



2302 Great N. Drive
Fargo, North Dakota 58402

September 2, 2022

—Via Electronic Filing and U.S. Mail—

Steven M. Kahl, Executive Director
North Dakota Public Service Commission
State Capitol Building, Dept. 408
600 East Boulevard
Bismarck, ND 58505-0480

RE: **FARGO FRANCHISE FEE-GAS**
CASE NO. PU-22-___

Dear Mr. Kahl:

Northern States Power Company, doing business as Xcel Energy, submits to the North Dakota Public Service Commission this request for approval of a miscellaneous tariff revision to reflect a gas franchise fee modification approved by the City of Fargo, North Dakota.

Ordinances

Fargo

On June 27, 2022, the City of Fargo adopted a resolution setting the franchise fee for natural gas customers at 2%, which is also the franchise fee amount that is currently in effect. This resolution is included as Attachment A to this filing. Additionally, on July 11, 2022, the City passed and adopted its Franchise Agreement that reduced the gas franchise fee to eligible large volume customers whose gas usage meets certain qualifying criteria. The lower franchise fee of 0.75% for qualifying large volume customers, contained in Section 9.6 of the Franchise Agreement, was adopted as an economic development tool. Gas Franchise Ordinance No. 5365 is provided as Attachment B to this filing.

Tariff Sheet

Attachment C to this filing is a revised tariff sheet in both legislative and non-legislative formats. The revision reflects the addition of a reduced City Fee for certain qualifying, high volume customers.

North Dakota Gas Rate Book – NDPSC No. 2

Sheet No. 5-21, revision 3

Customer Notification

No related bill messages will be sent on this change because there are currently no large volume customers in Fargo who qualify for the reduced City Fee under the new Gas Franchise Ordinance.

If you have any questions, please feel free to contact me at (701) 241-8607.

Sincerely,

/s/

TONY GRINDBERG
PRINCIPAL MANAGER

Enclosures

c: Mike Redlinger, Interim City Administrator, City of Fargo

Attachment "A"

COMMISSIONER Gehrig introduced the following resolution and moved its adoption:

RESOLUTION ESTABLISHING NORTHERN STATES POWER FRANCHISE FEE

WHEREAS, the City of Fargo has enacted Article 24-05 of the Fargo Municipal Code which authorizes the Franchise Ordinance for Northern States Power and use of the public ways for purposes of establishing a Gas Distribution System; and


WHEREAS, Section 24-0502 of the Fargo Municipal Code authorizes the Board of City Commission to adopt a Franchise Fee by Resolution.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF CITY COMMISSIONERS,

1. The Northern States Power Franchise Fee for a Gas Distribution System shall be in the amount of 2%.

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER Preston, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS Gehrig Preston Piepkorn Strand Mahoney. The following were absent and not voting: none, and the following voted against the same: none, whereupon the resolution was declared duly passed and adopted.

Dated this 27th day of June, 2022.



Timothy J. Mahoney, M.D., Mayor

ATTEST:


Steven Sprague, City Auditor

GAS FRANCHISE ORDINANCE

ORDINANCE NO. 5365.

CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Century Code; and

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the city shall have the right to implement home rule powers by ordinance; and

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purpose; and

WHEREAS, the board of city commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the board of city commissioners of the city of Fargo:

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF FARGO, NORTH DAKOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND TO USE THE PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, ORDAINS:

SECTION 1. DEFINITIONS.

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

City. The City of Fargo, County of Cass, State of North Dakota.

City Utility System. Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

Commission. The North Dakota Public Service 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 North Dakota Public Service Commission.

Company. Northern States Power Company, a Minnesota corporation, its successors and assigns.

Gas. "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.

Gas Facilities. Pipes, mains, regulators, and other facilities owned or operated by Company for the purpose of providing gas service for public use.

Notice. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 401 Nicollet Mall, 8th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, 225 4th Street, Fargo, ND 58102. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

Public Ground. Land owned by the City, for whatever purpose deemed necessary and appropriate by City.

Public Way. Any street, walkway or other public right-of-way within City.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date passed and approved by the City, a non-exclusive franchise ("Franchise"), except as otherwise provided by the Public Service Commission, the right to transmit and furnish Gas energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways of City, subject to the provisions of this Franchise 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.

2.2 **Effective Date; Written Acceptance.** This franchise Ordinance shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. City by board of city commission resolution may revoke this franchise Ordinance if Company does not file a written acceptance with the City within 90 days after publication.

2.3 **Service and Rates.** The service to be provided and the rates to be charged by Company for Gas service in City, termination provisions, assignment and merger terms, and all operational decisions that apply shall continue to be subject to the jurisdiction of the Public Service Commission of this State or its successor agency.

2.4 **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, Cass County, North Dakota, to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

SECTION 3. LOCATION, OTHER REGULATIONS.

3.1 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 previously installed therein. Gas Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company shall be required to comply with North Dakota Century Code Ch. 49-23 One-Call Excavation Notice System as underground gas facilities may be abandoned underground in place, from time to time, provided, at City's request, Company will remove abandoned metal pipe interfering with a City improvement project, but only to the extent such metal pipe is uncovered by excavation as part of the City's improvement project. To the extent inconsistent with state law, state law shall control.

3.2 Street Openings. Company shall not open or disturb any Public Way for any purpose without first having obtained a permit from the City in accordance with Fargo Municipal Code Article 18-09, for which the City may impose a reasonable fee or otherwise giving notice thereof to the city engineer in accordance with Fargo Municipal Code §18-0912. Permit conditions, if any, imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. In the event of an emergency, Company shall notify the city engineer on the first working day after such work is commenced, and shall secure such permits, if necessary.

3.3 Restoration. After undertaking any work requiring the opening of any Public Way, Company shall restore the same, including paving and its foundation, in accordance with Fargo Municipal Code Article 18-09, unless otherwise agreed to by the parties. Company shall be permitted to use non-reinforced concrete instead of cold mix asphalt for temporary restoration purposes. City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

3.4 Avoid Damage to Gas Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity.

3.5 Notice of Improvements. The City must give Company reasonable 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 must contain: (i) the nature and character of the

improvements, (ii) the Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Gas Facilities.

SECTION 4. RELOCATIONS.

4.1 Relocation of Gas Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Gas Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 2, Company shall relocate its Gas Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. Nothing in this Franchise Agreement requires Company to relocate, remove, replace or reconstruct at its own expense its Gas Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

4.2 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 North Dakota Century Code Chapter 24-01, as supplemented or amended. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment Costs of such relocation and the loss and expense resulting therefrom are first paid to Company, but the City need not pay those portions of such for which reimbursement to it is not available.

4.3 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Way was established, or Company's rights under state or county permit.

SECTION 5. TREE TRIMMING.

Company understands and agrees that it is also granted the permission and authority to trim shrubs, trees and other vegetation, including roots, in the Public Ways of City to the extent Company finds necessary and in accordance with City excavation permit requirements, including Emergency provisions therein, to avoid interference with the proper construction, operation, repair and maintenance of Gas Facilities, provided that Company shall save City harmless from any liability in the premises. Company agrees that if tree or vegetation impacts are possible, Company will consider alternate methods of construction when appropriate and reasonable.

SECTION 6. INDEMNIFICATION.

6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and 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. 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. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

6.2 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; and 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.

SECTION 7. VACATION OF PUBLIC WAYS.

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under North Dakota Century Code, Chapter 40-39.

SECTION 8. CHANGE IN FORM OF GOVERNMENT.

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. FRANCHISE FEE.

9.1 Fee Schedule. During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on the Company, the City may impose on Company a franchise fee ("Franchise Fee") as described herein.

9.2 General Franchise Fee. The franchise fee payable by the Company to the City shall be determined by a separate Resolution of the board of city commissioners as a percentage of Company's Gross Revenues. "Gross Revenues" means all sums, excluding any surcharge or similar addition to the

Company's charges to customers for the purpose of reimbursing the Company for the cost resulting from the franchise fee, received by the Company from the sale of gas to its retail customers within the corporate limits of City. The Resolution shall not be adopted until at least 90 days after written notice enclosing such proposed Resolution has been served upon Company by certified mail. The fee shall not become effective until the beginning of a Company billing month at least 90 days after written notice enclosing such adopted Resolution has been served upon Company by certified mail. Section 2.4 shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate Resolution.

9.3 Application of franchise fee to customer. The franchise fee shall be payable monthly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee on all customer billings for gas service. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by Resolution from time to time; however, each change shall meet the same notice requirements and not occur more often than annually. The time and manner of collecting the franchise fee may be subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers by imposing a surcharge in Company's applicable rates for gas service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times.

9.4 Fee Adjustments. City and Company agree that City, in its sole discretion, may raise or lower the percentage Franchise Fee on a non-discriminatory basis, and Company may raise or lower the corresponding surcharge to its customers accordingly. This franchise ordinance shall not be construed as a limitation on the City's power to tax the Company, if any.

9.5 Equivalent Fee Requirement. City agrees it will not grant additional franchises for other gas providers in City on terms more favorable or less burdensome than this franchise Ordinance, provided that City has the authority to require a franchise fee.

9.6 Large Volume User Franchise Fee. Upon written approval by the board of City Commissioners determining eligibility as a Large Volume User and commensurate benefit thereto, the franchise fee for the sale or transmission of gas to large volume gas customers who are so classified by the Company because their maximum daily requirements are 200 MCF or more, shall be .75%.

9.7 Annual Franchise Performance and Planning Meeting; Annual Reporting. Company and City shall meet annually to discuss items of concern or interest related to this Franchise, including, but not limited to, collaborative infrastructure planning, vegetation management and reliability performance. Upon request of City, Company shall annually provide to City reporting information on service reliability, customer usage, program participation, outage data, and infrastructure improvements

and capital improvements, the exact format and content of which shall be mutually agreed to by City and Company, and in a manner consistent with all applicable laws, regulations and Commission orders.

SECTION 10. INSURANCE AND WORKERS COMPENSATION.

10.1 Insurance. As of the effective date of this franchise agreement Company will, at its sole expense, maintain during the entire term of this franchise agreement public liability insurance with a company licensed to do business in the State of North Dakota with a rating by Best of not less than "A" that will protect Company, the City, and the City's officials, officers, employees, and agents from claims which may arise from operations under this Franchise, whether such operations are by the Company, its officials, officers, directors, employees, or agents, or any subcontractors of Company. This liability insurance will include, but will not be limited to, protection against claims arising from bodily and personal injury, death, and damage to property resulting from the Company's automobiles, products, and completed operations. The amount of such insurance shall be subject to periodic changes as described in this Section, or as may be required by applicable law, but will be not less than the following:

- (a) General liability insurance:
Bodily injury and/or death per Person \$1,000,000
Bodily injury and/or death per occurrence \$1,000,000
Property damage per occurrence \$1,000,000
Property damage and bodily injury, aggregate \$2,000,000
- (b) Automobile insurance:
Combined single limit \$1,000,000
- (c) Umbrella coverage: \$2,000,000

The liability policy will provide for the following, by endorsement or otherwise:

- (a) The policy will cover personal injury as well as bodily injury.
- (b) The policy will cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries, and property damage.
- (c) Broad form property damage liability will be afforded.
- (d) The City will be included as an additional insured on the policy.
- (e) The coverage is primary insurance and no other insurance or fund of the City will be called upon to contribute to a loss under this coverage.
- (f) Standard form of cross-liability will be afforded.
- (g) The policy will not be canceled without thirty (30) days prior written notice of such cancellation to the City.

The automobile insurance policy will provide for the following, by endorsement or otherwise:

- (a) The City will be included as an additional insured on the policy.
- (b) The policy will not be canceled without thirty (30) days prior written notice of such cancellation to the City.

Upon ninety (90) days prior written notice to Company, the City reserves the right to adjust the limit coverage requirements no more than once every five (5) years. Any such adjustment by the City will be no greater than the increase in the State of North Dakota Consumer Price Index for such five (5) year period, unless otherwise required by applicable law.

Company will submit to the City documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements required. The certificate of insurance should confirm that the required endorsements are in effect.

10.2. Self-Insurance. 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 11. DEVELOPMENT OF ENERGY EFFICIENCIES AND RENEWABLE ENERGY.

City and Company have demonstrated their intent to strive for energy efficiency in City. City and Company agree to further commit to collaborate, cooperate, and strive for an increase in the use of increased energy efficiencies and renewable energies. Areas of collaboration may include future agreements and activities in the areas of public education, promotion of alternative energy sources, promotion of energy efficiencies and conservation, along with the development of residential and commercial building weatherization strategies.

SECTION 12. PROVISIONS OF ORDINANCE.

12.1 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.

12.2 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.

12.3 Governing Law. This Franchise Ordinance shall be deemed to be executed in the State of North Dakota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with applicable laws of the State of North Dakota as applicable to contracts entered into and performed entirely within the State.

SECTION 13. AMENDMENT PROCEDURE.

Either party to this franchise ordinance may at any time propose that the Ordinance be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, 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 as provided herein.

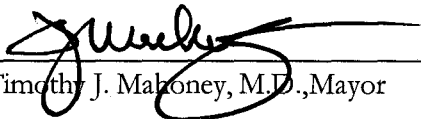
SECTION 14. PREVIOUS FRANCHISES SUPERSEDED.

This Franchise Agreement supersedes any previous Gas franchise granted to Company or its predecessor. This ordinance shall be in full force and effect after passage and approval as provided by law.

SECTION 15. EFFECTIVE DATE.


This ordinance shall be in full force and effect from and after its passage, approval and publication.

Passed and approved: 7-11, 2022



Dr. Timothy J. Mahoney, M.D., Mayor

Attest:



Steven Sprague, City Auditor

Introduction 6/13/22
First Reading 6/27/22
Second Reading and Adoption 7/11/22
Publication 7/27/22

Legislative

SURCHARGE RIDER

Section No. 5
~~2nd~~^{3rd} Revised Sheet No. 21

A surcharge as designated will be included in the monthly bills in the following North Dakota communities:

City of Casselton	2%		
City of Fargo	<u>0.75%</u>	<u>Applicable to Large Volume gas customers so classified by Company</u>	<u>N</u>
	2%	All other customers	
City of Grand Forks	0.75%	Applicable to Large Volume gas customers so classified by Company	
	2%	All other customers	<u>N</u>
	0%	Bills to the University of North Dakota	
City of Horace	2%		
City of West Fargo	2%		

Date Filed:	11-20-2009-02-22	By: Christopher B. Clark	Effective Date:	03-01-21
		President, Northern States Power Company, a Minnesota corporation		
Case No.	PU-20-452		Order Date:	12-16-20

Non-Legislative

SURCHARGE RIDER

Section No. 5
3rd Revised Sheet No. 21

A surcharge as designated will be included in the monthly bills in the following North Dakota communities:

City of Casselton	2%		
City of Fargo	0.75%	Applicable to Large Volume gas customers so classified by Company	N
	2%	All other customers	
City of Grand Forks	0.75%	Applicable to Large Volume gas customers so classified by Company	
	2%	All other customers	
	0%	Bills to the University of North Dakota	
City of Horace	2%		
City of West Fargo	2%		