

## CHAPTER 454

## PUBLIC ENTERPRISES

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**454.01 GAS, ELECTRIC, AND POWER PLANTS IN CITIES OF THE FIRST CLASS OR THE FOURTH CLASS.** Any city of the first class in this state, excepting cities operating under home rule charters framed pursuant to the Constitution of the State of Minnesota, Article 4, Section 36, and all cities of the fourth class, whether operating under such a home rule charter or not, are hereby authorized to acquire plants for furnishing gas, electricity, water, or either, any, or all thereof, for municipal purposes, as well as for the use of the inhabitants of the city, and for that purpose may exercise the power of eminent domain in pursuance of chapter 117, and thereby may take any and all property necessary or convenient for acquiring and establishing these plants and for adding thereto, from time to time, including lands, manufacturing plants, pumping stations, power stations, pipe lines, conduits, pole and wire lines, reservoirs, filter and purification plants, storage plants, transforming and converting plants, and any and all property necessary or convenient, wherever situate, within or without the corporate limits, or of whatever character, and whether devoted to public use or not.

[1909 c 372 s 1; 1913 c 158 s 1] (1922)

**454.02 CONDEMNATION.** The proceedings provided by chapter 117 shall be instituted and conducted under the direction and control of the council, which shall be authorized by resolution or ordinance passed by a vote of two-thirds of all the members-elect of the council. Judgment shall be entered upon the report or award of the commissioners or in case of appeal, upon the verdict, but only after the direction by the council by a two-thirds vote of the council of the city to move for the judgment. The motion may be made at any time within four months of the filing of the award of commissioners, or in case of appeal, at any time within four months after verdict, or such additional time as the court may, by order after notice, allow for the purpose. The judgment shall not be entered nor shall any of the bonds provided for in section 454.03 be issued until such bonds shall have been authorized by a vote of four-sevenths of all the legal voters of the city registered and voting at a special election of the voters, duly called for that purpose, and the council is hereby empowered and directed to call and hold this special election. The judgment shall fix and determine the amount to be paid, and shall vest in the city all the right, title, and estate of the parties to the action in and to all the property taken. The faith and credit of the city shall be pledged to the payment of the judgment and interest, and the city may immediately enter upon and take the property, and the court may issue and enforce execution or any other writ, process, or order necessary to put the city into complete possession and enjoyment of the property. This judgment and pledge of payment shall be deemed a complete and effectual taking and a complete security for payment.

[1909 c 372 s 2] (1923)

**454.03 BONDS AUTHORIZED.** The city, through its council, may, notwithstanding any limitations contained in the charter of the city, or in any law of this state prescribing or fixing any limit upon the bonded indebtedness of the city, issue and sell the negotiable bonds of the city for the payment of the judgment, bearing interest at a rate not exceeding five percent per annum and maturing in 30 years after date, and sell the bonds to the highest bidder, after a publication of notice once each week for three successive weeks in some newspaper of the city. The bonds shall be issued in such denominations as the council may determine, and shall not be sold for less than par, shall bear the seal of the city, and shall be executed by the mayor, clerk, and comptroller in the name of the city. The

comptroller shall keep an accurate register of the bonds. The bonds may be either in the ordinary coupon form, or may be issued as registered bonds, transferable in the usual manner. The faith and credit of the city shall be pledged for the payment of the principal and interest of the bonds. The city may discontinue the proceedings at any time before entry of judgment. The council may, after acquiring the property, operate the same for these purposes, and may issue and sell bonds of the city in the manner and on the terms prescribed in this section and upon the same conditions, to the par value of \$100,000, or less, as a working capital for the operation of the plant.

[1909 c 372 s 3] (1324)

**454.04 SERVICE RATES.** Any such city is hereby authorized and required, in event of the operation of any such plant, to establish and collect rates for service sufficient to pay the interest upon the bonds, maintain the plant in perfect condition, and to operate the same at a high standard of efficiency. The substantial performance of the requirements of this section is hereby declared to be part of the contract with the holder of any bonds of the city, that may hereafter be issued hereunder and shall be kept inviolate.

[1909 c 372 s 4] (1325)

**454.041 RATES FOR GAS OR ELECTRIC CURRENT IN CERTAIN CITIES.** In addition to all other powers now conferred upon any city of the third or fourth class in the state, whether existing under a general or special law or under a home rule charter, it is hereby authorized and empowered, through its council or like governing body, by ordinance, to prescribe, from time to time, the rates which any public service corporation supplying gas or electric current for lighting or power purposes within the city may charge for the service. Nothing in sections 454.041 to 454.043 shall be construed to impair the obligation of any contract or franchise provision now existing between the city and a public service corporation. It shall be the right and duty of the council or governing body to prescribe a rate which shall permit the corporation to make a reasonable return on the capital investment in the business, under an economical and efficient management of the same; and for the purpose of making the determination it shall be the duty of the corporation, upon request by the council or other governing body, to give to the council or other governing body, or any authorized agent of the council or other governing body, access to the books of the corporation for the obtaining of information necessary and proper in the making of the determination. In any case where the corporation supplies gas or current for lighting or power purposes to customers outside the limits of the city, the council, fixing the rates to be charged, shall take into consideration the effect of the rates, if any, upon the rates to be charged to customers living outside the limits of the city, but the council shall not have power to fix the rates to be charged to customers supplied outside of the city limits.

[1919 c 469 s 1] (1714)

**454.042 FIXING RATES.** These rates shall be prescribed only after hearing and 20 days' notice of the time and place of the hearing shall have been given to the public service corporation, which notice shall be served in the manner prescribed by law for the service of summons in district court. The proceedings may be instituted by the council or other governing body of the city or upon petition of the public service corporation, or upon petition of 25 percent of the customers served by the corporation within the city, and failure on the part of the council or other governing body to make a determination as to these rates within 60 days after the petition is filed with the clerk of the city shall be deemed a denial of the petition and a determination adverse to the petitioners; provided, that the council or other governing body of the city shall not be required to act upon the petition of a public service corporation which shall refuse to give the council or other governing body access to its books and other information relative to the operation of its business necessary and proper to the determination of these rates. In case of the failure or refusal of the public service corporation to give to the council or other governing body access to its books or other information relative to the business of the corporation necessary and proper for such a determination, the council or other governing body may proceed to determine and prescribe these rates upon such information and evidence as may be adduced at the hearing. The words "public service corporation" as used in sections 454.041 to 454.043 shall be con-

strued to include any person, copartnership, or corporation supplying gas or electric current for lighting or power purposes to the public within the city.

[1919 c 469 s 2] (1715)

**454.043 APPEAL; RIGHT OF APPEAL.** Any city of the third or fourth class, any public service corporation, or any person aggrieved by a determination of these rates shall have the right of appeal from the determination to the district court of the county in which the city, or any part thereof, is situate, at any time within 20 days after the filing of determination with the clerk of the city. The appeal shall be made by filing with the clerk of the city a written notice of appeal specifying the determination of the council or other governing body from which the appeal is taken. Thereupon the city clerk shall make out and file with the clerk of the district court a copy of the determination of the council or other governing body from which the appeal is taken and of the notice of appeal, certified by the clerk to be true copies thereof, and shall transmit and file with the clerk of the court all papers in the case upon which the determination was made. There shall be no pleadings upon the appeal and the only question that shall be passed upon or considered shall be whether the rates prescribed by the determination of the council or other governing body of the city were fair and just to the public service corporation and the consumers and would permit the public service corporation a fair and reasonable return on the capital investment in the business under an economical and efficient management of the same. These appeals shall have precedence over all other civil cases, except tax cases, and during the pendency of the appeal and until final determination of the appeal by the courts, the rates fixed and prescribed by the council or other governing body shall be and remain in force.

[1919 c 469 s 3] (1716)

**454.044 AMOUNT OF PAYMENT FOR USE OF STREETS; NO VESTED RIGHTS.** Subdivision 1. **Rates for electric service.** In all cities of the fourth class in this state where any person or corporation sells, conveys or delivers electricity or electric current that is manufactured, created or obtained in another state and where such person or corporation occupies or uses any of the streets, alleys, or public grounds of such city for the purpose of erecting or maintaining any towers, masts, poles, wires or conduits therein for the purpose of conveying or conducting electricity or electric current, or conducts or conveys electricity or electric current into or through such city, without having a written franchise, license, or authority from the city therefor, the council or governing body of the city may, by resolution, at any regular or special meeting thereof, name, fix, and regulate an amount in money that the person or corporation shall pay into the treasury of the city each month for the privilege of so doing, or so using these streets, alleys, or public grounds.

Subd. 2. **Resolution to fix amount.** This resolution shall state and fix the amount of the monthly payments and the time and manner of paying the same and the amount so stated and fixed shall be a legal charge against any such person or corporation and may be recovered by the city in a civil action in any court having jurisdiction.

Subd. 3. **Vested rights not granted.** Nothing contained in this section shall be construed as granting to any such person or corporation any vested rights, license, or authority in the city, or to prevent the city from at any time causing the removal from the streets, alleys, and public grounds thereof of any and all towers, masts, poles, wires or conduits of such person or corporation.

[1915 c 311 s 1, 2, 3] (1771, 1772, 1773)

**454.045 FURNISHING GAS TO CERTAIN ADJACENT CITIES.** When in any city of the first class in this state a franchise has heretofore been granted to any person, firm, or corporation giving the right, privilege, and authority to enter upon, use, and occupy the streets, lanes, alleys, bridges, parks, and public grounds of the city for the purpose of laying, maintaining, constructing, and operating pipes, tunnels, and conduits for the purpose of supplying gas for any or all purposes to the city or to its inhabitants, the grantee of the franchise is hereby given the right, privilege, and authority, during the life of the franchise, to use the pipes, tunnels, and conduits so constructed and maintained by it and to enlarge and extend the same for the purpose of supplying gas to any city of the fourth class, or its inhabitants, which immediately adjoins the city of the first class which has granted the

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franchise, and the proceeds or earnings from gas so supplied to the adjoining city or to its inhabitants shall not be subject to any gross earnings tax imposed, levied, or collected by or in the city of the first class which has granted the franchise. This section shall apply and be effective, any provision of the charter or ordinance of the city notwithstanding.

The provisions as to exemption from gross earnings tax shall not apply to gas supplied to any adjoining city of the fourth class where the gas has heretofore been supplied to it and has been subject to a gross earnings tax by virtue of contract between the grantee and the city granting the franchise.

The exercise of the privileges provided for in this section by any grantee shall be subject to reasonable regulation by the city granting the franchise.

Nothing herein contained shall be construed as granting to the grantee of the franchise any right or privilege within the adjoining city until and unless the grantee has first complied with all provisions of the charter and ordinances of the adjoining city in respect to obtaining a franchise therein.

[1921 c 93 s 1] (1491-4)

454.05-454.08 [Repealed, 1961 c 561 s 17]