

ELECTRIC FRANCHISE ORDINANCE

ORDINANCE NO. 20-__

CITY OF PEQUOT LAKES, CROW WING COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO ALLETE, INC., A MINNESOTA CORPORATION, D/B/A MINNESOTA POWER, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF PEQUOT LAKES, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, 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 City or agency thereof, including sewer, storm sewer, street lighting and traffic signals, and water service, but excluding facilities for providing heating, lighting or other forms of energy.

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

1.4 **Company.** ALLETE, Inc., a corporation under the laws of Minnesota, d/b/a Minnesota Power, 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.

1.5 **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.

1.6 **Notice.** A writing served by one party or parties on the other party or parties. Notice to Company shall be mailed to the Minnesota Power, Attn: Vice President of Marketing, 30 W Superior Street, Duluth, MN 55802. 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.

1.7 **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 nor a Public Way.

1.8 **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 electric energy for light, heat, power and other similar electric energy 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 Electric 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 equity if the Company does not file a written acceptance with the City within 90 days after publication of this Ordinance.

2.3 **Service and Rates.** The service to be provided and the rates to be charged by the Company for electric service in the City are subject to the jurisdiction of the Commission. The area within the City in which the 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 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 date of written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used, or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court in 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.

2.7 Not Exclusive. This Franchise is not exclusive.

SECTION 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. The Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Electric 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 consistent with state law and not inconsistent with the specific terms of this franchise agreement. The Company may abandon underground Electric Facilities in place, provided at the City's request, the Company, at the Company's own expense, will remove abandoned metal 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 improvement project.

3.2 Field Locations. The Company shall provide field locations for its underground Electric 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 or a permit from the City where an emergency exists requiring the immediate repair of Electric 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 if reasonably possible, before commencement of the emergency repair. 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 the 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 the 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 Electric 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 Electric 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 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 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 Electric Facilities the Company deems necessary.

3.7 Shared Use of Poles. The Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon reasonable terms and conditions whenever such use will not interfere with the use of such poles or towers by the Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, if the City desires to place facilities on the Company's poles, the City shall enter into a License Agreement for Pole Attachment Rental with the Company containing terms and conditions substantially similar to those contained in other such Agreements that the Company has with other governmental entities.

3.8 Mapping Information. Upon request, the Company must promptly provide mapping information for any of its underground Electric 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 Electric 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 Electric Facilities in Public Ways.

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

4.3 Projects with Federal Funding. The City shall not order the Company to remove or relocate its Electric 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 Electric 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 Electric 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 Electric 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 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.

6.3. Insurance. Before the effective date of this franchise, the Company shall furnish the City a summary of insurance, if any, carried by the Company, or of its self-insured status, in either case demonstrating adequate protection to the City from any and all obligations, liabilities, or claims of any nature whatsoever, growing out of the operation, construction, and maintenance of its Electric Facilities within the City. The Company shall maintain such insurance coverage at all times during this franchise.

6.4. Compliance with Laws; Hazardous Substances. In its operation under this Ordinance, the Company shall observe all federal, state and local laws, rules, regulations and orders with respect to the transmission, distribution, transformation or furnishing of electric energy and the handling of materials, substances and wastes deemed toxic or hazardous to health, natural resources or the environment (collectively, "Hazardous Substances"). The Company shall remove or remediate any Hazardous Substances located on, in or surrounding its Electric Facilities or caused to be located on, in or surrounding the Public Ways and Public Grounds or elsewhere in the City in compliance with all applicable laws, regulations and lawful government orders, and pay or cause to be paid all costs associated therewith. The indemnification terms and conditions of Section 6.1 shall apply to all claims made against the City by any person, including any governmental agency, who or which asserts any right to costs, damages or other relief based upon the terms and conditions imposed upon the Company under this Section 6.4 or which arise from or are related to the Company's acts or failure to act in compliance with any law, rule, regulation or lawful order governing Hazardous Substances.

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. Pursuant to Minnesota Rules, Part 7819.3200, if the City vacates a Public Way that contains Electric Facilities of Company and the vacation requires the relocation of the Company's Electric Facilities, payment of the relocation costs must be determined as follows: (1) if the vacation proceedings are initiated by the Company, the Company must pay the relocation costs; (2) if the vacation proceedings are initiated by the City for a public project, the Company must pay the relocation costs unless otherwise agreed to by the City and Company; or (3) if the vacation proceedings are initiated for the purpose of benefiting a person other than the Company, the benefited person must pay the relocation costs. Except where required for a City project, the vacation of any Public Way, after the installation of 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 are first paid to Company by the nongovernmental entity in favor of whom the vacation was granted. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29. The City and the Company shall comply with Minnesota Rules, 7819.3200 and applicable ordinances consistent with law applicable to right-of-way vacation.

In accordance with Minnesota Rules, Part 7819.3200, if the City vacates a Public Way, which contains Electric Facilities of Company and the vacation does not require relocation of Company's Electric Facilities, the vacation proceedings shall not be deemed to deprive Company of its right to continue to

use the right-of-way of the former Public Way for its Electric Facilities installed prior to such order of vacation.

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 fees 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 the 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 the Company by certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between the 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 electric 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 electric 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 the Company’s electric tariffs 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 electric tariffs after the effective date of this franchise agreement.

9.5 Equivalent Fee Requirement. The separate ordinance imposing the fee shall not be effective against the 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 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 equivalent fee requirement, City retains the right to determine a franchise fee structure that is a reasonably equivalent fee, and the right to exempt City facilities or operations from the franchise fee requirement. Notwithstanding the foregoing equivalent fee requirement, City retains the right to determine a franchise fee structure that is a reasonably equivalent fee, and the right to exempt City facilities or operations from the franchise fee requirement.

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, paragraph or part of this Ordinance is declared separate from every other section, provision, paragraph or part; and if any section, provision, paragraph or part shall be held invalid, it shall not affect any other section, provision, paragraph 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.

10.3. Governing Law. This franchise is granted and is intended to be performed in the State of Minnesota and shall be construed and enforced in accordance with the laws of the State of Minnesota. The Company shall be subject to personal jurisdiction in the State of Minnesota. All actions related to this Ordinance or its enforcement shall be venued in the District Court of the State of Minnesota within which venue the City is located.

10.4. Right to Repeal. If this franchise, having become final and operative as herein provided, shall be declared in any part illegal or void, then the City, in its sole discretion, may repeal the entire or any portion of this Ordinance. If any material portion of this Ordinance is declared void or illegal, then this Ordinance shall be void in its entirety.

10.5. Assignment. The Company may assign this franchise without the prior approval of, but upon not less than thirty (30) days' prior Notice to, the City. Such Notice shall include the identity of and contact information for, the assignee and the statement of the assignee's plans and intentions for the operation of the Electric Facilities under this franchise.

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. ABANDONED FACILITIES.

The Company shall comply with City ordinances and Minnesota Statutes, Section 216D.01 et seq., as they may be amended from time to time. The Company shall maintain records describing the exact location of all abandoned and retired Facilities within the City, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Electric Facilities, including abandoned and retired Electric Facilities.

SECTION 13. RATES AND SERVICE.

The electric service provided and the rates charged by the Company for electric service, as of the effective date hereof, are subject to the jurisdiction of the Commission as provided in Minnesota Statutes, chapter 216B.

SECTION 14. DEFAULTS.

If the Company shall be in default in the performance of any of the material terms and conditions of this Ordinance, and shall continue in default for more than thirty (30) days (or fails to initiate the cure of the default within said period and diligently pursue said cure, if the cure of the default cannot reasonably be accomplished within said 30 days) after receiving Notice from the City of such default, the City may elect to cure such default and charge the Company for the costs thereof.

SECTION 15. PREVIOUS FRANCHISES SUPERSEDED.

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

Passed by the City Council of the City of Pequot Lakes, Minnesota this ____ day of _____, 20__.

James Tayloe, Mayor

Attest:

Nancy Malecha, City Administrator

Date Published: _____

The provisions of the foregoing Ordinance are hereby accepted:

DATED _____, 20____.

ALLETE, INC., D/B/A/ MINNESOTA POWER

By: _____
_____, Its Vice President

By: _____
_____, Its Secretary