water system or storm system serving the property of any person or occupants of the land, parcel or premises affected that have not paid or provided for the payment of the full and proportionate share of the said utilities which shall be payable as follows:

1. For service to property to which service lines have not been previously run from the street laterals to the property line, the owner, occupant or user shall pay into the city treasury an amount not less than the cost of making the necessary connections, taps and installation of pipe and appurtenances to provide service to the property and the necessary street repairs.
 2. For service to property to which service lines have been run to the property line but which have not been paid for, the owner, occupant or user shall pay in cash or agree to pay charges in the form of special assessments to be levied against the property to be spread over a number of years coincident with the maturity requirements of any special improvement bonds sold for the purpose of financing the construction of sanitary sewer, municipal water or storm sewer system serving the property. Said cash payments or assessment charges shall be in the principal amount of not less than the payments made by or charges placed against comparable properties for like services for such sanitary sewer, water or storm sewer system in an amount as may be established by the City Council. In the instance of services run to the property line as provided under (1) herein above, the payment to the City Clerk of any amount required under (2) shall be reduced by the amount paid to the city under (1) thereof. Payment to the city Finance Director in the form of a special assessment charge shall be in the form of equal annual installments together with interest on the unpaid balance from year to year, which interest shall be computed at the rate set by State Statutes.
- (b) Before proceeding with the construction, enlargement, alteration or repair of any water or sewer lines connecting the water system, sanitary sewer system or storm sewer system and any house or building, the owner or agent shall first obtain a permit for such purpose from the municipality through its Building Inspection Department. After any construction, enlargement, alteration or repair is complete, the Building Official shall be notified. It shall be unlawful to cover any connecting line until an inspection has been made and such connection and the work incident hereto has been approved by the Building Inspection Department or Public Works Director/City Engineer as a proper and suitable connection.
- (c) Before any water conveyed through the municipal water system shall be used or utilized on the land or premises of any person, there shall first be installed a water meter that will accurately measure the water consumed on the premises, except and unless such installation shall be exempted by the city.

Sec. 23-14. Water Connection Requirements. There shall be installed in every connection to the city water system two (2) full flow and waste valves; one just ahead of meter and second valve on discharge side of meter so that the water may be turned off and the meter be removed and the house drained. Outside reading registers shall be installed not less than three (3) and not more than five (5) feet above ground level. All outside and inside piping shall be in accordance with the manufacturer's recommendations and the State plumbing code. There will be no fitting allowed between the corporation cock and curb stop valve except by special permission of the Public Works Department.

Sec. 23-15. Who May Install Connections. All connections to the water system or sanitary sewer system shall be performed by a licensed plumber; except that nothing in this Chapter shall be construed to prohibit an individual owner from obtaining a permit and installing such connection by the owner's own labor, provided however, that said construction is conducted under the regulations of this Chapter and the plumbing ordinances and requirements of the Public Works Director/City Engineer and Building Official.

Sec. 23-16. When Connection Charge Collected. Connection charges shall be determined and collected prior to the issuance of the building permit authorizing the construction of the unit or units to which the sewer and water connection is to be made, except in those instances where construction has preceded water or sewer availability, or building permits have been issued, the connection charges shall be determined and collected prior to the issuance of a plumbing permit authorizing the connection. In those cases where Water Accessibility Charge (WAC) and Sewer Availability Charge (SAC) "unit charges" have been previously paid or assessed, the amount of "unit charge" shall be deducted from the connection charge and the balance remitted to the city.

Sec. 23-17. Establishment of Rates and Billing Procedures. The City Council shall have the authority to prescribe the rates to be charged for water and sewer service to the customer and may prescribe the date of billing, a discount for payment within a prescribed period and/or penalty for failure to pay within such period and such further rules and regulations relative to the use and operation of such system as it may deem necessary from time to time, including industrial user sewer strength charge.

Sec. 23-18. Water Meter Regulations.

- (a) All water meters installed under the provisions of this Chapter shall be and remain the property of the city or its successor. All applications for the installation, maintenance and repair of water meters shall be made to the city Building Inspection Department who shall proceed to comply with such applications within a reasonable time thereafter.
- (b) No person, other than the city or its designee, shall maintain or repair any water meter within the city limits. Every water meter connected to the water system shall be sealed by or under the direction of the city and no person shall break or remove such seal; provided however that a licensed plumber may break such seal or remove such meter for necessary plumbing repairs. In all cases where a seal is broken or a meter is removed by a licensed plumber, such plumber shall notify the city of the fact within twenty-four (24) hours after the seal attached to the water meter is removed. Whenever any seal attached to a water meter by or under the direction of the city is found broken, the broken condition of such seal shall be prima facie evidence that such seal was broken contrary to the terms and provisions in violation of this Chapter and the necessary expenses incurred by repair of such seal shall be paid to the city.
- (c) All water meters connected to the water system shall be accessible to the city Public Works Department at any reasonable hour of any business day, the refusal of admission by any owner or occupant of any premises wherein a water meter is installed after such owner or occupant has been notified that admission is desired for the purpose of inspecting a water meter installed in said premises shall constitute a violation of this Chapter.
- (d) Said meters shall be repaired from time to time as is necessary to insure accurate measuring of the flow of water, except that whenever a meter has been damaged due to negligence on the part of persons other than the employees of the city, the owner, occupant or user of the premises or such other person desiring the use of the water shall reimburse the city for the expense of repairing any such meter or seal. Upon failure to reimburse the city within a reasonable time and upon demand, the water service and supply to said premises may be shut off or discontinued as determined to be in the best interest of the city.
- (e) All meters installed shall be purchased through the city and picked up at the Public Works Department. All meters shall be installed by a licensed plumber or by the city. All meters over two (2) inches shall be of the compound type.

Sec. 23-19. Tampering with Meter. It shall be unlawful for any person to tamper with, alter, by-pass or in any manner whatsoever interfere with the proper use and functioning of any water meter, remote meters, or transmitters within the city. A violation of this section shall be considered a misdemeanor.

Sec. 23-20. Meter Deposits. The deposit for the installation of a water meter as required by this Chapter shall be returned to the person making such deposit, or assignee, only after compliance with the following conditions:

- (a) Request directed to the Public Works Department that the service be discontinued.
- (b) Inspection of the meter by the city after the service has been discontinued to determine whether such meter is undamaged and in proper working order.
- (c) Payment of all delinquent or unpaid water or sewer charges accumulated to the date of the termination of such service.

Whenever any consumer shall become delinquent in payment of any sewer and water charges, the city may deduct from said deposit the amount of the unpaid bill and may discontinue service to the consumer until the depleted deposit sum is increased to the amount required under this Chapter.

Sec. 23-21. Reading of Meters. The City Council may provide a system of water meter reading by postcard, meter reader, outside reading registers, or any other method deemed suitable to the purpose of the City Council. The City Council may also establish billing areas or districts and provide for the reading of meters and billing charges by calendar quarters or monthly quarters or such periodic intervals as the City Council shall determine suitable and necessary from time to time.

Sec. 23-22. Charge When Meter Faulty. If a meter fails to register or accurately measure the water, the charge for water consumed shall be paid for at the established rate based upon past average billings as determined by the Finance Department.

Sec. 23-23. Discontinuing Service. The city reserves the right to discontinue service to any customer of the water and sanitary sewer system without notice when necessary for repairs, additional connection or reconnection, for nonpayment of charges or bills or for disregard of any rules and regulations in connection with the use or operation of said system. Whenever any service has been discontinued for nonpayment of charges or bills or for disregard of any rules or regulations or for any other purpose, it shall not be resumed except upon payment of the unpaid charges or bills, accumulated penalties and interest thereon in the amount set by State Statute as the assessment interest rate, or compliance with the rules and regulations previously violated and payment to the city of a restoration fee in a sum to be determined by the City Council.

Sec. 23-24. Lien for Delinquent Sewer and Water Charges. When a bill is deemed delinquent under procedures adopted by the City Council, the service may be discontinued, as herein provided, and the city may cause the charges noted in such billing to become a lien against the property served by certifying to the Washington County Auditor the amount of said delinquent bill in accordance with the State of Minnesota Statutes.

Sec. 23-25. Repealed.

Sec. 23-26. Excavations. All excavations required for installation of building service lines shall be open trench work unless otherwise approved by the Public Works Director/City Engineer or Building Official. Backfilling of ditches shall be performed in accordance with Municipal specifications except that no backfill shall be placed until work has been inspected.

Sec. 23-27. Abandonment of Service. If any water service pipe should have to be abandoned, the owner of the water service to be abandoned shall excavate and cut off the water service pipe at the curb stop within ten (10) days after the water service has been discontinued.

Sec. 23-28. Taking Water from or Meddling with Public Hydrant. No person shall unscrew or take off the cap on any water hydrant or in any way meddle or interfere with such hydrant or take or carry away any water from the public hydrant, except the Public Works Director/City Engineer, or agent, when in the line of duty.

Sec. 23-29. Yard Hydrant. No person shall install any yard hydrant, except by special permission of the City Council. Yard hydrants may only be used between the 1st of April and the 1st of November.

Sec. 23-30. Construction of Sanitary and Storm Sewer and Watermains, Service and Building Systems. The city shall, by resolution, establish in booklet form, all rules and procedures for the construction of sanitary and storm sewer and watermains, service and building systems, including but not limited to: gravity and forced mains, manhole service, hydrants, removal of existing facilities, trench excavations and backfills, restoration and limits on discharges into systems.

Sec. 23-31. Separate Sewers Required. A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on the same lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

Sec. 23-32. Separate Services. Every separate building supplied with water shall have its own separate service connection directly with the main, except private garages and barns. In any building where there is more than one water meter serviced by a single water line and shut-off valve, the taxpayer shall be responsible for paying the water bill for each meter. Where more than one meter is on a single water line, the City Council shall have the authority to determine a water deposit in such amount as they deem necessary to insure the prompt payment of water bills.

Sec. 23-33. Use of Municipal Sewers. No person or local government unit shall discharge, or cause or allow to be discharged into the city disposal system or any connected disposal system any waste that contains any of the following:

- (a) Any water or waste which may contain more than one hundred (100) MG/L of fats, wax, grease, oils, or containing any substances which may solidify or become viscous at temperatures between 32° F and 150° F at the point of discharge into the sewer system.
- (b) Any liquids, solids or gases which by reason of their nature or quality are or may be sufficient to cause fire or explosion or be injurious in any way to the disposal system or to the operation of the system.
- (c) Any noxious or malodorous solids, liquids or gases which either singly or by interaction with other wastes are capable of creating a public nuisance or hazard to life.

- (d) Garbage that has not been ground or comminuted to such a degree that all particles will be carried freely in suspension under flow conditions normally prevailing in public services, with no particle greater than one-half inch in diameter.
- (e) Solid or viscous wastes which will or may cause obstruction to the flow in a sewer, or other interference with the proper operation of any disposal system, such as grease, uncomminuted garbage, animal tissues, pauch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone dust, metal, glass, straw, shavings, grass clippings, rags, spent grain, waste paper, wood, plastic, asphalt residue, oil, gasoline, naphtha and similar substances.

Sec. 23-34. Trap Installation. Grease, oil and sand traps shall be provided when the Public Works Director/City Engineer determines they are necessary for the proper discharge of waste containing excessive amounts of grease, oil or sand except that such trap shall not be required for private homes. All traps shall be of type and capacity approved by the Public Works Director/City Engineer and shall be located as to be readily and easily accessible for cleaning and inspection. Where installed, all grease, oil and sand traps shall be maintained by the owner, at the owner's expense, in continuously efficient operation at all times.

Sec. 23-35. Owner Must Connect. The owner of all house, building or properties used for human occupancy, employment, recreation or other purposes situated with the city in which there is now located a public sanitary sewer of the city, is hereby required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper municipal sewer collection system.

Sec. 23-36. Repealed.

Sec. 23-37. Accidental Discharges. Accidental discharges of prohibited waste into the Oakdale city collection system, or to any place from which such waste may enter the Oakdale collection system, shall be reported to the Public Works Director/City Engineer by the person responsible for the discharge, or by the owner or occupant of the premises where the discharge occurs, promptly upon obtaining knowledge of the fact of such discharge. Cost due to damages caused by discharging prohibited waste shall be borne by the person responsible for the discharge.

Sec. 23-38. Pre-treatment Facilities Operation. If preliminary treatment or control of waste flow is required, such facilities shall be effectively operated and maintained by the owner at the owner's expense subject to the requirements of these rules and regulations and all other State or Federal codes, ordinances and laws.

ARTICLE II. SURFACE WATER MANAGEMENT UTILITY

Sec. 23-40. General Operation. The city surface water system (storm sewer) shall be operated as a public utility (hereinafter called the surface water management utility), pursuant to Minnesota Statute Section 444.075, from which revenues will be derived subject to the provisions of this Chapter and Minnesota Statutes.

Sec. 23-41. Definitions.

- **Surface Water Management Fee.** The surface water management fee is defined as the annual charge developed for each parcel of land.

- **Quarterly Surface Water Management Revenue.** The quarterly surface water management revenue is the estimated quarterly expenditures for planning and inventories, capital expenditures, personnel and equipment and operation of the surface water utility, in accordance with established city policy.
- **Utility Factor.** The utility factor is defined as the ratio of runoff volume, in inches, for a particular land use, to the runoff volume, in inches for an average single family residential, assuming a two and 1/2-inch rainfall and Soil Conservation Service (SCS) "Type B" soil conditions.

Sec. 23-42. Surface Water Management Fees. The utility factors for various land uses are as follows:

Classification	Land Use	Utility Factor
1	Single Family	1
2	Rental Units, Industrial, Townhouse*	2.12
3	Commercial/Office/Parking/Clinics	2.60
4	Open Space/Golf Course	0.46
5	Institutions (Churches, Schools)	2.35
6	Undeveloped (Rural Vacant)	*
7	Twinhomes*	1.81

*Twinhouse UF based on CN= 88 average acreage = 0.10 acre.

*Twinhomes UF based on CN=85 average acreage = 0.125 acre

The Surface Water Management Fee shall be determined by first determining the percentage of total runoff in the city which is attributed to Single Family Residential Property. The fee per acre for Single Family Residential is computed by computing the product of the runoff percentage and the Quarterly Surface Water Management Revenue (less the agricultural revenue), divided by the estimated total equivalent Single Family units in the city. The per acre fee for all other individual parcels shall be the product of the SFR x the UF x Acreage. Single Family Residential parcels shall be assessed on a per household basis.

Sec. 23-43. Credits. The City Council may adopt policies for adjustment of the surface water management fees. Information to justify a fee adjustment must be supplied by the property owner. Such adjustments of fees shall not be retroactive. Credits will be reviewed regularly by the Environmental Management Commission and recommendation to the City Council for final action. If the storm water management features are not properly maintained, the property owner will be notified that the credit will be rescinded and the full fee reflected in the next utility bill.

Sec. 23-44. Exemptions. The following land uses are exempt from the surface water management fee:

- a) Undeveloped and agricultural land
- b) Public right-of-way
- c) Lakes
- d) Wetlands
- e) City Property
- f) State/Federal Properties

Sec. 23-45. Payment of Fee. Surface water management fee shall be invoiced every three (3) months with water and sanitary sewer bills from single family and monthly for all other land uses. The fee

shall be due and payable the same terms as water and sanitary sewer utility bills. Any prepayment or overpayment of charges shall be retained by the city and applied against fees.

Sec. 23-46. Appeal of Fee. If a property owner or person responsible for paying the surface water management fee believes that a particular assigned fee is incorrect, such a person may request that the fee be recomputed.

Sec. 23-47. Penalty for Late Payment. Each billing for surface water management fees not paid when due shall incur a penalty charge of ten (10) percent of the amount past due.

Sec. 23-48. Certification of Past Due Fees on Taxes. If any two (2) quarters of surface water management fees have not been paid when due, then a penalty as set forth on Section 00.080, shall be added to the amount due. Any such past due fees may then be certified to the County Auditor for collection with real estates taxes on the following year pursuant to Minnesota Statutes Section 444.075, Subdivision 3. In addition, the city shall also have the right to bring a civil action or to take other legal remedies to collect unpaid fees.

ARTICLE III. UTILITY FRANCHISES.

Sec. 23-49 – Centerpoint Energy Minnegasco - Gas

Subdivision 1. Definitions. For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- **City.** The City of Oakdale, County of Washington, State of Minnesota.
- **City Utility System.** Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.
- **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.
- **Company.** CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas (“CenterPoint Energy”) its successors and assigns including all successors or assigns that own or operate any part or parts of the Gas Facilities subject to this franchise.
- **Gas Energy.** Gas Energy includes both retail and wholesale natural, manufactured or mixed gas.
- **Gas Facilities.** Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing Gas Energy for retail or wholesale use.
- **Non-Betterment Costs.** Costs incurred by Company from relocation, removal or rearrangement of Gas Facilities that do not result in an improvement to the Gas Facilities, taking into consideration salvage value of Facilities removed.
- **Notice.** A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy, Minnesota Division Vice President, 800 LaSalle Avenue, Minneapolis, Minnesota 55402. Notice to the City shall be mailed to City Administrator, City of Oakdale, 1584 Hadley Avenue N., Oakdale, Minnesota, 55128-5407. Any party may change its respective address for the purpose of this Ordinance by written Notice to the other parties.
- **Ordinance.** This gas franchise ordinance.
- **Public Way.** Public right-of-way within the City as defined in Minn. Stat. § 237.162, subd. 3.

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

Subdivision 2. Adoption of Franchise.

2.1 Grant of Franchise. City hereby grants Company, for a period of 20 years from the date this Ordinance is passed and approved by the City, the right to import, manufacture, distribute and sell Gas Energy for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future and also the right to transport Gas Energy through the limits of the City for use outside of the City limits. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to a public right-of-way ordinance or permit requirements adopted consistent with state law.

2.2 Effective Date; Written Acceptance. This franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 60 days after the date the City Council adopts this Ordinance, or otherwise inform the City, at any time, that the Company does not accept this franchise, the City Council by resolution shall revoke this franchise.

2.3 Service and Gas Rates. The terms and conditions of service and the rates to be charged by Company for Gas Energy in City are subject to the exclusive jurisdiction of the Commission.

2.4 Publication Expense. Company shall pay the expense of publication of this Ordinance.

2.5 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 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 to interpret and enforce this franchise or for such other relief as may be permitted by law or equity.

2.6 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 franchise to expire. However, in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Section 2.1.

Subdivision 3. Location, Other Regulations.

3.1 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 normal operation of any City Utility System. Gas Facilities may be located on Public Grounds in a location selected by the City. The location and relocation of Gas Facilities shall be subject to reasonable

regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this franchise.

3.2. Street Openings. Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee, unless the City is receiving a franchise fee pursuant to this Ordinance, in which case all permit fees will be waived. Permit conditions imposed on Company shall not be more burdensome than those imposed on other public-right-of-way users for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) Company gives telephone, email or similar Notice to the City before commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

3.3 Restoration. After undertaking any work requiring the opening of any Public Way or Public Ground, the Company shall restore the Public Ways or Public Grounds in accordance with Minnesota Rules, 7819.1100. Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six months thereafter. All 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 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 five days, the right to make the restoration of the Public Ways or Public Grounds at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City.

3.4 Performance Security. City hereby waives any requirement, in the normal course of Company operations, for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain Gas Facilities in a Public Way or the Public Ground. Notwithstanding the foregoing, the City reserves the right to require a performance bond for new installation, replacement, or repairs, when the Company's completion of its work is required in order for the City to proceed with its work for constructing a public improvement to the Public Way.

3.5 Major Facilities. Before Company constructs any new structure or converts any existing structure for the manufacture or storage of gas, Company shall first obtain the approval of the structure and the location thereof from the City. Such approval by the City shall not be unreasonably withheld.

3.6 Avoid Damage to Gas Facilities. The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Gas Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Gas Facilities, if given reasonable Notice by the City of such work prior to its commencement.

3.7 Notice of Improvements to Streets. The City will give Company reasonable written Notice of plans for improvements to Public Ways and Public Grounds where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways or Public Grounds upon which the improvements are

to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Grounds is involved, the order in which the work is to proceed, if known. The Notice will be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary.

3.8 Mapping Information. If requested by City, the Company must promptly provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100.

3.9 Emergency Response. Neither the City nor the Company will hold the other responsible for personnel and equipment costs incurred when either responds to routine calls requiring less than four (4) hours of staff or equipment time, regarding gas leaks or to protect its own facilities at the request of the other, provided, however, that the requirements under Minnesota Statutes chapter 216D are not within the scope of this provision. The City and Company do not intend to create additional response duties hereby, reserve all other rights not expressly addressed in this provision and limit the scope of this provision to customary personnel and equipment costs that may be incurred on responses lasting four hours or less in duration.

Subdivision 4. Relocations.

4.1 Relocation in Public Ways. The Company and City shall comply with the provisions of Minnesota Rules 7819.3100, with respect to requests for the Company to relocate Gas Facilities located in Public Ways.

4.2 Relocation in Public Grounds. The City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by City that the Gas Facilities have become or will become a substantial impairment to the existing or imminent public use of the Public Ground. Such relocation shall comply with applicable City ordinances consistent with State law and shall not result in any delay to the timely commencement of the public use giving rise to the relocation.

4.3 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 Sections 161.45 and 161.46.

Subdivision 5. Indemnification.

5.1 Indemnity of City. Company shall indemnify and hold the City harmless from any and all liability, on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence or otherwise wrongful act or omission except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work.

5.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the 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 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. The 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 immunity or limitations on liability under Minnesota Statutes, Chapter 466.

Subdivision 6. Vacation of Public Ways and Public Grounds

The City shall give Company at least two weeks prior written Notice of a proposed vacation of a Public Ways or Public Grounds. The City and the Company shall comply with Minnesota Rule 7819.3200 with respect to any request for vacation.

Subdivision 7. Change in Form of Government. Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

Subdivision 8. Franchise Fee.

8.1 Fee Schedule. During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on the Company, the City may impose on the Company a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated Company Customer Class. The City and Company have agreed that the initial fee collected by the Company under this franchise shall continue in accordance with Ordinance No. 733, adopted on January 26, 2010 and in place on the Effective Date of this franchise.

8.2 Separate Ordinance. Any subsequent franchise fees modifying Ordinance No. 733 shall be imposed by separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least sixty (60) days after written Notice enclosing such proposed ordinance has been served upon the Company by certified mail. The Company is not required to collect a franchise fee if the terms of the fee agreement are inconsistent with this franchise or state law, provided the Company notifies the City Council of the same within the sixty (60) day period. No action by the City to implement a separate ordinance will commence until this Ordinance is effective. Notwithstanding the fee schedule in Ordinance No. 733, during the term of this franchise at intervals no more frequently than one year, the City may impose a lesser fee or the City may request an amendment pursuant to Section 11 allowing the City to impose a greater fee on one or more Classes of customer and/or a different fee design, including but not limited to, a customer usage fee, or a meter fee. If the City proposes such an amendment, it shall notify Company in writing no less than six (6) months prior to the anniversary date of the then current franchise fee required by the City. Promptly thereafter, City and Company shall attempt to negotiate a mutually acceptable modification to the fee amount and design for intended future collection by Company. If City and Company are unable to agree on a modification, all disputes shall be resolved pursuant to Section 2.5 of this Ordinance. Nothing in this Section is intended to be a limitation on the City's right to raise revenue under Minnesota Statutes, Section 216B.36.

8.3 Terms Defined.

- **Class** shall refer to classes listed in the Fee Schedule and as defined or determined in Company's gas rate book on file with the Commission.

- **Fee Schedule** refers to Schedule in Section 8.1 setting forth the various customer classes from which a franchise fee would be collected if a separate ordinance were implemented immediately after the effective date of this franchise agreement. The Fee Schedule in the separate ordinance may include new customer Classes added by the Company to its gas tariffs after the effective date of this franchise agreement.
- **Therm** shall be a unit of gas providing 100,000 Btu of heat content adjusted for billing purposes under the rate schedules of Company on file with the Commission.

8.4 Condition of Fee. The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of energy within the City by any other energy supplier, provided that, as to such supplier the City has the authority or contractual right to require a franchise fee or similar fee through an agreed-upon franchise. If the parties are unable to agree on what constitutes a same or substantially similar fee, they will utilize the dispute resolution process in section 2.5.

8.5 Collection of Fee. The franchise fee shall be payable not less than quarterly during complete billing months of the period for which payment is to be made. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. Such fee is subject to subsequent reductions to account for uncollectibles and customer refunds incurred by the Company. The Company shall not be responsible to pay City fees that Company is unable to collect under Commission rules or order. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

8.6 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. However, the franchise fee will not remain in effect for more than one year after the franchise expires as stated in Section 2.6 of this franchise.

Subdivision 9. Abandoned Facilities. The Company shall comply with Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules 7819.3300, as they may be amended from time to time with respect to abandoned facilities located in Public Ways and Public Grounds. The Company shall maintain records describing the exact location of all abandoned and retired Gas Facilities within the Public Ways and Public Grounds, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Gas Facilities, including abandoned and retired Gas Facilities not located in Public Ways and Public Grounds.

Subdivision 10. Provisions of Ordinance.

10.1 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; provided, however, if any provision is held invalid, the parties agree to negotiate in good faith to substitute, to the extent reasonably possible, amended provisions that validly carry out the primary purpose of the invalid provisions. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

10.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company. No provisions herein 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 this Ordinance or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any third party.

Subdivision 11. Amendment Procedures. Either the City or Company may propose at any time that this Ordinance be amended. 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 60 days after the effective date of the amendatory ordinance. If the Company does not consent to the amendment, the City and Company will resolve any resulting dispute pursuant to Section 2.5.

Subdivision 12. Previous Franchises Superseded. This franchise supersedes and replaces previous franchises granted to the Company or its predecessors. Upon Company acceptance of this franchise under Section 2.2, the previous franchise shall terminate.

Sec. 23-50. Centerpoint Energy Minnegasco – Gas Fee.

Subdivision 1. Purpose. The Oakdale City Council has determined that it is in the best interest of the city to impose a franchise fee on those public utility companies that provide natural gas and electric services within the city of Oakdale.

- (a) Pursuant to City Ordinance No. 520, a Franchise Agreement between the city and CenterPoint Energy Minnegasco ("Minnegasco"), the city has the right to impose a franchise fee on Minnegasco in an amount and fee design as set forth in Section 4 of the Minnegasco Franchise and in the fee schedule in Section 9.

Subdivision 2. Franchise Fee Statement. A franchise fee is hereby imposed on Minnegasco under its Gas Franchise in accordance with the schedule attached hereto and made a part of this ordinance, commencing with the Minnegasco's January 2004 billing month.

Subdivision 3. Payment. Said franchise fee shall be payable to the city in accordance with the terms set forth in Section 4 of the Franchise.

Subdivision 4. Surcharge. The city recognizes that the Minnesota Public Utilities Commission allows the utility company to add a surcharge to customer rates to reimburse such utility company for the cost of the fee and that Minnegasco will surcharge its customers in the city the amount of the fee.

Subdivision 5. Record Support for Payment. Minnegasco shall make each payment when due and, if requested by the city, shall furnish a statement of gas usage by each customer class at the time of each payment for the period for the payment was made. Minnegasco shall permit the city's designated representative reasonable access to the company's records for the purpose of verifying such statements.

Subdivision 6. Enforcement. Any dispute, including enforcement of a default regarding this ordinance will be resolved in accordance with Section 2.5 the Franchise Agreement.

Subdivision 7. Effective Date of Franchise Fee. Notwithstanding the effective date of this ordinance and notwithstanding any contrary provisions in the Franchise, the effective date of the fee collected under Subdivision 2 of this ordinance is the later of ten (10) days after the publication or after the sending of written notice enclosing a copy of this adopted ordinance upon Minnegasco by certified mail. It has been agreed in advance by Minnegasco’s representatives that Minnegasco will abide by the provisions of this Subdivision 7.

Subdivision 8. Fee Review. The City Council shall begin a review of this Ordinance by June 30, 2006, to determine whether to continue, terminate, or modify the fee. If the Council deems it to be in the city’s best interest to continue the fee in its current form, no Council action is necessary. If the Council deems it to be city’s best interest to terminate or modify the fee, the Council shall give Minnegasco at least sixty (60) days written notice prior to the proposed change. Subject to the city’s rights under Minnesota law, the city shall obtain the consent of Minnegasco to any proposed increase in the fee by may unilaterally decrease or terminate the fee.

Subdivision 9. Fee Schedule.

<u>Class</u>	<u>Customers</u>	<u>Fee Per Meter</u>
Residential	0	\$ 1.50
Comm. Firm A&B	1	\$ 5.00
Comm. Firm C	3	\$ 8.00
Small Interruptible A&B	0	\$17.00
Large Interruptible	0	\$17.00
Firm Transportation	0	\$17.00
Interruptible Transportation	0	\$17.00

Franchise fees are to be collected by the Utility in the amounts set forth in the above schedule and submitted to the city on a quarterly basis as follows: January – March collections due by April 30, April – June collections due by July 31, July – September collections due by October 31, and October – December collections due by January 31.

Sec. 23-51. North St. Paul Municipal Electric Utility.

Subdivision 1. Definitions. For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- **City.** The City of Oakdale, County of Washington, State of Minnesota.
- **City Utility System.** Facilities used for providing public utility service owned or operated by city or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.
- **Electric Facilities.** Electric transmission and distribution towers, poles, conductors lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Municipal for the purpose of providing electric energy for public use.
- **Municipal.** The City of North St. Paul Municipal Electric Utility, its successors and assigns.
- **Non-Betterment Costs.** Costs incurred by Municipal from relocation, removal or rearrangement of Electric Facilities that do not result in an improvement to the Electric Facilities.
- **Notice.** A writing served by either party on the other party. Notice to Municipal shall be mailed to City Manager, City of North St. Paul, 2526 E. 7th Avenue, North St. Paul, Minnesota 55109.

Notice to the City shall be mailed to the City Administrator, 1584 Hadley Avenue North, Oakdale, MN 55128. Any party may change its respective address for the purpose of this Ordinance by written notice to the other party.

- **Public Ground.** Land owned or otherwise controlled by the city for park, open space or similar public purpose, which is held for use in common by the public.
- **Public Way.** Public right-of-way within the city as defined in Minn. Stat. §237.163, Subd. 3.

Subdivision 2. Adoption of Franchise.

2.1 **Grant of Franchise.** City hereby grants Municipal, for a period of twenty (20) years from the date this Ordinance is passed and approved by the city, the right to transmit and furnish electric energy for light, heat and power for public use within and through the limits of the city as its boundaries now exist or as they may be extended in the future. For these purposes, Municipal may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Municipal may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the city pursuant to ordinance and to the further provisions of this franchise agreement.

2.2 **Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Municipal. If Municipal does not file a written acceptance with the city within 60 days after the date the City Council adopts this Ordinance, or otherwise places the city on notice, before that time, that the Municipal does not accept all terms of this franchise, the City Council by resolution may revoke this Ordinance or seek its enforcement in a court of competent jurisdiction.

2.3 **Publication Expense.** The expense of publication of this Ordinance shall be paid by city and reimbursed to city by Municipal within 30 days.

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 to interpret and enforce this franchise or for such other relief as may be permitted by law or equity.

2.5 **Continuation of Franchise.** If the city and Municipal 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 Municipal serves written Notice to the other party of its intention to allow the franchise to expire, but in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Subdivision 2.1.

Subdivision 3. Location, Other Regulations.

3.1 **Location of Facilities.** Electric 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 normal operation of any city Utility System. Electric Facilities shall be located on Public Grounds as determined by the city. Municipal's construction, reconstruction, operation, repair, maintenance, location and relocation of Electric Facilities shall be subject to any permit requirements authorized in a separate ordinance and other reasonable regulations of the city, consistent with authority granted the city to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this franchise agreement. Municipal may abandon underground Electric Facilities in place, provided at city's request, Municipal at its own expense removes abandoned metal conduits or concrete encased conduit or other Facilities interfering with a city improvement project to extent such conduit is uncovered as part of the city's improvement project.

3.2 **Street Openings.** Municipal shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the city, if required by a separate ordinance for which the city may impose a reasonable fee, subject to the provisions of Subdivision 9. Permit conditions imposed on Municipal shall not be more burdensome than those imposed on other utilities for similar facilities or work. Municipal may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Electric Facilities and (ii) Municipal gives telephone, e-mail or similar notice to the city before, if reasonably possible, commencement of the emergency repair. Within two business days after commencing the repair, Municipal shall apply for any required permits and pay any required fees.

3.3 **Restoration.** After undertaking any work requiring the opening of any Public Way, Municipal shall restore the Public Way in accordance with Minnesota Rules, Part 7819.1100 and applicable city ordinances to the extent consistent with law. Municipal shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six months thereafter, but shall have no obligation to water any grass or other vegetation thereon. All work shall be completed as promptly as weather permits and if Municipal shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition the city shall have, after demand to Municipal to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration of the Public Ground at the expense of Municipal. Municipal shall pay to the city the cost of such work done for or performed by the city. This remedy shall be in addition to any other remedy available to the city for noncompliance with this Section.

3.4 **Performance Security.** City hereby waives any requirement, in the normal course of Municipal operations, for Municipal to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required under a separate existing or future ordinance of the city, of a person or entity obtaining the city's permission to install, replace or maintain facilities in a Public Way or the Public Ground. Notwithstanding the foregoing, the city reserves the right to require a performance bond for new installation, replacement, or repairs, when the duration of Municipal's work within a Public Way or Public Ground is estimated by Municipal to exceed 14 calendar days and Municipal's completion of its work is required in order for the city to proceed with its work for constructing a public improvement to the Public Way.

3.5 **Shared Use of Poles.** Municipal shall make space available on its poles or towers for city fire, water utility, police or other city facilities in accordance with Municipal's Pole Attachment Policy, and Fee and whenever such use will not interfere with the use of such poles or towers by Municipal, by

another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the city shall pay for any added cost incurred by Municipal because of such use by city.

3.6 **Avoid Damage to Electric Facilities.** Nothing in this Ordinance relieves any person, including Municipal, from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities or other persons or property while performing any activity.

3.7 **Notice of Improvements to Streets.** The city must give Municipal reasonable written Notice of plans for improvements to Public Ways where the city has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the city will start the work, and (v) if more than one Public Way is involved, the order in which the work is to proceed. The Notice must be given to Municipal a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Municipal to make any additions, alterations or repairs to its Electric Facilities Municipal deems necessary.

3.8 **Mapping Information.** Municipal must promptly provide mapping information for any of its underground Electric Facilities in accordance with Minnesota Rules Parts 7819.4000 and 7819.4100.

Subdivision 4. Relocations.

4.1 **Relocation in Public Ways.** Municipal shall comply with the requirements of any applicable ordinance of the city relating to relocation of Electric Facilities in Public Ways to the extent consistent with Minnesota Rules, Part 7819.3100 and applicable law.

4.2 **Relocation in Public Grounds.** The city may require Municipal at Municipal's expense 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 to the existing or proposed public use of the Public Ground. Such relocation shall comply with applicable city ordinances consistent with law.

4.3 **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Electric 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. It is expressly understood that the right herein granted to Municipal is a valuable property right. The city shall not order Municipal to remove or relocate its facilities without compensation when a Public Way is vacated, improved or re-aligned 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 are paid to Municipal. The city is obligated to pay Municipal, however, only for those portions of its relocation costs for which city has received federal funding specifically allocated for relocation costs in the amount requested by the Municipal.

4.4 **No Waiver.** Municipal does not waive its rights under an easement or prescriptive right or State or County permit.

Subdivision 5. Tree Trimming. Unless otherwise provided in any permit or other reasonable regulation required by the city under separate ordinance, Municipal may trim all trees and shrubs in the Public Ways and Public Grounds of city to the extent Municipal finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Municipal shall save the city harmless from any liability arising therefrom.

Subdivision 6. Indemnification.

6.1 **Indemnity of City.** Municipal shall indemnify and hold harmless the city from any and all liability on account of injury to persons or damage to property occasioned by the installation, construction, relocation, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Ways and Public Grounds. The city shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the city's negligence as to the issuance of permits for, or inspection of, Municipal's plans or work.

6.2 **Defense of City.** In the event a suit is brought against the city under circumstances where this agreement to indemnify applies, Municipal at its sole cost and expense shall defend the city in such suit if written notice thereof is promptly given to Municipal within a period wherein Municipal is not prejudiced by lack of such notice. If Municipal is required to indemnify and defend, it will thereafter have control of such litigation, but Municipal 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 Municipal, 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 immunity or limitations on liability under Minnesota Statutes, Chapter 466.

Subdivision 7. Vacation of Public Ways. The city shall give Municipal at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a city improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Municipal of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same are first paid to Municipal. In no case, however, shall the city be liable to Municipal for failure to specifically preserve a right-of-way, under Minnesota Statutes, Section 160.29. In accordance with Minnesota Rules, Part 7819.3200, if the city's order directing vacation of the Public Way does not require relocation of the Municipal's Electric Facilities, the vacation proceedings shall not be deemed to deprive Municipal of its right to continue to use the right-of-way of the former Public Way for its Electric Facilities installed prior to such order of vacation.

Subdivision 8. Change in Form of Government. Any change in the form of government of the city shall not affect the validity of this Ordinance. Any governmental unit succeeding the city shall, without the consent of Municipal, succeed to all of the rights and obligations of the city provided in this Ordinance.

Subdivision 9. Franchise Fee.

9.1 **Fee Schedule.** During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on Municipal for Municipal work in or use of the right-of-way, the city may

impose on Municipal a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated Municipal Customer Class. The city retains the right to modify the fee rate and fee design for the term of the franchise, subject to fee limits agreed upon below. The parties have agreed that the initial franchise fee collected by Municipal and paid to the city in accordance with this Subdivision 9 shall not exceed the following amounts, as they may be adjusted for inflation during the term of this franchise:

<u>Class</u>	<u>Fee Per Month Per Meter</u>
Residential	\$1.50
Commercial Electric	\$3.00
Large Commercial Demand	\$8.00
Public Street Lighting	\$6.00
MuniPumping – Dem	\$8.00

9.2 **Separate Ordinance.** The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least sixty (60) days after written notice enclosing such proposed ordinance has been served upon Municipal by certified mail. The fee shall not become effective until at least sixty (60) days after written notice enclosing such adopted ordinance has been served upon Municipal by certified mail. Subdivision 2.5 shall constitute the sole remedy for solving disputes between Municipal and the city in regard to the interpretation of, or enforcement of, the separate ordinance. No action by the city to implement a separate ordinance will commence until this Ordinance is effective. Notwithstanding the Fee Schedule in Subdivision 9.1, during the term of this franchise at intervals no more frequently than one year, the city may impose a lesser fee under Subdivision 9.4 or the city may request an amendment pursuant to Subdivision 11 allowing the city to impose a greater fee on one or more Classes of customer and/or a different fee design, including but not limited to, customer usage fee, or a meter fee. City and Municipal shall attempt to negotiate a mutually acceptable modification to the fee amount and design for intended future collection by Municipal. If city and Municipal are unable to agree on a modification, all disputes shall be resolved pursuant to Subdivision 2.4 of this franchise ordinance. Nothing in this Section is intended to be a limitation on the city's right to raise revenue under Minnesota Statutes, Section 216B.36.

9.3 **Terms Defined.** For the purpose of this Subdivision 9, the following definitions apply:

- **Customer Class** shall refer to the classes listed on the Fee Schedule and as defined or determined in Municipal’s electric tariffs on file with the Commission.
- **Fee Schedule** refers to the schedule in Subdivision 9.1 setting forth the various customer classes from which a franchise fee would be collected if a separate ordinance were implemented immediately after the effective date of this franchise agreement. The Fee Schedule in the separate ordinance may include new Customer Class added by Municipal to its electric tariffs after the effective date of this franchise agreement

9.4 **Collection of the Fee.** The franchise fee shall be payable quarterly and shall be based on the complete billing months during the period for which payment is to be made. The payment shall be due the last business day of the month following the period for which the payment is made. The fee may be changed by ordinance from time to time, however each change shall meet the same notice requirements and may not occur more often than annually. Such fee shall not exceed any amount, which the Municipal may legally charge to its customers prior to payment to the city by imposing a surcharge equivalent to such fee in its rates for electric service. The Municipal may pay the city the fee based upon

the surcharge billed subject to subsequent reductions to account for uncollectibles or customer refunds. The Municipal agrees to make its records available for inspection by the city at reasonable times, provided that the city and its designated representative agree in writing not to disclose any information that is not public data which would indicate the amount paid by any identifiable customer or any other information regarding specific customers.

9.5 Equivalent Fee Requirement. The separate ordinance imposing the fee shall not be effective against Municipal, unless it lawfully imposes and the city monthly or more often collects a fee or tax of substantially the same or greater equivalent amount on the receipts from sales of energy within the city by any other energy supplier, provided that, as to such a supplier, the city has the authority to require a franchise fee or to impose a tax. The “substantially same or greater equivalent amount” shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers, the percentage of the annual bill represented by the amount collected for the franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, or to run machinery and appliances, but shall not apply to energy sales for the purpose of providing fuel for vehicles. If the Municipal specifically consents in writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in contravention of this Subdivision 9.5, the foregoing conditions will be waived to the extent of such written consent. Notwithstanding the foregoing, the city retains the right to determine the “substantially same or equivalent amount” and shall not be prevented from requiring a franchise fee that is reasonably equivalent to the customer.

Subdivision 10. Provisions of Ordinance.

10.1 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; provided, however, that if the city is unable to enforce its franchise fee provisions for any reason the city will be allowed to amend the franchise agreement to impose a franchise fee pursuant to statute. Where a provision of any other city ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

10.2 Limitation On Applicability. This Ordinance constitutes a franchise agreement between the city and Municipal 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.

Subdivision 11. Amendment Procedure. Either party to this franchise agreement may at any time propose that the agreement be amended. 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 Municipal’s written consent thereto with the City Clerk after City council adoption of the amendatory ordinance.

Subdivision 12. Previous Franchises Superseded. This franchise supersedes and replaces previous franchises granted to the Municipal or its predecessors. Upon Municipal acceptance of this franchise under Subdivision 2.2, the previous franchise shall terminate.

Sec. 23-52. North St. Paul Municipal Electric Utility – Fee.

Subdivision 1. Purpose. The Oakdale City Council has determined that it is in the best interest of the city to impose a franchise fee on those public utility companies that provide natural gas and electric services within the City of Oakdale.

(a) Pursuant to City Ordinance No. 617, a Franchise Agreement between the City and North Saint Paul Municipal Electric Utility (“Municipal”), the city has the right to impose a franchise fee on Municipal in amount and fee design as set forth in Subdivision 9.1 of the Franchise and in the fee schedule attached hereto as Exhibit A.

Subdivision 2. Franchise Fee Statement. A franchise fee is hereby imposed on Municipal under its Electric Franchise in accordance with the schedule attached hereto and made a part of this ordinance, commencing with the Municipal’s January 2004 billing month.

Subdivision 3. Payment. The said franchise fee shall be payable to the city in accordance with the terms set forth in Subdivision 9.4 of the Franchise.

Subdivision 4. Surcharge. The city recognizes that Municipal may surcharge its customers in the city in the amount of the fee.

Subdivision 5. Record Support for Payment. Municipal shall make each payment when due and, if requested by the city, shall furnish a statement of electric usage by each customer class at the time of each payment for the period for the payment was made. Municipal shall permit the city’s designated representative reasonable access to the company’s records for the purpose of verifying such statements.

Subdivision 6. Enforcement. Any dispute, including enforcement of a default regarding this ordinance will be resolved in accordance with Subdivision 2.5 the Franchise Agreement.

Subdivision 7. Effective Date of Franchise Fee. Notwithstanding the effective date of this ordinance and notwithstanding any contrary provisions in the Franchise, the effective date of the fee collected under Subdivision 2 of this ordinance is the later of ten (10) days after the publication or after the sending of written notice enclosing a copy of this adopted ordinance upon Municipal by certified mail. It has been agreed to in advance by Municipal’s representatives that Municipal will abide by the provisions of this Subdivision 7.

Subdivision 8. Fee Schedule.

<u>Class</u>	<u>Fee Per Meter</u>
Residential	\$1.50
Commercial Electric	\$3.00
Large Commercial Demand	\$8.00
Public Street Lighting	\$6.00
MuniPumping – Dem	\$8.00

Franchise fees are to be collected by the Utility in the amounts set forth in the above schedule and submitted to the city on a quarterly basis as follows: January – March collections due by April 30,

April – June collections due by July 31, July – September collections due by October 31, and October – December collections due by January 31.

Sec. 23-53. Northern States Power dba Xcel Energy – Electric.

Subdivision 1. Definitions.

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

- **City.** The City of Oakdale County of Washington, State of Minnesota.
- **City Utility System.** Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, but excluding facilities for providing heating, lighting, or other forms of energy.
- **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 electric retail rates now vested in the Minnesota Public Utilities Commission.
- **Company.** Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns, including all successors or assignees that own or operate any part or parts of the Electric Facilities subject to this franchise.
- **Electric Facilities.** Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.
- **Non-Betterment Costs.** Costs incurred by Company from relocation, removal or rearrangement of Electric Facilities that do not result in an improvement to the Electric Facilities, taking into consideration salvage value of Facilities removed.
- **Notice.** A writing served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, Legal Services, Suite 3000, 800 Nicollet Mall, Minneapolis, MN 55402. Notice to the city shall be mailed to the City Administrator, 1584 Hadley Avenue North, Oakdale, MN 55128. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
- **Public Ground.** Land owned or otherwise controlled by the city for park, open space or similar public purpose, which is held for use in common by the public.
- **Public Way.** Public right-of-way within the city as defined in Minn. Stat. § 237.163, subd. 3.

Subdivision 2. Adoption of Franchise.

2.1 **Grant of Franchise.** City hereby grants Company, for a period of twenty (20) years from the date this Ordinance is passed and approved by the city, the right to transmit and furnish electric energy for light, heat and power or similar electric energy purposes for public use within and through the limits of the 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, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to such reasonable regulations as may be imposed by the city pursuant to ordinance and to the further provisions of this franchise agreement.

2.2 Effective Date; Written Acceptance. This franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the city within 90 days after the date the city Council adopts this Ordinance, or otherwise places the city on notice, before that time, that the Company does not accept all terms of this franchise, the City Council by resolution may revoke this Ordinance or seek its enforcement in a court of competent jurisdiction.

2.3 Service Rates and Area. The service to be provided and the rates to be charged by Company for electric service in city are subject to the jurisdiction of the Commission. The area within the city in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

2.4 Publication Expense. The expense of publication of this Ordinance shall be paid by city and reimbursed to city by Company within 30 days.

2.5 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 to interpret and enforce this franchise or for such other relief as may be permitted by law or equity.

2.6 Continuation of Franchise. If the city and 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 Company serves written Notice to the other party of its intention to allow the franchise to expire, but in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Section 2.1.

Subdivision 3. Location, Other Regulations.

3.1 Location of Facilities. Electric 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 normal operation of any City Utility System or street lighting or traffic signal system of the city. Electric Facilities shall be located on Public Grounds as determined by the city. Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Electric Facilities shall be subject to any permit requirements authorized in a separate ordinance and other reasonable regulations of the city, consistent with authority granted the city to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this franchise agreement. Company may abandon underground Electric Facilities in place, provided at city's request, Company at its own expense, removes abandoned metal conduits or concrete encased conduit or other Facilities interfering with a city improvement project, but only to the extent such conduit is uncovered as part of the city's improvement project.

3.2 Street Openings. Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the city, if required by a separate

ordinance for which the city may impose a reasonable fee, subject to the provisions of Section 9. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Electric Facilities and (ii) Company gives telephone, e-mail or similar notice to the city before, if reasonably possible, commencement of the emergency repair. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

3.3 Restoration. After undertaking any work requiring the opening of any Public Way, Company shall restore the Public Way in accordance with Minnesota Rules, Part 7819.1100 and applicable city ordinances to the extent consistent with law. Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six months thereafter, but shall have no obligation to water any grass or other vegetation thereon. All 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 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 five days, the right to make the restoration of the Public Ground at the expense of Company. Company shall pay to the city the cost of such work done for or performed by the city. This remedy shall be in addition to any other remedy available to the city for noncompliance with this Section.

3.4 Performance Security. City hereby waives any requirement, in the normal course of Company operations, for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required under a separate existing or future ordinance of the city, of a person or entity obtaining the city's permission to install, replace or maintain facilities in a Public Way or the Public Ground. Notwithstanding the foregoing, the city reserves the right to require a performance bond for new installation, replacement, or repairs, when the Company's completion of its work is required in order for the city to proceed with its work for constructing a public improvement to the Public Way.

3.5 Shared Use of Poles. Company shall 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, the city shall pay for any added cost incurred by Company because of such use by city.

3.6 Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person, including Company, from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities or other persons or property while performing any activity.

3.7 Notice of Improvements to Streets. The city must give Company reasonable written Notice of plans for improvements to Public Ways where the city has reason to believe that Electric Facilities may affect or be affected by the improvement. The Notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the city will start the work, and (v) if more than one Public Way is involved, the order in which the work is to proceed. The Notice must be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual

commencement of the work to permit Company to make any additions, alterations or repairs to its Electric Facilities Company deems necessary.

3.8 **Mapping Information.** Company must promptly provide mapping information for any of its underground Electric Facilities in accordance with Minnesota Rules Parts 7819.4000 and 7819.4100.

Subdivision 4. Relocations.

4.1 **Relocation in Public Ways.** Company shall comply with the requirements of any applicable ordinance of the city relating to relocation of Electric Facilities in Public Ways to the extent consistent with Minnesota Rules, Part 7819.3100 and applicable law.

4.2 **Relocation in Public Grounds.** The city may require Company at Company's expense 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 to the existing or proposed public use of the Public Ground. Such relocation shall comply with applicable city ordinances consistent with law.

4.3 **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Electric 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. It is expressly understood that the right herein granted to Company is a valuable property right. City shall not order Company to remove or relocate its facilities without compensation when a Public Way is vacated, improved or re-aligned 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 are paid to Company. The city is obligated to pay Company, however, only for those portions of its relocation costs for which city has received federal funding specifically allocated for relocation costs in the amount requested by the Company.

4.4 **No Waiver.** By entering this or any prior franchise agreement with the city, Company does not waive its rights under an easement or prescriptive right or State or County permit.

Subdivision 5. Tree Trimming. Unless otherwise provided in any permit or other reasonable regulation required by the city under separate ordinance, Company may trim all trees and shrubs in the Public Ways and Public Grounds of city to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the city harmless from any liability arising therefrom.

Subdivision 6. Indemnification.

6.1 **Indemnity of City.** Company shall indemnify and hold harmless the city from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Ways and Public Grounds. The city shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the city's negligence as to the issuance of permits for, or inspection of, Company's plans or work.

6.2 **Defense of City.** In the event a suit is brought against the city under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the 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 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 immunity or limitations on liability under Minnesota Statutes, Chapter 466.

Subdivision 7. Vacation of Public Ways. The city shall give 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 first paid to Company. In no case, however, shall the city be liable to Company for failure to specifically preserve a right-of-way, under Minnesota Statutes, Section 160.29. In accordance with Minnesota Rules, Part 7819.3200, if the city’s order directing vacation of the Public Way does not require relocation of the Company’s Electric Facilities to prevent interference with a current public improvement, 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 Electric Facilities installed prior to such order of vacation.

Subdivision 8. Change in Form of Government. Any change in the form of government of the city shall not affect the validity of this Ordinance. Any governmental unit succeeding the city shall, without the consent of Company, succeed to all of the rights and obligations of the city provided in this Ordinance.

Subdivision 9. Franchise Fee.

9.1 **Fee Schedule.** During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on Company, the city may impose on Company a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated Company Customer Class. The parties have agreed that the initial fee collected by the Company and paid to the city in accordance with this Section 9 shall not to exceed the following amounts.

<u>Class</u>	<u>Fee Per Premise</u>
Residential	\$ 1.50
Sm C & I – Non-Dem	\$ 3.00
Sm C & I – Demand	\$10.00
Large C & I	\$ 8.00
Public Street Lighting	\$ 6.00
Muni Pumping –N/D	\$ 2.00
MuniPumping – Dem	\$ 8.00

9.2 **Separate Ordinance.** The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 60 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until at least 60 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between Company and the city in regard to the interpretation of, or enforcement of, the separate ordinance. No action by the city to implement a separate ordinance will commence until this Ordinance is effective. Notwithstanding the Fee Schedule in Section 9.1, during the term of this franchise at intervals no more frequently than one year, the city may impose a lesser fee under Section 9.4 or the city may request an amendment pursuant to Section 11 allowing the city to impose a greater fee on one or more Classes of customer and/or a different fee design, including but not limited to, a customer usage fee or a meter fee. If the city proposes such an amendment, it shall notify Company in writing no less than six (6) months prior to the anniversary date of the then current franchise fee required by the city. Promptly thereafter, city and Company shall attempt to negotiate a mutually acceptable modification to the fee amount and design for intended future collection by Company. If city and Company are unable to agree on a modification, all disputes shall be resolved pursuant to Section 2.5 of this franchise ordinance. Nothing in this Section is intended to be a limitation on the city's right to raise revenue under Minnesota Statutes, Section 216B.36.

9.3 **Terms Defined.** For the purpose of this Section 9, the following definitions apply:

- **Customer Class** shall refer to the classes listed on the Fee Schedule and as defined or determined in Company's electric tariffs on file with the Commission.
- **Fee Schedule** refers to the schedule in Section 9.1 setting forth the various customer classes from which a franchise fee would be collected if a separate ordinance were implemented immediately after the effective date of this franchise agreement. The Fee Schedule in the separate ordinance may include new Customer Class added by Company to its electric tariffs after the effective date of this franchise agreement

9.4 **Collection of the Fee.** The franchise fee shall be payable quarterly and shall be based on the complete billing months during the period for which payment is to be made. The payment shall be due the last business day of the month following the period for which the payment is made. The fee may be changed by ordinance from time to time, however each change shall meet the same notice requirements and may not occur more often than annually. Such fee shall not exceed any amount, which the Company may legally charge to its customers prior to payment to the city by imposing a surcharge equivalent to such fee in its rates for electric service. The Company may pay the city the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles or customer refunds. The time and manner of collecting the franchise fee is subject to approval of the Public Utilities Commission, which the Company agrees to use best efforts to obtain. The Company agrees to make its records available for inspection by the city at reasonable times, provided that the city and its designated representative agree in writing not to disclose any information that is not public data which would indicate the amount paid by any identifiable customer or any other information regarding specific customers.

9.5 **Equivalent Fee Requirement.** The separate ordinance imposing the fee shall not be effective against Company, unless it lawfully imposes and the city monthly or more often collects a fee or tax of the same or greater equivalent amount on the receipts from sales of energy within the city by any other energy supplier, provided that, as to such a supplier, the city has the authority to require a franchise fee or to impose a tax. The "same or greater equivalent amount" shall be measured, if practicable, by

comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers, the percentage of the annual bill represented by the amount collected for the franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, or to run machinery and appliances, but shall not apply to energy sales for the purpose of providing fuel for vehicles. If the Company specifically consents in writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in contravention of this Section 9.5, the foregoing conditions will be waived to the extent of such written consent. Notwithstanding the foregoing, the city retains the final right to determine a franchise fee structure that is a reasonably equivalent fee.

Subdivision 10. Provisions of Ordinance.

10.1 **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; provided, however, if any provision is held invalid, the parties agree to negotiate in good faith to substitute, to the extent reasonably possible, amended provisions that validly carry out the primary purpose of the invalid provisions. Where a provision of any other city ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

10.2 **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.

Subdivision 11. Amendment Procedure. Either party to this franchise agreement may at any time propose that the agreement be amended. 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 after city council adoption of the amendatory ordinance.

Subdivision 12. Previous Franchises Superseded. This franchise supersedes and replaces previous franchises granted to the Company or its predecessors. Upon Company acceptance of this franchise under Subdivision 2.2, the previous franchise shall terminate.

Sec. 23-54. Northern States Power dba Xcel Energy – Electric Fee.

Subdivision 1. Purpose. The Oakdale City Council has determined that it is in the best interest of the city to impose a franchise fee on those public utility companies that provide natural gas and electric services within the City of Oakdale.

- (a) Pursuant to City Ordinance No. 619, a Franchise Agreement between the City of Oakdale and Northern States Power Company, a Minnesota corporation, dba Xcel Energy, its successors and assigns, the city has the right to impose a franchise fee on Northern States Power Company, a Minnesota corporation, dba Xcel Energy, its successors and assigns, in an amount and fee design as set forth in Section 9 of the Northern States Power Company Franchise and in the fee schedule attached hereto as Schedule A.

Subdivision 2. Franchise Fee Statement. A franchise fee is hereby imposed on Northern States Power Company, a Minnesota corporation, dba Xcel Energy, its successors and assigns, under the electric franchise in accordance with the schedule attached hereto and made a part of this ordinance, commencing with the Xcel Energy’s November 2013 billing month.

This fee is an account-based fee on each premise and not a meter-based fee. In the event that an entity covered by this ordinance has more than one meter at a single premise, but only one account, only one fee shall be assessed to that account. If a premise has two or more meters being billed at different rates, the Company may have an account for each rate classification, which will result in more than one franchise fee assessment for electric service to that premise. If the Company combines the rate classifications into a single account, the franchise fee assessed to that account will be the largest franchise fee applicable to a single rate classification for energy delivered to that premise. In the event any entities covered by this ordinance have more than one premise, each premise (address) shall be subject to the appropriate fee. In the event a question arises as to the proper fee amount for any premise, the Company’s manner of billing for energy used at all similar premises in the city will control.

Subdivision 3. Payment. The said franchise fee shall be payable to the city in accordance with the terms set forth in Section 9.2 of the Franchise.

Subdivision 4. Surcharge. The city recognizes that the Minnesota Public Utilities Commission may allow Company to add a surcharge to customer rates to reimburse Company for the cost of the fee.

Subdivision 5. Record Support for Payment. Xcel Energy shall make each payment when due and, if requested by the city, shall provide at the time of each payment, a statement summarizing how the franchise fee payment was determined, including information showing any adjustments to the total surcharge billed in the period for which the payment is being made to account for any uncollectibles, refunds, or error corrections.

Subdivision 6. Enforcement. Any dispute, including enforcement of a default regarding this ordinance will be resolved in accordance with Section 2.5 of the Franchise Agreement.

Subdivision 7. Effective Date of Franchise Fee. The effective date of this ordinance shall be after its publication and ninety (90) days after the sending of written notice enclosing a copy of this adopted Ordinance to Xcel Energy by certified mail. Collection of the fee shall commence as provided above.

Subdivision 8. Fee Schedule.

<u>Class</u>	<u>Fee Per Meter</u>
Residential	\$ 1.50
Sm C & I – Non-Dem	\$ 3.00
Sm C & I – Demand	\$10.00
Large C & I	\$ 8.00
Public Street Lighting	\$ 6.00
Muni Pumping –N/D	\$ 2.00
MuniPumping – Dem	\$ 8.00

Franchise fees are to be collected by the Utility in the amounts set forth in the above schedule and submitted to the city on a quarterly basis as follows: January – March collections due by April 30, April – June collections due by July 31, July – September collections due by October 31, and October – December collections due by January 31.

Sec. 23-55. Northern States Power dba Xcel Energy – Gas.

Subdivision 1. Definitions. For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- **City.** The City of Oakdale County of Washington, State of Minnesota.
- **City Utility System.** Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, but excluding facilities for providing heating, lighting, or other forms of energy.
- **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.
- **Company.** Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, 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.
- **Gas Facilities.** Gas transmission and distribution pipes, mains, regulators and necessary appurtenances owned or operated by Company for the purpose of providing natural gas, manufactured gas, or other form of gaseous energy for public use.
- **Non-Betterment Costs.** Costs incurred by Company from relocation, removal or rearrangement of Gas Facilities that do not result in an improvement to the Gas Facilities, taking into consideration salvage value of Facilities removed.
- **Notice.** A writing served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, Legal Services, Suite 3000, 800 Nicollet Mall, Minneapolis, MN 55402. Notice to the city shall be mailed to the City Administrator, 1584 Hadley Avenue, North, Oakdale, MN 55128. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
- **Public Ground.** Land owned or otherwise controlled by the city for park, open space or similar public purpose, which is held for use in common by the public.
- **Public Way.** Public right-of-way within the city as defined in Minn. Stat. § 237.163, subd. 3.

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date this Ordinance is passed and approved by the city, the right and privilege of erecting a gas distribution system and using the Public Ways and Public Grounds for the purpose of installing, operating, repairing, and maintaining, in, on, over, under, and across the same, all gas pipes, mains, and appurtenances, usually, conveniently or necessarily used in connection therewith, for the purpose of the transmission of gas, or the distribution of gas, for public and private use within and through the limits of the city as its boundaries exist or as they may be extended in the future. Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to such reasonable regulations as may be imposed by the city pursuant to ordinance and to further provisions of this franchise agreement.

2.2 **Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Company.

If Company does not file a written acceptance with the city within 90 days after the date the city Council adopts this Ordinance, or otherwise places the city on notice, before that time, that the Company does not accept all terms of this franchise, the city Council by resolution may revoke this Ordinance or seek its enforcement in a court of competent jurisdiction.

2.3 Service and Rates. The service to be provided and the rates to be charged by Company for gas service in city are subject to the jurisdiction of the Commission.

2.4 Publication Expense. The expense of publication of this Ordinance shall be paid by city and reimbursed to city by Company within 30 days.

2.5 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 to interpret and enforce this franchise or for such other relief as may be permitted by law or equity.

2.6 Continuation of Franchise. If the city and 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 Company serves written Notice to the other party of its intention to allow the franchise to expire, but in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Section 2.1.

Subdivision 3. Location, Other Regulations.

3.1 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 normal operation of any city Utility System or street lighting or traffic signal system of the city. Gas Facilities shall be located on Public Grounds as determined by the city. Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas Facilities shall be subject to any permit requirements authorized in a separate ordinance and other reasonable regulations of the city, consistent with authority granted the city to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this franchise agreement. Company may abandon underground Gas Facilities in place, provided at city's request, Company at its own expense, removes abandoned metal conduits or concrete encased conduit or other Facilities interfering with a city improvement project, but only to the extent such conduit is uncovered as part of the city's improvement project.

3.2 Street Openings. Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the city, if required by a separate ordinance for which the city may impose a reasonable fee, subject to the provisions of Section 9. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate

repair of Gas Facilities and (ii) Company gives telephone, e-mail or similar notice to the city before, if reasonably possible, commencement of the emergency repair. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

3.3 **Restoration.** After undertaking any work requiring the opening of any Public Way, Company shall restore the Public Way in accordance with Minnesota Rules, Part 7819.1100 and applicable city ordinances to the extent consistent with law. Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six months thereafter, but shall have no obligation to water any grass or other vegetation thereon. All 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 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 five days, the right to make the restoration of the Public Ground at the expense of Company. Company shall pay to the city the cost of such work done for or performed by the city. This remedy shall be in addition to any other remedy available to the city for noncompliance with this Section.

3.4 **Performance Security.** City hereby waives any requirement, in the normal course of Company operations, for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required under a separate existing or future ordinance of the city, of a person or entity obtaining the city's permission to install, replace or maintain facilities in a Public Way or the Public Ground. Notwithstanding the foregoing, the city reserves the right to require a performance bond for new installation, replacement, or repairs, when the Company's completion of its work is required in order for the city to proceed with its work for constructing a public improvement to the Public Way.

3.5 **Major Facilities.** Before Company constructs any new structure or converts any existing structure for the manufacture or storage of gas, Company shall first obtain the approval of the structure and the location thereof from the city. Such approval by the city shall not be unreasonably withheld.

3.6 **Avoid Damage to Gas Facilities.** Nothing in this Ordinance relieves any person, including Company, from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities or other persons or property while performing any activity.

3.7 **Notice of Improvements to Streets.** The city must give Company reasonable written Notice of plans for improvements to Public Ways where the city has reason to believe that Gas Facilities may affect or be affected by the improvement. The Notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the city will start the work, and (v) if more than one Public Way is involved, the order in which the work is to proceed. The Notice must be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities Company deems necessary.

3.8 **Mapping Information.** Company must promptly provide mapping information for any of its underground Gas Facilities in accordance with Minnesota Rules Parts 7819.4000 and 7819.4100.

Subdivision 4. Relocations.

4.1 **Relocation in Public Ways.** Company shall comply with the requirements of any applicable ordinance of the city relating to relocation of Gas Facilities in Public Ways to the extent consistent with Minnesota Rules, Part 7819.3100 and applicable law.

4.2 **Relocation in Public Grounds.** The city may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by city that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground. Such relocation shall comply with applicable city ordinances consistent with law.

4.3 **Projects with Federal Funding.** Relocation, removal, or rearrangement of any 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. It is expressly understood that the right herein granted to Company is a valuable property right. City shall not order Company to remove or relocate its facilities without compensation when a Public Way is vacated, improved or re-aligned 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 are paid to Company. The city is obligated to pay Company, however, only for those portions of its relocation costs for which city has received federal funding specifically allocated for relocation costs in the amount requested by the Company.

4.4 **No Waiver.** By entering this or any prior franchise agreement with the city, Company does not waive its rights under an easement or prescriptive right or State or County permit.

Subdivision 5. Indemnification.

5.1 **Indemnity of City.** Company shall indemnify and hold harmless the city from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. The city shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the city's negligence as to the issuance of permits for, or inspection of, Company's plans or work.

5.2 **Defense of City.** In the event a suit is brought against the city under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the 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 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 immunity or limitations on liability under Minnesota Statutes, Chapter 466.

Subdivision 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. Except where required solely for a city improvement 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 first paid to Company. In no case, however, shall the city be liable to Company for failure to specifically preserve a right-of-way, under Minnesota Statutes, Section 160.29. In accordance with Minnesota Rules, Part 7819.3200, if the city’s order directing vacation of the Public Way does not require relocation of the Company’s Gas Facilities to prevent interference with a current public improvement, 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.

Subdivision 7. Change in Forms of Government.

Any change in the form of government of the city shall not affect the validity of this Ordinance. Any governmental unit succeeding the city shall, without the consent of Company, succeed to all of the rights and obligations of the city provided in this Ordinance.

Subdivision 8. Franchise Fee.

8.1 **Fee Schedule.** During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on the Company, the city may impose on the Company a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated Company Customer Class. The parties have agreed that the initial fee collected by the Company and paid to the city in accordance with this Section 8 shall not exceed the following amounts.

<u>Class</u>	<u>Fee Per Premise</u>
Residential	\$ 1.50
Comm. Firm Non-Demand	\$ 5.00
Comm. Firm Demand	\$ 8.00
Small Interruptible	\$17.50
Large Interruptible	\$17.50
Firm Transportation	\$17.50
Interruptible Transportation	\$17.50

8.2 **Separate Ordinance.** The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 60 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until at least 60 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between Company and the city in regard to the interpretation of, or enforcement of, the separate ordinance. No action by the city to implement a separate ordinance will commence until this Ordinance is effective. Notwithstanding the formula set forth above, during the term of this franchise at intervals no more frequently than one year, the city may impose a lesser fee under Section 9.4 or the city may request an amendment pursuant to Section 11 allowing the city to impose a greater fee on one or more Classes of customer and/or a different fee design, including but not limited to, a customer usage fee, or a meter fee. If the city proposes such an amendment, it shall notify Company in writing no less than six (6) months prior to the anniversary date of the then current franchise fee required by the city. Promptly thereafter,

city and Company shall attempt to negotiate a mutually acceptable modification to the fee amount and design for intended future collection by Company. If city and Company are unable to agree on a modification, all disputes shall be resolved pursuant to Section 2.5 of this franchise ordinance. Nothing in this Section is intended to be a limitation on the city's right to raise revenue under Minnesota Statutes, Section 216B.36

8.3 **Terms Defined.**

- **Class** shall refer to classes listed in the Fee Schedule and as defined or determined in Company's gas rate book on file with the Commission.
- **Fee Schedule** refers to the Schedule in Section 8.1 setting forth the various customer classes from which a franchise fee would be collected if a separate ordinance were implemented immediately after the effective date of this franchise agreement. The Fee Schedule in the separate ordinance may include new Customer Classes added by the Company to its gas tariffs after the effective date of this franchise agreement.
- **Therm** shall be a unit of gas providing 100,000 Btu of heat content adjusted for billing purposes under the rate schedules of Company on file with the Commission.

8.4 **Collection of the Fee.** The franchise fee shall be payable quarterly and shall be based on the complete billing months during the period for which payment is to be made. The payment shall be due the last business day of the month following the period for which the payment is made. The fee may be changed by ordinance from time to time, however each change shall meet the same notice requirements and may not occur more often than annually. Such fee shall not exceed any amount, which the Company may legally charge to its customers prior to payment to the city by imposing a surcharge equivalent to such fee in its rates for Gas service. The Company may pay the city the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles or customer refunds. The time and manner of collecting the franchise fee is subject to approval of the Public Utilities Commission, which the Company agrees to use best efforts to obtain. The Company agrees to make its records available for inspection by the city at reasonable times, provided that the city and its designated representative agree in writing not to disclose any information that is not public data which would indicate the amount paid by any identifiable customer or any other information regarding specific customers.

8.5 **Equivalent Fee Requirement.** The separate ordinance imposing the fee shall not be effective against Company, unless it lawfully imposes and the city monthly or more often collects a fee or tax of the same or greater equivalent amount on the receipts from sales of energy within the city by any other energy supplier, provided that, as to such a supplier, the city has the authority to require a franchise fee or to impose a tax. The "same or greater equivalent amount" shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers, the percentage of the annual bill represented by the amount collected for the franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, or to run machinery and appliances, but shall not apply to energy sales for the purpose of providing fuel for vehicles. If the Company specifically consents in writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in contravention of this Section 8.5, the foregoing conditions will be waived to the extent of such written consent. Notwithstanding the foregoing, the city retains the final right to determine a franchise fee structure that is a reasonably equivalent fee.

Subdivision 9. Provisions of Ordinance.

9.1 **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; provided, however, if any provision is held invalid, the parties agree to negotiate in good faith to substitute, to the extent reasonably possible, amended provisions that validly carry out the primary purpose of the invalid provisions. Where a provision of any other city ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

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.

Subdivision 10. Amendment Procedure. Either party to this franchise agreement may at any time propose that the agreement be amended. 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 after city council adoption of the amendatory ordinance.

Subdivision 11. Previous Franchises Superseded. This franchise supersedes and replaces previous franchises granted to the Company or its predecessors. Upon Company acceptance of this franchise under Section 2.2, the previous franchise shall terminate.

Sec. 23-56. Northern States Power dba Xcel Energy – Gas Fee.

Subdivision 1. Purpose. The Oakdale City Council has determined that it is in the best interest of the city to impose a franchise fee on those public utility companies that provide natural gas and electric services within the City of Oakdale.

(a) Pursuant to City Ordinance No. 621, a Franchise Agreement between the City of Oakdale and Northern States Power Company, a Minnesota corporation, dba Xcel Energy, its successors and assigns, the city has the right to impose a franchise fee on Northern States Power Company, a Minnesota corporation, dba Xcel Energy, its successors and assigns, in an amount and fee design as set forth in Section 9 of the Northern States Power Company Franchise and in the fee schedule attached hereto as Schedule A.

Subdivision 2. Franchise Fee Statement. A franchise fee is hereby imposed on Northern States Power Company, a Minnesota corporation, dba Xcel Energy, its successors and assigns, under its gas franchise in accordance with the schedule attached hereto and made a part of this ordinance, commencing with the Xcel Energy's November 2013 billing month.

This fee is an account-based fee on each premise and not a meter-based fee. In the event that an entity covered by this ordinance has more than one meter at a single premise, but only one account, only one fee shall be assessed to that account. If a premise has two or more meters being billed at different rates, the Company may have an account for each rate classification, which will result in more than

one franchise fee assessment for electric service to that premise. If the Company combines the rate classifications into a single account, the franchise fee assessed to that account will be the largest franchise fee applicable to a single rate classification for energy delivered to that premise. In the event any entities covered by this ordinance have more than one premise, each premise (address) shall be subject to the appropriate fee. In the event a question arises as to the proper fee amount for any premise, the Company's manner of billing for energy used at all similar premises in the city will control.

Subdivision 3. Payment. The said franchise fee shall be payable to the city in accordance with the terms set forth in Section 9 of the Franchise.

Subdivision 4. Surcharge. The city recognizes that the Minnesota Public Utilities Commission may allow Company to add a surcharge to customer rates of city residents to reimburse Company for the cost of the fee.

Subdivision 5. Record Support for Payment. Xcel Energy shall make each payment when due and, if requested by the city, shall provide at the time of each payment, a statement summarizing how the franchise fee payment was determined, including information showing any adjustments to the total surcharge billed in the period for which the payment is being made to account for uncollectibles, refunds, or error corrections.

Subdivision 6. Enforcement. Any dispute, including enforcement of a default regarding this ordinance will be resolved in accordance with Section 2.5 the Franchise Agreement.

Subdivision 7. Effective Date of Franchise Fee. The effective date of this ordinance shall be after its publication and ninety (90) days after the sending of written notice enclosing a copy of this adopted Ordinance to Xcel Energy by certified mail. Collection of the fee shall commence as provided above.

Subdivision 8. Fee Schedule.

<u>Class</u>	<u>Fee Per Meter</u>
Residential	\$ 1.50
Comm. Firm Non-Demand	\$ 5.00
Comm. Firm Demand	\$ 8.00
Small Interruptible	\$17.50
Large Interruptible	\$17.50
Firm Transportation	\$17.50
Interruptible Transportation	\$17.50

Franchise fees are to be collected by the Utility in the amounts set forth in the above schedule and submitted to the city on a quarterly basis as follows: January – March collections due by April 30, April – June collections due by July 31, July – September collections due by October 31, and October – December collections due by January 31.

ARTICLE IV. ILLICIT DISCHARGE AND CONNECTION

Sec. 23-57. Purpose and Intent. The purpose of this Article is to provide for the health, safety, and general welfare of the citizens of the City of Oakdale through the regulation of non-storm water discharges to the storm drainage system in compliance with federal and state law. This Article establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this Article are:

- a) To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.
- b) To prohibit illicit connections and discharges to the MS4.
- c) To establish legal authority to carry out all inspection, and enforcement procedures necessary to ensure compliance with this Article.

Sec. 23-58. Definitions. For the purposes of this Article, the following definitions apply:

- **Authorized Enforcement Person:** The Public Works Director/City Engineer of the City of Oakdale or designees.
- **Best Management Practices (BMPs):** Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other structural, vegetative, or management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. (Ord. 897, 03/28/23)
- **Clean Water Act:** The Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), and any subsequent amendments thereto.
- **Construction Activity:** Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
- **Deicer:** Any substance used to melt snow and ice or used for its anti-icing effects. (Ord. 897, 03/28/23)
- **Hazardous Materials:** Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- **Illegal Discharge:** Any direct or indirect non-storm water discharge to the storm drainage system, except as exempted in Section 23-63 of this Article
- **Illicit Connection:** An illicit connection is defined as either of the following:
 - a) Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection has been previously allowed, permitted, or approved by an authorized enforcement agency; or

b) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

- **Industrial Activity:** Activities subject to NPDES Industrial Storm Water Permits as defined in 40 CFR, Section 122.26 (b)(14).
- **Municipal Separate Storm Sewer System (MS4):** The system of conveyances, including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of Oakdale and designed or used for collecting or conveying storm water, and that is not used for collecting or conveying sewage.
- **National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit:** Means a permit issued by EPA (or by a State under authority delegated pursuant to 33 US § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
- **Non-Storm Water Discharge:** Any discharge to the storm drain system that is not composed entirely of storm water.
- **Person:** Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.
- **Pollutant:** Anything which causes or contributes to the pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents, oil and other automotive fluids; non-hazardous manmade liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, Articles, and accumulations, that that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, animal waste, fecal coliform and pathogens; dissolved and particulate metals; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
- **Premises:** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- **Storm Drainage System:** Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.
- **Storm Water:** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- **Storm Water Pollution Prevention Plan:** A document which describes the Best Management Practices (BMPs) and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm Water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.
- **Wastewater:** Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Sec. 23-59. Applicability. This Article shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City Council.

Sec. 23-60. Responsibility for Administration. The City of Oakdale Public Works Director/City Engineer shall administer, implement, and enforce the provisions of this Article. Any powers granted or duties imposed upon the Public Works Director/City Engineer may be delegated to persons or entities acting in the beneficial interest of or in the employ of the City.

Sec. 23-61. Compatibility with other Regulations. This Article is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this Article are in addition to the requirements of any other ordinance, rule regulation, or other provision of law, and where any provision of this Article imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Sec. 23-62. Ultimate Responsibility. The standards set forth in this Article and promulgated pursuant to this Article are minimum standards; therefore this Article does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

Sec. 23-63. Prohibition of Illegal Discharges: No person shall throw, drain, or otherwise discharge, or cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any water other than storm water or any pollutant or waters containing any pollutant.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

- a) The following discharges are exempt from discharge prohibitions established by this Article: water line flushing, firefighting discharges, landscape and lawn irrigation, diverted stream flows, rising ground waters, uncontaminated groundwater infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, sump pumps, air conditioning condensation, springs, footing drains, individual residential car washing, flows from riparian habitats and wetlands, de-chlorinated swimming pool discharges, and street wash water.
- b) Other discharges specified in writing by the Public works Director/City Engineer as being necessary to protect public health and safety.
- c) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA).

Sec. 23-64. Prohibition of Illicit Connections

- a) The construction, use, maintenance or continued existence of an illicit connection to the storm drain system is prohibited.
- b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- c) A person is in violation of this Article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

- d) Improper connections in violation of this Article must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Public Works Director/City Engineer.
- e) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Public Works Director/City Engineer requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location of point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City of Oakdale.

Sec. 23-65. Watercourse Protection. Every person owning property through which a watercourse passes, shall keep and maintain that part of the watercourse within the property free of obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Sec. 23-66. Industrial or Construction Activity Discharges. Submission of NOI (Notice of Intent) to the City of Oakdale.

- a) Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of the permit. Proof of compliance with the permit may be required in a form acceptable to the Public Works Director/City Engineer prior to the allowing of discharges to the MS4.
- b) The operator of a facility, including construction sites, required to have an NPDES permit to discharge storm water associated with industrial activity shall submit a copy of the Notice of Intent (NOI) to the Public Works Director/City Engineer at the same time the operator submits the original Notice of Intent to the EPA as applicable.
- c) The copy of the Notice of Intent may be delivered to the City of Oakdale either in person or by mailing it to: *"Notice of Intent to Discharge Storm Water", Attn: Public Works Director/City Engineer, 1584 Hadley Avenue North, Oakdale, MN 55128*
- d) A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the Notice of Intent to do so to the Public Works Director/City Engineer.

Sec. 23-67. Requirement to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices. The owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structure BMPs. Further, any person responsible for a property or premise that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with

the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

Sec. 23-68. Notification of Spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the storm water, the storm drain system, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City of Oakdale in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Oakdale within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least two years.

Failure to provide notification of a release as provided above is a violation of this Article.

Sec. 23-69. Deicer Requirements.

- a) All indoor and outdoor bulk deicer storage facilities, whether temporary or permanent, including salt piles, salt bag storage, sand piles and other storage of deicing materials must meet the following requirements:
- 1) Indoor operations for the storage of deicing materials must be provided wherever possible in order to prevent such materials from being affected by rain, snow and melt water.
 - 2) All salt, sand and other deicing materials stored outdoors must be covered at all times:
 - i. When not using a permanent roof, a waterproof impermeable, flexible cover must be placed over all storage piles to protect against precipitation and surface water runoff. The cover must prevent runoff and leachate from being generated by the outdoor storage piles. The cover must be secured to prevent removal by wind or other storm events. Piles must be formed in a conical shape and covered as necessary to prevent leaching.
 - ii. Any roof leaks, tears, or damage should be temporarily repaired during winter to reduce the entrance of precipitation. Permanent repairs must be completed prior to the next winter season.
 - 3) The facility must be sited as follows:
 - i. Having proximity to the area in which the deicing materials are to be used.
 - ii. Located outside of floodplains and 100 feet from lakes, rivers, streams, ditches, storm drains, manholes, catch basins, wetlands and any other areas likely to absorb runoff. A facility must not be located in close proximity to surface water features, water supplies, wells, or drywells. A facility must not be within the Emergency Response Area of the city's Wellhead Protection Plan.
 - iii. Located on an impermeable surface.
 - iv. Property must be sloped away from the facility's salt, deicer, and sand storage.
 - v. Salt vulnerable/intolerant natural areas should be avoided as storage facilities to the extent possible such areas include: areas with salt sensitive vegetation, serving as a source of drinking water, containing bodies of water with low dilution, low volume

or salt-sensitive species, and associated with ground water recharge zones in low or shallow water table with medium to high permeable soils.

- b) Snow Piles must be located downslope from salt and deicer storage areas to prevent the snow melt from flowing through storage areas and carrying material to the nearest drainage system or waterway.
- c) Deicer-containing and salt-containing truck wash water must be captured, treated, and recycled for use as salt-brine in pre-wetting and anti-icing activities.
- d) Practices must be implemented in order to reduce exposure (e.g. sweeping, diversions, and/or containment) when transferring salt or other deicing material.
- e) Every owner or occupant of any dwelling or other residential building, proprietor or lessee of any business, commercial, or public premise, within the City of Oakdale must conform to ice and snow removal as specified in this chapter. If dry deicing material is spread, it must be property swept and disposed of immediately after snow melt. (Ord. 897, 03/28/23)

Sec. 23-70. Violations, Enforcement, and Penalties.

- a) **Violations.** It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. Any person who has violated or continues to violate the provisions of this Article, may be subject to the enforcement penalties set forth in Chapter 1, Articles III and IV of this Code or may be restrained by injunction or otherwise abated in a manner provided by law.
- b) **Warning Notice.** When the City of Oakdale finds that any person has violated, or continues to violate, any provision of this Article, or any order issued hereunder, the City of Oakdale may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the City of Oakdale to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.
- c) **Notice of Violation.** Whenever the City of Oakdale finds that a person has violated probation or failed to meet a requirement of this Article, the City of Oakdale may order compliance by written notice of violation to the responsible person. The Notice of Violation shall contain:
 - (i) The name and address of the alleged violator;
 - (ii) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred.
 - (iii) A statement specifying the nature of the violation;
 - (iv) A description of the remedial measures necessary to restore compliance with this Article and a time schedule for the completion of such remedial action;
 - (v) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
 - (vi) A statement that the determination of violation may be appealed to the Board of Appeals as created in Chapter 21, Sec. 36 (a) of this Code by filing a written notice of appeal within seven days of service of notice of violation; and
 - (vii) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

- d) **Cease and Desist Orders:** When the City of Oakdale finds that any person has violated, or continues to violate, any provision of this Article, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to be present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the City of Oakdale may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:
- (i) Immediately comply with all Article requirements; and
 - (ii) Take such appropriate preventative action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of a Cease and Desist Order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the order, the City of Oakdale may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The City of Oakdale may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the City of Oakdale that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this Article. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the City of Oakdale within seven days of receipt of the order

Sec. 23-71. Appeal of Notice of Violation. Any person receiving Notice of Violation may appeal the determination of the City of Oakdale Board of Appeals as created in Chapter 21, Section 36 (a) of this Code. The notice of appeal must be received within seven days of the decision of the municipal authority upholding the decision for the City of Oakdale. The Notice of Appeal must be received within seven days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within seven days from the date of receipt of the Notice of Appeal. The decision of the municipal authority or their designee shall be final.

Sec. 23-72. Enforcement Measures After Appeal. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within seven days of the decision of the Board of Appeals upholding the decision of the City of Oakdale, then representatives of the City of Oakdale may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Sec. 23-73. Cost of Abatement of the Violation. Within thirty days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs,

attorneys' fees, court costs and other expenses associated with enforcement of this Article, including sampling and monitoring expenses. If the amount due is not paid within 30 days, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Sec. 23-74. Remedies Not Exclusive. The remedies listed in this Article are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City of Oakdale to seek cumulative remedies.