

Chapter #12
MINNEGASCO (Otherwise known as Centerpoint Energy)
NONEXCLUSIVE FRANCHISE

1201.01. Intent. An ordinance granting Minnegasco, Inc., a Minnesota corporation, its successors and assigns, a nonexclusive franchise to construct, operate, repair and maintain facilities and equipment for the transportation, distribution, manufacture and sale of gas energy for public and private use and to use the public ground of the City of Pierz, Minnesota for such purposes; and prescribing certain terms and conditions thereof.

1201.02. Definitions: The following terms shall mean:

Subd. 1. **Company.** Minnegasco, Inc., a Minnesota corporation, its successors and assigns.

Subd. 2. **Gas .** Natural gas, manufactured gas, mixture of natural gas and manufactured gas or other forms of gas energy

Subd. 3. **Municipality, Municipal Council, Municipal Clerk.** These terms mean respectively, the City of Pierz, The Council of the City of Pierz, and the Clerk of the City of Pierz

Subd. 4. **Public Ground.** All streets, alleys, public ways, utility easements and public grounds of the Municipality as to which it has the right to grant the use to the Company.

1201.03. Franchise Generally.

Subd. 1. **Grant of Franchise.** There is hereby granted to the Company, for a period of 25 years, the right to import, manufacture, transport, distribute and sell gas for public and private use in the Municipality, and for these purposes to construct, operate, repair and maintain in, on, over, under and across the Public Ground of the Municipality, all facilities and equipment used in connection therewith, and to do all things which are necessary or customary in the accomplishment of these objectives, subject to zoning ordinances, other applicable ordinances, permit procedures, customary practices, and the provisions of this franchise.

Subd. 2. **Effective Date.** Written Acceptance: This franchise shall be in force and effect from and after its passage and publication as required by law, and its acceptance by the Company in writing filed with the Municipal Clerk within 60 days after publication.

Subd. 3. **Nonexclusive Franchise.** This expense of publication of this ordinance shall be paid by the Company.

Subd. 4. **Default.** If the Company is in default in the performance of any material part of this franchise for more than 90 days after receiving written notice from the Municipality of such default, the Municipal Council may, by ordinance, terminate all rights granted hereunder to the Company. The notice of default shall be in writing and shall specify the provisions of this franchise under which the default is claimed

and state the basis therefore. Such notice shall be served on the Company by personally delivering the notice to an officer thereof at its principal place of business in Minnesota.

If the company is in default as to any part of this franchise, the Municipality may, after reasonable notice to the Company and the failure of the Company to cure the default within a reasonable time, take such action as may be reasonable necessary to abate the condition caused by the default, and the Company agrees to reimburse the Municipality for all its reasonable costs. Nothing in this section shall bar the Company from challenging the Municipality's claim that a default has occurred. In the event of disagreement over the existence of a default, the burden of proving the default shall be on the Municipality.

1201.04. Conditions of Use.

Subd. 1. Use of Public Ground. All utility facilities and equipment of the Company shall be located, constructed, installed and maintained so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of Public Ground, and shall be subject to those permit conditions the Municipality has adopted for all utilities.

Subd. 2. Restoration. Upon completion of any work requiring the opening of any Public Ground, the Company shall restore the same, including paving and its foundations, to as good condition as formerly, insofar as weather permits, but if the Company shall not promptly perform and complete the work, the Municipality shall have the right to do so at the expense of the Company; and the Company shall, upon demand, pay to the Municipality the reasonable cost of the work performed by the Municipality.

Subd. 3. Relocation of Utility Facilities. The Company shall promptly, with due regard for seasonal working conditions, permanently relocate its facilities or equipment whenever the Municipality orders such relocation. If the relocation is a result of the proper exercise of the police power in grading, regarding, changing the location or shape of or otherwise improving any Public Ground or constructing or reconstruction any sewer or water system therein, the relocation shall be at the expense of the Company. If the relocation is not a result of the proper exercise of the police power, the relocation shall be at the expense of the Municipality. If such relocation is done without an agreement first being made as to who shall pay the relocation cost, such relocation of the facilities by the Company shall not be construed as a waiver of its right to be reimbursed for the relocation cost. If the Company claims that it should be reimbursed for such relocations costs, it shall notify the Municipality within thirty days after receipt of such order. The Municipality shall give the Company reasonable notice of plans requiring such relocations. Nothing contained in this subsection shall require the Company to remove and replace its mains or to cut and reconnect its service pipe running from the main to a customer's premises at its own expense where the removal and replacement or cutting and reconnecting is made for the purpose of a more expeditious operation for the construction or reconstruction of underground facilities; nor shall anything contained herein relieve any person from liability arising out of the failure to exercise reasonable care to avoid damaging the Company's facilities while performing any work in any Public Ground.

Subd. 4. Relocation When Public Ground Vacated. The vacation of any Public Ground shall not operate to deprive the Company of the right to operate and maintain its facilities therein. Unless ordered

, the Company need not relocate until the reasonable cost of relocating and the loss and expense resulting from such relocation are first paid to the Company. When the vacation is for the sole benefit of the Municipality in the furtherance of a public purpose, the Company shall relocate at its own expense.

Subd. 5. Street Improvements, Paving or Resurfacing. The Municipality shall give the Company reasonable written notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the time when the Municipality will start the work, and, if more than one street is involved, the order in which this work is to proceed. The notice shall be given to the Company a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit the Company to make any additions, alterations or repairs to its facilities the Company deems necessary.

1201.05. Indemnification. The Company shall indemnify, keep and hold the Municipality, its elected officials, officers, employees, and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, maintenance, repair, removal, or operation of the Company=s property located in, on, over, under, or across the Public Ground of the Municipality, unless such injury or damage is the result of the negligence of the Municipality, its elected officials, employees, officers, or agents. The Municipality shall not be entitled to reimbursement for its costs incurred prior to notification to the Company of claims or actions and a reasonable opportunity for the Company to accept and undertake the defense. If a claim or action shall be brought against the Municipality under circumstances where indemnification applies, the Company, at its sole cost and expense, shall defend the Municipality if written notice of the claim or action is promptly given to the Company within a period wherein the Company is not prejudiced by lack of such notice. The Company shall have complete control of such claim or action, but it may not settle without the consent of the Municipality, which shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Municipality, and the Company in defending any action on behalf of the Municipality shall be entitled to assert every defense or immunity that the Municipality could assert in its own behalf.

1201.06. Assignment. The Company, upon notice to the Municipality, shall have the right and authority to assign all right conferred upon it by this franchise to any person. The assignee of such rights, by accepting such assignment, shall become subject to the terms and provisions of this franchise.

1201.07. Change in Form of Government. Any change in the form of government of the Municipality shall not affect the validity of this franchise. Any governmental unit succeeding the Municipality shall, without the consent of the Company, automatically succeed to all of the rights and obligations of the Municipality provided in this franchise.

1201.08. Severability. If any portion of this franchise is found to be invalid for any reason whatsoever, the validity of the rest of this franchise shall not be affected.

