

ORDINANCE NO. 41.00

An Ordinance granting to the Otter Tail Power Company, a Minnesota corporation, its successors and assigns, permission to erect, construct, install and maintain within the City of Kerkhoven, an electric light and power system and transmission lines and to operate the same and to install conduits, poles, wires, pipes and other fixtures in, upon and under the streets, alleys, bridges and public grounds of said City for the purpose of furnishing electric light, heat and power to said City and the inhabitants thereof.

41.01 Duration and Extent. There is hereby granted to Otter Tail Power Company, a Minnesota corporation, its successors and assigns, hereinafter called the Grantee, for a period of 10 years from and after the passage and approval of this Ordinance and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to construct, install and maintain an electric light and power system and transmission line and to operate and maintain the same within and through the City and to transmit electricity to and from the other towns or cities for the purpose of light, power and heat and to erect, construct, install and maintain conduits, poles, wires, pipes and other necessary fixtures and attachments upon and under the streets, alleys, bridges and public grounds of said City for the purpose of furnishing and selling electricity for light, heat and power and such other purposes for which electricity may be used by the inhabitants of said City, said permission and franchise to become operative and continue under the conditions hereinafter set forth, and provided further, that this franchise shall be effective for an additional 10 years, if the City does not elect to terminate said franchise within 60 days prior to the commencement of the second 10-year period.

41.02 Conditions. Said Grantee shall use poles, wires, cross arms, equipment and devices to conform with the standards of construction adopted by the National Electrical Safety Code of the United States, Department of Commerce, and all apparatus connected therewith shall be located so as not to obstruct the avenues, streets and alleys of said City or to endanger persons or property or to hinder or to obstruct the use of said avenues, streets and alleys for public places by the inhabitants of said City, or public in general, or to interfere with any street, sidewalk, curb, gutter or park improvements that the City may deem proper to make along the lines of said avenues, streets and public places.

All poles where set in alleys shall be set at or near the boundary line thereof, and where set in streets shall be located at such distances as shall be directed by the City, from the property line of the abutting owner and shall be placed so as not to interfere with the construction or placing of any water pipes, sewers or drains or the flow of water therefrom which have been or may be placed by authority of said City. In the event that said Grantee shall make any unnecessary obstructions of said streets, alleys, public grounds or places not designated by the City Council, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removals.

All conduits, poles, wires and pipes installed by virtue of this Ordinance shall be installed in such places and in such manner as not unnecessarily to encroach upon streets, alleys, bridges or public grounds and places of said City and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon and the installation thereof shall be subject to the reasonable supervision and direction of the City Council of the said City. Whenever practicable, all poles shall be set in alleys and poles now in position upon or along the streets, whenever practicable, shall be removed and the locations of all of said poles shall be designated by the President of the City Council under the supervision of the City Council of the said City.

41.03 Extensions. During the construction, maintenance or enlargement of any part of said electric light and power system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City, and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

The City reserves the right for itself and its agents to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to, such reasonable regulations of a police nature as it may deem necessary for the best interests of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

41.04 Hold Harmless. Whenever the said Grantee, in erecting, constructing and maintaining said lines or poles, shall take up any of the pavements, sidewalks, crossings or curbs on any of the avenues, streets and alleys or public places in said City or shall make any excavations thereon; such excavations shall be refilled and the sidewalk, crossing or curb replaced under the direction of the said City and any excavation so made shall be properly lighted at night during the construction and in case of the failure to do so on the part of the said Grantee, then the said City may do the same at the expense of said Grantee and said Grantee agrees to pay said City for the reasonable cost or value of said work.

Said Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the said City, caused by it or its agents, servants or employees in erecting, operating and maintaining the said electric system within said City, and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system.

41.05 Assignments. There is granted to said Grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets and public grounds of said City so as to remove all parts of said trees interfering with the proper erection, maintenance and operation of poles, cables, wires, masts or other fixtures or appliances installed or to be installed pursuant to authority hereby granted.

Said Grantee shall have full right and authority to assign any person, persons, firm or corporation all the rights that are given it by this Ordinance, provided that the assignee of such rights, by accepting such assignment, shall become subject to the terms and conditions of this Ordinance.

41.06 Damages. The Grantee shall use due diligence and care in furnishing electric service as herein provided, but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said Grantee from liability for negligence.

41.07 Deposit Required. The Grantee shall have the right to require any person to whom electric service is furnished to make a deposit to insure the payment of bills for service to be rendered. The company shall issue a receipt for such deposit and shall return same whenever the customer shall discontinue the use of electric service, provided all bills are then paid. The Grantee may apply all or any portion of the deposit to any unpaid bills and shall thereupon mail to the customer a receipt for such amount.

41.08 Exclusive Franchise. It is further expressly and specifically provided that all permits, licenses and franchises heretofore granted by the City, giving or purporting to give permission to any person, persons or corporation to construct, install or maintain an electrical line or system in, upon or through the streets, alleys or public grounds of the City for the purpose of furnishing light, heat and power to the City or its inhabitants be, and the same hereby are, in all respects revoked, cancelled and annulled.

41.09 Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the City Council and its publication as required by statute. The said Grantee shall specify its acceptance of this franchise in writing, to be filed by the City Clerk and in no event shall this Ordinance be binding on said Grantee until the filing of such acceptance.

Derivation: November 14, 1978