



AGENDA ITEM #10.2

REPORT TO CITY COUNCIL

Report Prepared by: Nancy Malecha

Date: March 5, 2019

Subject: Gas Franchise Ordinances

Report: At the February 5th City Council Meeting, the Council directed me to seek information from Xcel Energy as to a listing of neighboring cities who have implemented gas franchise fees with Xcel Energy. I contacted Xcel Energy for a listing of cities in Crow Wing and Cass counties who have gas service franchise fees and Baxter is the only city currently with a fee. Their Franchise Fee Ordinance is attached.

Also, attached are the City of Pequot Lakes' draft ordinances for your review. As you can see, the gas service franchise fee ordinance defines a monthly flat franchise fee of \$2 to customers within the City of Pequot Lakes' jurisdiction. This fee would generate approximately \$22,344 in revenue to the City per year. The draft ordinances have been reviewed by Xcel Energy, the City Attorney, and myself.

Please know that if the City implements a franchise fee on Xcel Energy, the draft gas franchise ordinance states that the City agrees to impose an equivalent franchise fee upon all other energy providers (Minnesota Power and Crow Wing Power) operating in the City and we have until April 30, 2021 to do so or the franchise fee on Xcel Energy shall expire.

I am requesting a consensus from the Council to proceed with the draft gas franchise ordinances as presented or provide direction on changes.

Council Action Requested: Council consensus to proceed with the gas franchise ordinance and the gas service franchise fee ordinance with Northern States Power/Xcel Energy as presented or provide direction on changes.

**CITY OF BAXTER, MINNESOTA
ORDINANCE 2016-027**

**AN ORDINANCE IMPLEMENTING A GAS SERVICE
FRANCHISE FEE ON NORTHERN STATES POWER
COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS
AND ASSIGNS, DBA XCEL ENERGY FOR PROVIDING GAS
SERVICE WITHIN THE CITY OF BAXTER**

THE CITY COUNCIL OF THE CITY OF BAXTER DOES ORDAIN:

SECTION 1. The City of Baxter Municipal Code is hereby amended to include reference to the following Special Ordinance.

Subd. 1. Purpose. The Baxter 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 services within the City of Baxter to fund pavement management related and street and traffic lighting related activities.

- (a) Pursuant to City Ordinance 56, a Franchise Agreement between the City of Baxter ("City") and Northern States Power Company, its successors and assigns ("Company"), the City has the right to impose a franchise fee on Company, its successors and assigns, in an amount and fee design as set forth the fee schedule attached hereto as Schedule A.

Subd. 2. Franchise Fee Statement. A franchise fee is hereby imposed on Company, its successors and assigns, under its gas franchise in accordance with the schedule attached here to and made a part of this Ordinance, commencing with the September 1, 2016 billing month.

This fee is an account-based fee on each premise and not a meter-based fee. In the event there is 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 gas service to that premise. If the Company combines the rate classifications into a single account, the franchise fee assessed to the account will be the largest franchise fee applicable to a single rate classification for energy delivered to that premise. In the event Company serves an entity with 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.

Subd. 3. Payment. The said franchise fee shall be payable to the City in accordance with the terms set forth in Section 13, subd. 3 of the Franchise Agreement.

Subd. 4. Surcharge. The City recognizes that the Minnesota Public Utilities Commission may allow the addition of a surcharge to customer rates of accounts within the City to reimburse Company for the cost of the fee.

Subd. 5. Enforcement. Any dispute, including enforcement of a default regarding this ordinance will be resolved in accordance with Section 15, subd. 3 of the Franchise Agreement.

Subd. 6. Effective Date of Franchise Fee. The effective date of this Ordinance shall be after its publication and sixty (60) days after the sending of written notice enclosing a copy of this adopted Ordinance to Company by certified mail. Collection of the fee shall commence as provided in above.

Whereupon, said Ordinance is hereby adopted on this 7th day of June 2016.



Darrel L. Olson, Mayor

ATTEST:


Kelly Steele, Assistant City Administrator/Clerk

City Seal

SCHEDULE A

Franchise Fee Rates:

Gas Utility

The franchise fee shall be in an amount determined by applying the following schedule per customer premise/per month based on metered service to retail customers within the City:

<u>Class</u>	<u>Amount Per Month</u>
Residential	\$ 2.00
Commercial Firm – Non-Demand	\$ 7.00
Commercial Firm – Demand	\$ 65.00
Small Interruptible	\$ 65.00
Medium & Large Interruptible	\$ 65.00
Firm Transportation	\$ 65.00
Interruptible Transportation	\$ 65.00

Franchise fees are 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
- October – December collections due by January 31.

GAS FRANCHISE ORDINANCE

ORDINANCE NO. _____.

CITY OF PEQUOT LAKES, CROW WING COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF PEQUOT LAKES, MINNESOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF PEQUOT LAKES, CROW WING COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

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

1.1 **City.** The City of Pequot Lakes, County of Crow Wing, State of Minnesota.

1.2 **City Utility System.** Facilities used for providing public utility service owned or operated by the City or an agency thereof, including but not limited to sewer, storm sewer and water services, but excluding facilities for providing heating, lighting or other forms of energy.

1.3 **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate Gas retail rates now vested in the Minnesota Public Utilities Commission.

1.4 **Company.** Northern States Power Company, a Minnesota corporation, its successors and assigns.

1.5 **Gas.** "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.

1.6 **Gas Facilities.** Gas transmission and distribution pipes, lines, mains, ducts, fixtures, regulators, and other facilities owned or operated by the Company for the purpose of providing gas energy service for public or private use.

1.7 **Notice.** A written notice served by one party on the other party. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, City Hall, 4638 Main Street,

Pequot Lakes, MN 56472-3385. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.8 **Public Ground.** Land owned or otherwise controlled by the City for park, open space or similar public purpose, which is held for use in common by the public and is not a Public Way.

1.9 **Public Way.** Any public right-of-way within the City as defined by Minnesota Statutes, Section 237.162, subd. 3, as the same may be amended from time to time.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 **Grant of Franchise.** The City hereby grants the Company, for a period of 20 years from the date this Ordinance is passed and approved by the City, the right to transmit, furnish and sell Gas energy for light, heat, power and other purposes 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. For these purposes, the Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Grounds and Public Ways of the City, subject to the provisions of this Ordinance. The 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 or permit requirements, and to the further provisions of this franchise agreement.

2.2 **Effective Date; Written Acceptance.** This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by the Company, and its publication as required by law. The City by Council resolution may revoke this franchise agreement, seek its enforcement in a court of competent jurisdiction or pursue other remedies in law or in equity if the Company does not file a written acceptance with the City within 90 days after publication.

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

2.4 **Publication Expense.** The expense of publication of this Ordinance will be paid by the City and reimbursed to the City by the Company within 60 days of invoicing by the City.

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 in Crow Wing County to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

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 the franchise to expire. However, in no event shall this franchise continue

for more than one year after expiration of the term set forth in Section 2.1, unless an extension is otherwise agreed in writing by the City and the Company in which case the franchise may be extended up to an additional six months.

SECTION 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 shall be located on Public Grounds as determined by the City. The Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas Facilities shall be subject to permits if required by separate ordinance or law and to other reasonable regulations of the City imposed pursuant to ordinance, rule or statute to the extent not inconsistent with the specific terms of this franchise agreement. Company may abandon underground gas facilities in place, provided, at City's request, Company, at Company's own expense, will remove abandoned gas facilities interfering with a City improvement project, but only to the extent such gas facilities are uncovered by excavation as part of the City's improvement project.

3.2 Field Locations. The Company shall provide field locations for its underground Gas Facilities within the City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 Street Openings. The Company shall not open or disturb any Public Ground or Public Way 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. Permit conditions imposed on the Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. The Company may, however, open and disturb the surface of any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Gas Facilities. In such emergency event, the Company shall notify the City by telephone, email or similar notice to the office designated by the City as soon as practicable, but before commencement of the emergency repair, if reasonably possible. Not later than the second working day thereafter, the Company shall apply for any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with law. The Company shall restore the same, including but not limited to paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for one year thereafter and unpaved surfaces for one year thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to the 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 at the expense of the Company. The Company shall pay to the City the cost of such work done for or performed by the City or its agent. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4., but the City hereby waives, except as otherwise required by law, any requirement 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. Notwithstanding the foregoing, the City reserves the right to require a performance

bond for new Facilities installation, relocation, 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 project to the Public Way.

3.5 Avoid Damage to Gas Facilities. Nothing in this Ordinance relieves any person, including the 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.

3.6 Notice of Improvements. The City will give the Company reasonable notice of plans for improvements to Public Grounds or 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 Grounds and 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 Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to the Company a sufficient length of time in advance of the actual commencement of the work to permit the Company to make any necessary additions, alterations or repairs to its Gas Facilities the Company deems necessary.

3.7. Mapping Information. Upon request, the Company must promptly provide mapping information for any of its underground Gas Facilities in accordance with Minnesota Rules parts 7819.4000 and 7819.4100, as the same may be amended from time to time.

SECTION 4. RELOCATIONS.

4.1 Relocation of Gas Facilities in Public Ways. The Company shall comply with Minnesota Rules, part 7819.3100 and applicable law, and any applicable City ordinances consistent with law regarding relocation of Gas Facilities in Public Ways.

4.2 Relocation of Gas Facilities in Public Ground. The City may require the Company at the Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by the 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 ordinances consistent with law.

4.3 Projects with Federal Funding. The City shall not order the Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project 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 first paid to the Company; provided however, that the City is obligated to pay the Company only for those portions of its relocation costs for which the City has actually received federal funding specifically allocated for the relocation costs in the amount requested by the Company for such relocation costs, which allocated funding as requested by the Company in writing to the City, the City shall thereafter specifically request from the applicable federal government entity. Relocation, removal or rearrangement of any Company Gas Facilities made necessary because of the extension into or through the 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 understood that the rights herein granted to the Company are valuable rights.

4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by the Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or the Company's rights under state or county permit.

SECTION 5. TREE TRIMMING.

The Company is also granted the permission and authority to trim all shrubs and trees, including roots, in the Public Ways of the City to the extent the Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of Gas Facilities, provided that the Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

SECTION 6. INDEMNIFICATION.

6.1 Indemnity of City. The Company shall indemnify, keep, save, and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, relocation, the issuance of permits, or the operation of the Gas Facilities located in the Public Grounds and Public Ways. 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, the Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

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

SECTION 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. The City and the Company shall comply with Minnesota Rules, part 7819.3200 and applicable ordinances consistent with law applicable to right-of-way vacation. Except where required for a City project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same are first paid to Company by the nongovernmental entity in favor of whom the vacation was granted. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

SECTION 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 the Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 9. FRANCHISE FEE.

9.1 Fee Schedule. During the term of the franchise hereby granted, and in addition to any permit being imposed on the Company, the City may impose on the Company a franchise fee by separate ordinance. The parties have agreed that the franchise fee collected by the Company and paid to the City in accordance with this Section 9 shall be a flat fee per customer based on metered service to retail customers within the City or on some other similar basis.

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 90 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until the beginning of a Company billing month at least 90 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.

9.3 Collection of the Fee. The franchise fee shall be payable quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for gas service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company's applicable rates for gas service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. 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 which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers.

9.4 Terms Defined.

9.4.1 "Customer 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.

9.4.2 "Fee Schedule" refers to the Schedule 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.

9.4.3 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.

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. Notwithstanding the foregoing, the separate ordinance shall be effective against the Company as provided in the separate ordinance even where no such equivalent ordinance has been passed for other energy providers in the City during any such period that the City is negotiating with such other energy provider for imposition of an equivalent franchise fee upon such provider. As of the effective date of this Ordinance, the City has not previously imposed a franchise fee on any energy provider in the City and it will take time to negotiate and adopt such separate ordinances with all other energy providers in the City. If the City imposes a franchise fee on the Company through a separate ordinance, Company agrees that City shall have until April 30, 2021 to impose an equivalent franchise fee upon all other energy providers operating in the City and that during such time the separate franchise fee ordinance with the Company shall be in effect as provided in such separate ordinance. If any of the separate franchise fee ordinances with other energy providers are not in place and effective as of April 30, 2021, any separate franchise fee ordinance with the Company shall expire on April 30, 2021. Notwithstanding the foregoing, neither expiration as provided in the preceding sentence, nor failure by the City for any reason to impose a separate franchise fee ordinance on the Company and all other energy providers on or before April 30, 2021, shall prevent or prohibit the City from imposing separate franchise fee ordinances on the Company and all other energy providers at any other time during the term of this franchise agreement. 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 franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for gas and electric 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.

9.6. 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, but not more than one year after expiration of the term set forth in Section 2.1, and subject to any continuation as set forth in Section 2.6. The parties understand that no franchise fee shall be collected after this franchise has expired.

SECTION 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. 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 the 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.

SECTION 11. AMENDMENT PROCEDURE.

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

SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.

This franchise supersedes any previous Gas franchise granted to Company or its predecessor.

Passed by the City Council of the City of Pequot Lakes, Minnesota this _____ day of _____, 2019.

James Tayloe, Mayor

Attest:

Nancy Malecha, City Administrator

Date Published: _____

ORDINANCE NO. _____

AN ORDINANCE IMPLEMENTING A GAS SERVICE FRANCHISE FEE ON NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, FOR PROVIDING GAS SERVICE WITHIN THE CITY OF PEQUOT LAKES.

THE CITY COUNCIL OF THE CITY OF PEQUOT LAKES DOES ORDAIN THAT:

SECTION 1. The City of Pequot Lakes Municipal Code is hereby amended to include reference to the following Special Ordinance.

Subd. 1. Purpose. The Pequot Lakes City Council has determined that it is in the best interest of the City of Pequot Lakes (the "City") to impose a franchise fee on those public utility companies that provide natural gas services within the City.

- (a) Pursuant to City Ordinance 2019 - _____, a Franchise Agreement (the "Franchise Agreement") between the City and Northern States Power Company, a Minnesota corporation, its successors and assigns, (the "Company"), the City has the right to impose a franchise fee on the Company, in an amount and fee design as set forth in Section 9 of the above-referenced Franchise Agreement and in the fee schedule attached hereto as Schedule A.

Subd. 2. Franchise Fee Statement. A franchise fee is hereby imposed on the Company under its gas franchise in accordance with the schedule attached hereto and made a part of this Ordinance as Schedule A, commencing with the Company's _____, 20____ 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 gas service to that premise. If the Company combines the rate classifications into a single account, the franchise fee assessed to the 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.

Subd. 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 Agreement. The Company shall make each payment when due.

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

Subd. 5. Enforcement. Any dispute, including enforcement of a default regarding this Ordinance will be resolved in accordance with Section 2.5 of the Franchise Agreement.

Subd. 6. 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 the Company by certified mail. Collection of the fee shall commence as provided above.

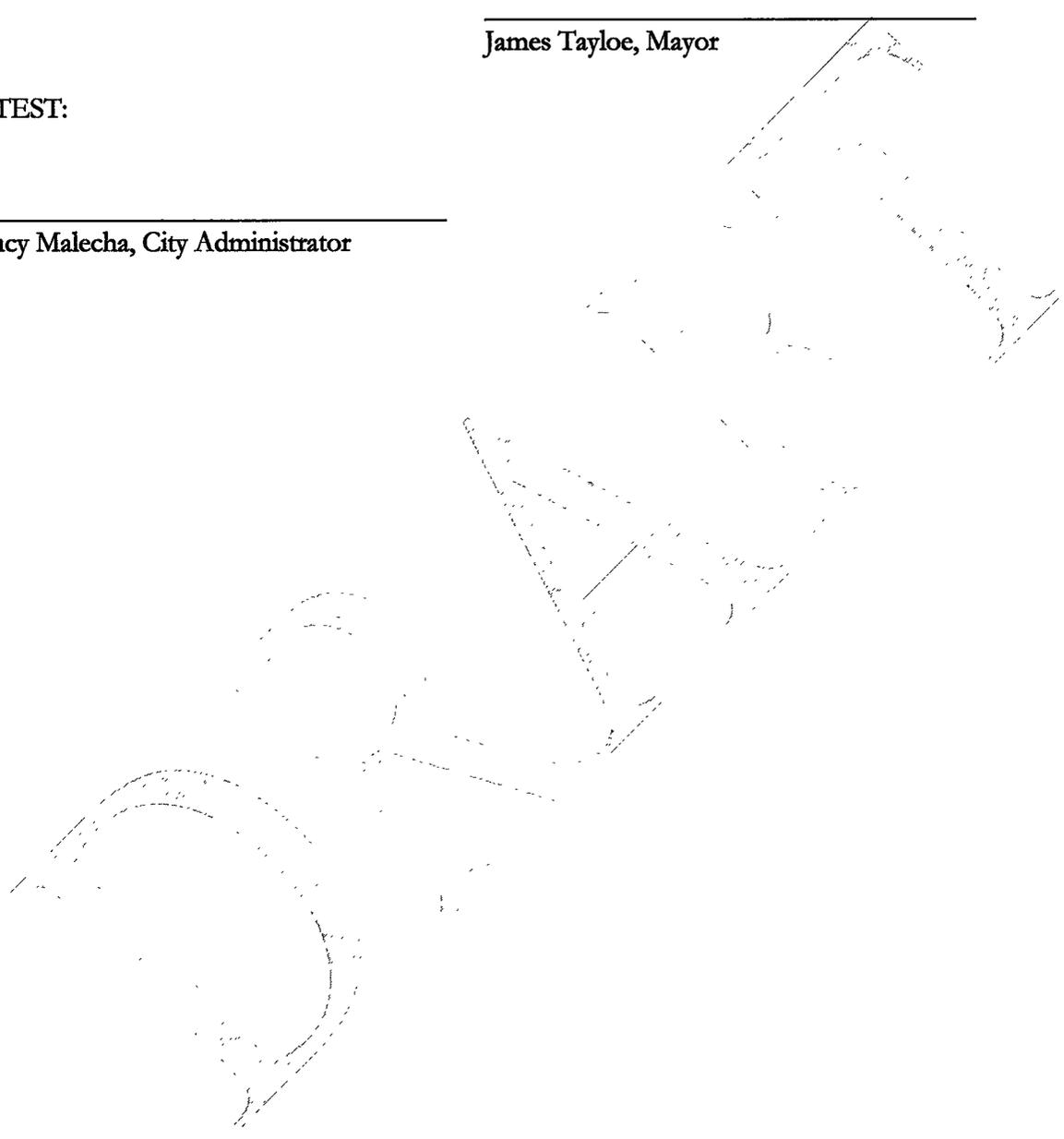
Subd. 7. Sunset. This Ordinance shall sunset on April 30, 2021 if City has not entered into effective franchise fee ordinances with all of the other energy suppliers in the City by said date.

Passed and adopted by the City Council of the City of Pequot Lakes this ____ day of _____, 2019.

James Tayloe, Mayor

ATTEST:

Nancy Malecha, City Administrator



SCHEDULE A

Franchise Fee Rates:

Gas Utility

The franchise fee shall be in an amount determined by applying the following schedule per customer premise/per month based on metered service to retail customers within the City:

<u>Class</u>	<u>Amount per month</u>
Residential	\$2.00
Commercial Non-Demand	\$2.00
Commercial Firm Demand	\$2.00
Small Interruptible	\$2.00
Medium and Large Interruptible	\$2.00
Firm Transportation	\$2.00
Interruptible Transportation	\$2.00

Franchise fees are to be collected by the Company at the rate listed above and are 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.
- October – December collections due by January 31.