

**CITY OF MARSHALL
ORDINANCE 24-014**

**AN ORDINANCE GRANTING MINNESOTA ENERGY RESOURCES, A
SUBSIDIARY OF WEC ENERGY GROUP, A WISCONSIN 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 A SPECIFIED AREA WITHIN THE CITY'S BOUNDARIES AND TO
USE PUBLIC WAYS AND GROUNDS OF THE CITY OF MARSHALL, MINNESOTA
FOR SUCH PURPOSE; AND, PRESCRIBING CERTAIN TERMS AND
CONDITIONS THEREOF.**

The Common Council of the City of Marshall in the State of Minnesota do ordain as follows:

SECTION 1: **ADOPTION** “DIVISION 22-VI-3 MINNESOTA ENERGY RESOURCES” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

DIVISION 22-VI-3 MINNESOTA ENERGY RESOURCES(*Added*)

SECTION 2: **ADOPTION** “Section 22-205 Definitions” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-205 Definitions(*Added*)

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

- (a) **City.** The City of Marshall, County of Lyon, State of Minnesota.
- (b) **City Utility System.** Facilities used for providing public utility service owned or operated by City or agency thereof, including fiber optic, sanitary sewer, storm sewer, water service, street lighting, traffic signals, and electrical service.
- (c) **Commission.** The Minnesota Public Utilities Commission (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.

- (d) **Company.** Minnesota Energy Resources, a subsidiary of WEC Energy Group, a Wisconsin corporation, its successors and assigns including all successors and assigns that own or operate any part or parts of the Gas Facilities subject to this franchise.
- (e) **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 use in a specified area within the City's boundaries.
- (f) **Notice.** A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to 2685 145th Street West, Rosemount, MN 55068. Notice to the City shall be mailed to City of Marshall, c/o City Administrator 344 West Main Street, Marshall, MN 56258. Any party may change its respective address for the purpose of this Ordinance by written notice to the other parties.
- (g) **Ordinance.** This gas franchise ordinance, also referred to as the Franchise.
- (h) **Public Way.** Any street, alley, platted or recorded utility easement or other public right-of-way within the City.
- (i) **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

SECTION 3: ADOPTION “Section 22-206 Adoption Of Franchise” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-206 Adoption Of Franchise(*Added*)

- (a) **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, a non exclusive franchise with the right to import, manufacture, distribute and sell gas within th eportion of the City identified and depicted in Exhibit A hereto. 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 ordinance or permit requirements and to the further provisions of this Franchise.
- (b) **Effective Date; Written Acceptance.** This Franchise shall be in full force and effect from and after its 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 informs the City, at any time, that the Company does not accept this Franchise, the City Council by resolution may revoke this Franchise or seek its enforcement in a court of competent jurisdiction.
- (c) **Service and Gas Rates.** The service to be provided, the measurement of, and the rates to be charged by Company for gas service in the City are subject to the jurisdiction of

the Commission, or its successor agency.

- (d) **Publication Expense.** Company shall pay the expense of publication of this Ordinance.
- (e) **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.
- (f) **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.

SECTION 4: ADOPTION “Section 22-207 Location, Other Regulations” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-207 Location, Other Regulations(*Added*)

- (a) **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 as determined by the City. Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas Facilities shall be subject to 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.
- (b) **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. 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, 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.
- (c) **Restoration.** After undertaking any work requiring the opening of any Public Way, the Company shall restore the Public Way in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with law. Company shall restore the Public Ground to as good a condition as formerly existed, and shall be completed as promptly as weather permits, and if Company shall not promptly perform and completed 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 reasonable period of time following the demand, but not to exceed thirty days, the right to make the restoration of 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 3.3. The City may also require Company to post a construction performance bond consistent with the provisions of Minnesota Rules parts 7819.3000 and 7819.0100, subpart 6.
- (d) **Avoid Damage to Gas Facilities.** The Company must take reasonable measures to prevent the Gas Facilities from causing damage to property. 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.
- (e) **Notice of Improvements to Streets.** The City will 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 will contain: (i) the nature of the improvements, (ii) the Public Ways upon which the improvements are to be made, (iii) the time when the City anticipates that the work will start, and (iv) if more than one-Public Way is involved, the order in which the work is expected to proceed. 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.
- (f) **Mapping Information.** Subject to the Homeland Security Act, or other applicable laws, rules or regulations protecting confidential or proprietary information, the Company must promptly provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules Parts 7819.4000 and 7819.4100.
- (g) **Manufacture or Storage of Gas.** 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.
- (h) **Insurance.** The Company is required to maintain worker's compensation insurance in limits required by state law, Commercial General Liability Insurance on an occurrence basis protecting it from claims for damages for bodily injury, including death, and for claims for property damage, which may arise from operations under this Ordinance. Insurance minimum limits are as follows:
- (1) \$2,000,000 – per occurrence

- (2) \$4,000,000 – annual aggregate
- (3) The following coverages shall be included: Premises and Operations Bodily Injury and Property Damage; Personal and Advertising Injury Blanket Contractual Liability and Products and Completed Operations Liability.
- (4) The City must be endorsed as an Additional Insured.
- (5) With the City’s consent, which shall not be unreasonably withheld, the Company shall have the option of providing a program of self-insurance to meet its obligation under this Ordinance. In such event, the Company shall submit to the city a Certificate of Self-Insurance or other documents showing proof of its financial responsibility.

SECTION 5: ADOPTION “Section 22-208 Relocations” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-208 Relocations(*Added*)

- (a) **Relocation in Public Ways.** The Company shall comply with Minnesota Rules, part 7819.3100 and applicable City ordinances consistent with law. If the City orders or requests the Company to relocate its Gas Facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and not merely for the convenience of the City or other right-of-way user, the Company shall receive payment for the cost of such relocation as a precondition to relocating its Gas Facilities or equipment. Any person or corporation desiring to move a building or other structure along, or to make any unusual use of any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the Gas Facilities or equipment of the Company, shall first give notice to the City and the Company and pay a sum sufficient to cover the expense and damage incident to the moving of the Company’s Gas Facilities and equipment.
- (b) **Relocation in Public Ground.** 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. Relocation shall comply with applicable city ordinances consistent with law.
- (c) **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 Section 161.46.

(d) **Relocation Liability.** Nothing contained in this section shall relieve any person, persons, or corporations from liability arising out of the failure to exercise reasonable care to avoid injuring Company's facilities while performing any work connected with grading, regrading or changing the line of any public way, or with the construction or reconstruction of any City utility system

SECTION 6: **ADOPTION** “Section 22-209 Indemnification” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-209 Indemnification(*Added*)

- (a) **Indemnification 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 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.
- (b) **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 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: **ADOPTION** “Section 22-210 Vacation Of Public Ways” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-210 Vacation Of Public Ways(*Added*)

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, 7819.3100 and 7819.3200 and applicable ordinances consistent with law.

SECTION 8: **ADOPTION** “Section 22-211 Change In Form Of Government” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-211 Change In Form Of Government(*Added*)

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.

SECTION 9: **ADOPTION** “Section 22-212 Franchise Fee” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-212 Franchise Fee(*Added*)

- (a) **Form.** During the term of this Franchise, and in addition to permit fees being imposed or that the City has a right to impose, the City may charge the Company a franchise fee.
- (b) **Franchise Fee.** Company shall pay to the City an annual amount equal to 5% of its gross revenues. The foregoing shall be compensation for the use of Public Ways and Grounds. The City reserves the right to increase or lower the fee upon sixty (60) days advance written notice to the Company. The fee shall become effective ten (10) days after written notice enclosing the Ordinance amending the fee amount has been served upon the Company by certified mail. Such change shall not occur more often than once in any calendar year.
- (c) **Payments.** Payments due to the City under this Franchise shall be computed on a monthly basis and shall be computed at the end of each month. Payments shall be due and payable for each month, forty-five (45) days after the end of the proceeding month. Each payment shall be accompanied by a brief report showing the basis for the computation of said payment and such other relevant facts to support the computation as may be required by the City.
- (d) **Collection of Fee.** No acceptance of any payment shall be construed as an accord that the payment paid is in fact the correct amount, nor shall such acceptance of the payment be construed of the release of any claim that the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall

be subject to audit and recomputation by the City. 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.

(e) **Gross Revenues.** Gross Revenues shall mean the actual gross revenues received by the Company from sales of natural gas and distribution within the City limits. This term does not include any sales, excise or other taxes collected by Company on behalf of the State, City or other governmental unit.

(f) **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.

SECTION 10: **ADOPTION** “Section 22-213 Purchase By City” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-213 Purchase By City(*Added*)

The Council, at the end of any calendar year, upon a 2/3 majority vote of the Council, may acquire and thereafter operate the gas plant and distribution system, and all mains, pipes, services and other appliances thereto appertaining which shall have been constructed, installed, operated, and maintained by the Company, its successors, lessees or assigns, upon paying to the Company, its successors, lessees or assigns, the fair market value of such property. To ascertain the fair market value of such property, the City shall acquire such property by right of eminent domain.

SECTION 11: **ADOPTION** “Section 22-214 Approval Of Transfer” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-214 Approval Of Transfer(*Added*)

No sale, assignment or lease of this Franchise shall be effective until the Common Council shall have approved the same and until the successor, lessee or assignee of the Company shall have filed in the office of the City Administrator an instrument, duly executed, reciting the fact of such sale, lease or assignment, accepting the terms of the Franchise, and agreeing to be bound thereby and to perform all of the terms and conditions thereof.

SECTION 12: **ADOPTION** “Section 22-215 Forfeiture” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-215 Forfeiture(*Added*)

The violation by the Company, its successors, lessees or assigns, of the provisions of this Franchise or of any material part or portion thereof, or the failure promptly to perform any of the provisions thereof shall be cause for the forfeiture of this Franchise and all rights hereunder by Resolution of the Common Council after written notice to the Company, its successors, lessees or assigns, and the continuation of such violation, failure or default. The parties acknowledge that the provisions for dispute resolution as set forth in Sec. 22-192 (e) must be complied with prior to imposition of the forfeiture provision herein.

SECTION 13: **ADOPTION** “Section 22-216 Abandoned Facilities” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-216 Abandoned Facilities(*Added*)

The Company shall comply with City ordinances, Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules Part 7819.3300, 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 Facilities, including abandoned and retired Facilities.

SECTION 14: **ADOPTION** “Section 22-217 Provisions Of Ordinance” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-217 Provisions Of Ordinance(*Added*)

- (a) 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.

- (b) **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.

SECTION 15: **ADOPTION** “Section 22-218 Amendment Procedure” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

Section 22-218 Amendment Procedure(*Added*)

Either party to this Franchise may at any time propose that the Franchise 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 Administrator within 60 days after the effective date of the amendatory Ordinance. The City, however, reserves the exclusive right to amend the franchise fee pursuant to Ordinance Sec. 22-212 above without the requirement that Company consent to said franchise fee amendment.

SECTION 16: **ADOPTION** “AUTHORIZED SERVICE AREA” of the Marshall Municipal Code is hereby *added* as follows:

ADOPTION

AUTHORIZED SERVICE AREA(*Added*)

EXHIBIT A



SECTION 17: **AMENDMENT** “DIVISION 22-VI-2 NATURAL GAS” of the Marshall Municipal Code is hereby *amended* as follows:

AMENDMENT

DIVISION 22-VI-2 GREAT PLAINS NATURAL GAS

SECTION 18: **AMENDMENT** “Section 22-211 Mechanical License” of the Marshall Municipal Code is hereby *amended* as follows:

AMENDMENT

Section 22-~~211~~311 Mechanical License

SECTION 19: **EFFECTIVE DATE** This Ordinance shall be effective upon its passage and publication as required by law, and receipt of Company's acceptance.

PASSED AND ADOPTED BY THE CITY OF MARSHALL COMMON COUNCIL

_____.

Presiding Officer

Attest

Robert Byrnes, Mayor, City of
Marshall

Steven Anderson, City Clerk, City of
Marshall