

PUBLIC WORKS & UTILITIES COMMITTEE

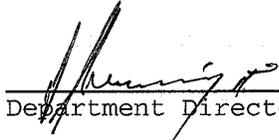
11-0326R

RESOLUTION CREATING THE FOND DU LAC EXPANSION AREA FOR THE EXPANSION OF NATURAL GAS SERVICE AND ESTABLISHING A TWO-TIER RATE STRUCTURE TO FACILITATE SAID EXPANSION.

CITY PROPOSAL:

RESOLVED, that, pursuant to Section 48-214(b) of the Duluth City Code, 1959, as amended, the city council does hereby create the Fond du Lac Expansion Area to facilitate the expansion of natural gas service in Fond du Lac neighborhood of the city of Duluth and does hereby approve the establishment of capital funding mechanisms, including a two-tiered natural gas rate structure to facilitate the funding of the costs thereof, all as set forth in the program description on file in the office of the city clerk as Public Document No. \_\_\_\_\_.

Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

PW&U/ATTY    GBJ:dma    06/11/2011

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize the establishment of the Fond du Lac Expansion Area (the "FDLEA") as an area in which the City will encourage the extension of natural gas service by creating funding mechanisms, principally a two-tier rate system, to fund the capital cost of providing service to areas not previously served by the City's natural gas utility.

The area proposed to be included in the FDLEA is generally that area within the

City limits which is west of the fire training school and above Highway 23. A more specific description of the area is shown on the map which is part of the Program description. This area does not have access to natural gas service. A significant number of residents in the area have expressed strong interest in having access to such service.

The Program would allow the Director of Public Works and Utilities to determine when there was sufficient interest in any particular portion of the area to make construction of a main financially practical to seek to extend gas mains in that area (subject to standard City purchasing policies). Customers connecting to the mains constructed would have the option of paying their share of the cost of the main extensions either in a lump sum at the time of connection or through a two-tier rate which would allow them to pay the cost by means of a temporary increase in their gas rates, generally over a ten to fifteen year period. The Duluth Public Utilities Commission would establish the actual rate applicable to the Program pursuant to their standard rate-setting authority.

Because of the size and cost of the main extension required to reach the properties to be served, it is presently contemplated that construction would not begin until 2012.

For a more specific description of the Program, see the Program Description document.

On June 8, 2011, the Duluth Public Utilities Commission recommended that the Council approve the establishment of the Program. The Council's approval is required by Section 48-214 of the City Code.

## DULUTH NATURAL GAS UTILITY

### FOND DU LAC EXPANSION AREA

#### PROGRAM DESCRIPTION

1. Definitions: the following words and phrases shall have the meanings hereinafter ascribed to them:
  - A. Amortization Rate: shall mean an amount determined as set forth below by the Duluth Public Utilities Commission (“DPUC”) having the purpose of amortizing the cost of extending natural gas mains to various locations within the FDLEA to serve residents and customers in the FDLEA during any Connection Period. The DPUC shall establish a new Amortization Rate at the commencement of each new Connection Period applicable to Mains constructed in that Period.
  - B. Connection Period: shall mean a period of sixty (60) months commencing on July 1 of any year in which a new Tier Payment Period is established which shall apply to that Tier Payment Period.
  - C. Department: Shall mean the Public Works and Utilities Department of the City.
  - D. Director: shall mean the Director of the Department or his or her designee.
  - E. Fair Share Pay-off Amount: shall mean the unamortized cost of constructing the Main adjacent to the property to which the connection is made from the Main, which costs shall be determined by the Director as follows: the Director shall determine the average cost per lineal foot of Main constructed in the FDLEA during the applicable Connection Period which shall include the cost of design, construction, construction supervision, testing and all other direct and indirect costs associated with such construction; said cost per lineal foot shall be multiplied by number of lineal feet of property owned by owner to which the service connection is made, including all adjacent property owned by said owner or a member of his or her immediate family; the resulting amount shall be divided by the number of years from the date of the construction of said connection to the end of the Tier Payment Period applicable to the connection and the result thereof shall be multiplied by the number of years from the date of the election to make the Fair Share Pay-off payment to the end of said Tier Payment Period, provided that the number of years used as a multiplier shall not be less than ten (10) years. The result of this calculation shall constitute the Fair Share Pay-off Amount.
  - F. Fond du Lac Expansion Area or FDLEA: shall mean that area described on Exhibit A attached hereto and made a part hereof.
  - G. Mains: Shall mean natural gas mains providing natural gas service to multiple customers which are owned by and connected to the City’s natural gas system.
  - H. Standard Rates: shall mean the City’s fixed monthly charges and volumetric charges for provision of natural gas services as authorized under chapter 48 of the City Code.
  - I. Tier Payment Period: shall mean a period established by the DPUC by resolution during which any property owner connecting to any Main shall be charged the

Two-Tier Rate applicable to that Main. Each Tier Payment Period shall be of Fifteen (15) years in duration and shall commence with a Connection Period which shall constitute the first Five (5) years of the Tier Payment Period. The Amortization Rate for each Main shall apply to any property connected to that Main during the Tier Payment Period in which the connection is made. A new Tier Payment Period shall be established every Five (5) years. The first Tier Payment Period shall commence on July 1, 2011 and shall run through June 30, 2026. The second Tier Payment Period shall commence and be effective on July 1, 2016. The DPUC may create one (1) additional Tier Payment Period pertaining to any Main.

- J. Two-Tier Rate: shall mean the Standard Rate plus the Amortization Rate for the applicable Connection Period.

2. Establishment of the FDLEA

The DPUC hereby establishes the Fond du Lac Expansion Area as an area into which the City intends to expand the availability of natural gas service based on customer demand therefore and the ability of the City to amortize the costs of such service expansion at a cost the Department deems acceptable to the City and to the potential customers of such expansion. The FDLEA is further described on Exhibit A attached hereto and a part hereof.

3. Main Extensions-City

A. Generally

The Department may extend Mains in the FDLEA based on the request of a sufficient number of potential customers of any such Main to cause the Director to believe that the cost of such Main extension can be reasonably be expected to be amortized by customer use thereof, or based on the determination of the Director that such Main extension is needed by and appropriate to the surrounding area. In any event, no property owner in the FDLEA shall be assessed for the cost of constructing any Main extension constructed pursuant to this Paragraph .

B. Director's Discretion

The decision to extend any Main under this Paragraph shall be solely at the unfettered discretion of the Director. No owner or tenant of property in the FDLEA shall have any right to have the Department extend any Main past or adjacent to his or her property unless the Director in the exercise of such discretion determines that it is in the best interests of the City to do so.

C. Construction of Mains

Upon the decision of the Director to do so, the City will cause Mains in the locations in the FDLEA as determined by the Director to be designed and constructed, which shall be at the cost of the City subject to Paragraphs 4, 5 and 6 below.

D. Connection to Mains

The owner of any property adjacent to which any Main is constructed under this

Paragraph shall have the right to have a service connection made from said Main to the principal structure on said property upon said owner executing an application therefore as provided for in Chapter 48 of the Duluth City Code, 1959, as amended.

4. Payment–Two-Tier Payment

A. Generally

All customers owning properties which connect to a Main constructed pursuant to Paragraph 3 above during any Connection Period associated with any Tier Payment Period shall pay the costs thereof by means of payment of the Two Tier Rate during the term of the Tier Payment Period related to the Connection Period during which the Main connection is made, subject to Paragraphs 5 and 6 below.

B. End of Two-Tier Payments

At the end of the applicable Tier Payment Period, such customers shall thereafter pay the Standard Rate applicable to them.

C. Amortization Rate-Default Rate

In the event that the DPUC fails to establish a new Amortization Rate at the commencement of any new Connection Period, until the DPUC shall so establish a new Amortization Rate, the Amortization Rate applicable to said Connection Period shall be One Hundred Fifty (150%) Percent of that applicable to the prior Connection Period.

5. Fair Share Pay-off Alternative

in the event any customer wishes to do so, the customer may elect to pay the Fair Share Pay-off Amount in lieu of paying the Two-Tier Rate. Once such customer has so elected and has paid the Fair Share Pay-off Amount as defined in Paragraph 1 above, such customer shall be entitled to purchase natural gas and natural gas service upon payment of the Standard Rates.

6. Main Extensions–Private

Nothing to the contrary in the foregoing withstanding, the Director may permit a property owner or property owners in the FDLEA to construct natural gas mains connected to the City's mains in the same manner and under the same terms and conditions as is permitted for the making of local improvements under Division 2 of Article VII of Chapter 45 of the Duluth City Code, 1959, as amended; provided that the identity and qualifications of the contractor constructing such main or mains shall be subject to the prior written approval of the Director. In the event that a property owner or property owners construct such a main which is accepted by the City, such property owners shall not be required to pay the Two-Tier Rate but shall only be required to pay the Standard Rate.

7. Non-Payment of Two-Tier Rate

In the event that any customer obligated to pay the Two-Tier Rate shall fail to do so, the Department may enforce payment of such obligations as provided for in Chapter 48 of the Duluth City Code, 1959, as amended.