

CITIZENS LEAGUE REPORT

No. 27

**Proposed charge on Power Lines  
In Minneapolis**

**June 1954**

(27)

C I T I Z E N S   L E A G U E   O F   G R E A T E R   M I N N E A P O L I S  
601 Syndicate Building LI 0791

TO: Board of Directors

FROM: Taxation and Finance Committee, John Windhorst, Chairman

SUBJECT: Proposed charge on power lines

At its meeting on Thursday, June 3, the Taxation and Finance Committee completed action on its revised report on the proposed charge on power lines in the City of Minneapolis. Added to the revised fact sheet which was sent you earlier this week, this completes the committee's expansion of its report which was undertaken at the Board's request.

The committee adopted the following statement, to be added to the fact sheet:

PRINCIPAL ARGUMENTS FOR AND AGAINST THE CHARGE

The committee has considered this proposal while engaged in a study of pertinent principles applicable to local taxes in Minneapolis. It has not completed this study and, therefore, is not prepared to express definite opinions as to the proper basis for a solution to the City's revenue problems. The following is a summary of the principal arguments considered by the committee in reaching its conclusion as to the desirability of adopting the specific proposal here considered:

Arguments made for the charge:

1. The Northern States Power Company is essentially a monopoly and, therefore, does not have the usual worry of being placed at a competitive disadvantage in selling its product locally.
2. The gas company provides a precedent in Minneapolis for the payment of special charge by a public utility.
3. The charge would be simple to administer and the cost of administration would be low in relation to the revenue to be derived.
4. The City Attorney has advised the Council it has the power to impose the charge. Proponents of the charge in the City Council believe it is the only source of additional revenue readily available.

Arguments made against the charge:

1. Any additional charge on Northern States Power Company would cause them loss of business if their rates fail to remain competitive with other types of power. Since a portion of this charge will fall on business in the City of Minneapolis, it would become a factor of additional cost of operating a competitive business in this city as compared to other areas. As a result, it would become a factor in the determination of location of business in Minneapolis for both present activities as well as new business seeking a satisfactory location.

2. The charge probably would be passed on to the public in increased power rates rather than as a separate tax item appearing on the bill. This would avoid making the consumer tax conscious and would permit evasion of political responsibility for imposing a tax or charge. It also makes it impossible for the individual consumer to deduct his share of the charge in computing his net income for income tax purposes.
3. The charge is of questionable legality and, if passed, the City may be faced with expensive legal action and finally no revenue.
4. The proposed charge does not answer all the needs of the City for additional revenue and appears to be prompted by immediate needs rather than part of an overall program.
5. Once the charge is imposed and its legality assured, there is the possibility of further increases as needs occur which would increase the burdens of this form of charge.
6. The proposed charge, although termed compensation to the City for the privilege of using public property, appears to bear little relationship to the value of the privilege conferred upon the Northern States Power Company. In the absence of a showing that the power company derives benefits from this privilege in excess of those benefits already paid for through real and personal property taxes, the proposed charge should be condemned as being discriminatory.

By a vote of 13 to 2 with the chairman not voting, the committee adopted the following resolution:

"RESOLVED, that it is the opinion of this committee that the adoption of the proposal described above at this time is not in the best interests of the City of Minneapolis, and that consideration should be given to other sources of revenue. The committee believes that it will be able to make a more affirmative recommendation in the reasonably near future."

\* \* \* \* \*

The committee also voted to make the following changes in the revised fact sheet:

On page 3, INCIDENCE OF THE CHARGE, add the paragraph:

"The company's earnings in Minneapolis are divided approximately one-third among residential users, one-third among industries and one-third among commercial users."

On page 3, PRESENT TAXATION OF UTILITIES IN MINNEAPOLIS, second sentence in last paragraph of this section should read:

"In lieu thereof it pays a state tax of 7% of gross earnings in Minneapolis"

On page 4, substitute the following for the first paragraph:

"However, the company has submitted the following comparison of Minneapolis and St. Paul: The company has 515 large customers in Minneapolis and 56 private plants generate their own electricity. The company has 234 large customers in

St Paul and 23 private plants generate their own electricity.

"The power company's business promotion department, which has been active about two years, says now potential customers coming into this area have raised a question about the rate differential between Minneapolis and St. Paul. The probable explanation is that on the average the power cost in operating a factory in this area is only about 0.6% to 1.4% of the total production cost. A higher percentage exists in some industries not found in this area."

June 3, 1954

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CITIZENS LEAGUE OF GREATER MINNEAPOLIS  
601 Syndicate Building

TO: Board of Directors

From: Taxation and Finance Committee

Subject: Committee report on proposed charge for use of City streets for transmission of power.

Chairman John Windhorst of the Taxation and Finance Committee appointed Harry L. Tyson, Chairman, C. F. Quest and H. G. Peterson as a special sub-committee charged with gathering as much information as possible regarding the proposed ordinance to levy a charge upon power lines within the City of Minneapolis. The sub-committee's report as amended and approved by the committee was submitted to the Board of Directors at its meeting on May 12. Because there had been a number of developments on the power line charge proposal subsequent to the committee's action, the Board of Directors asked the committee to expand its report and particularly to ask representatives of the power company and the City Council to present their arguments at a committee meeting. Alderman Eugene Stokowski and Mr. Carsten Jacobsen, assistant city attorney, presented the City's point of view and Mr. E. K. Thorgaard, Manager of the Minneapolis division of the Northern States Power Company, presented the power company's arguments at the committee meeting of May 20, to which members of the League Board had been invited.

This report reflects the additional information developed at the May 20 meeting.

#### WHAT IS THE PROPOSAL?

The proposed charge is "compensation payment for the use of the streets, avenues, alleys and other public grounds of the City of Minneapolis" in the amount of \$500 per route mile of transmission pole lines, overhead pole lines and underground cables and transmission lines used upon, over and or under the streets, alleys or other public grounds of the City of Minneapolis, and within its corporate limits, on the last day of the preceding year.

The city attorney's office supports the legality of the charge on the grounds that it is not a tax or a license fee.

The power company contends it is a tax.

The language in the proposed ordinance may be ambiguous as to what is meant by route mile, but the City Attorney's staff says it is intended to mean the unit mile of street or other land rather than a mile of wire and transmission cable. In other words, the street would be measured by the mile whether it contained one or 100 transmission lines, as would be the case with many of the downtown streets and arterials in the residential areas.

#### Who would pay the charge?

Any person, firm or corporation engaged in the business of transmitting, distributing or selling electrical energy in the City and owning or using

transmission and distribution lines, whether overhead, on the surface or underground, within the City. This would mean the Northern States Power Company at the present time.

Estimated Yield.

The power company has 1,093 route miles of line in the City of Minneapolis (about 260 are on telephone company poles). The yield would be about \$546,000 annually.

Use of the Proceeds

The receipts would be paid into the Current Expense Fund, which is the major fund under control of the City Council and is used for such purposes as police, fire, street lighting, garbage collection and general governmental functions.

HISTORY OF THE EFFORT TO IMPOSE A CHARGE ON  
THE POWER COMPANY

Two and a half years ago the Minneapolis Gas Company asked for and received a 25 year extension of its franchise, in return for which it agreed to pay a charge of 1.6 % of gross receipts to the City for the use of the City streets. At that time the City asked the power company to consent to a similar charge but it refused. The City feels it has legal power to impose the charge.

A member of the City Attorney's staff has stated that the use charge was chosen from five possible alternatives because it is the least cumbersome.

NEED FOR REVENUE

Because of current lack of money in the current Expense Fund, the activities of some departments, notably the police, fire and engineering departments, have been curtailed.

Alderman Stokowski said the City needs about \$200,000 yearly to bring the police and fire departments up to authorized strength, and an additional \$400,000 yearly to pay policemen and firemen the salary adjustments recently voted by the Council on the basis of the findings of the Citizens Salary Survey Committee.

REASON FOR \$500 PER MILE RATE-AND POSSIBILITY OF  
FUTURE CHANGES

Alderman Stokowski stated that the \$500 per mile rate was selected because it yields roughly about the same as the franchise charge on the gas company. (Gas company - 1.6 % of gross receipts. Proposed charge would be about 2.24% of power company's gross earnings in Minneapolis).

There would apparently be nothing to restrain the Council from changing the rate in the future except the general rule, stated by the assistant city attorney, that the charge would have to be a reasonable measure of the benefits from the use of the streets. However, Alderman Stokowski indicated that in his opinion the City would be willing to issue a long term franchise which, if properly drawn, would prevent increases during the life of the franchise.

### INCIDENCE OF THE CHARGE

The proposed charge is in form a charge on the company, not the consumer. If the company absorbed the charge without increasing rates, its net earnings would be reduced, to the extent that the company would not absorb the charge, it would be passed on to the consumer.

The exact basis on which all or part of the charge would be passed on is not known. The company claims it would try to show the charge separately on the consumer's electric bill. Since it is not a tax, individual persons would not be able to claim the added charge as a deduction on their income tax, but businesses would be able to do so, as an item of expense of doing business.

### PRESENT TAXATION OF UTILITIES IN MINNEAPOLIS

The Northern States Power Company now pays real and personal property taxes to the City. In 1954 these will total \$1,980,000. The company says it is the largest property taxpayer in the City. It presents the figures shown in Table I in support of its claim that it already pays more than its share of taxes in the City.

The Company also pays special fees for inspections in connection with street openings, encroachments, etc.

The Minneapolis Gas Company also pays property taxes and inspection fees. Starting in 1952 it has paid to the City in addition a special franchise tax of 1.5% of its gross earnings, which is estimated to yield \$370,000 in 1954. This special charge is provided for in the company's franchise from the City. It should be noted that under its franchise, the gas company is guaranteed a certain net income. This special franchise earnings tax is passed on to the consumer in his gas rate.

The Northwestern Bell Telephone Company pays no property taxes. In lieu thereof it pays a state tax of 7% of gross earnings. It pays no taxes to the City of Minneapolis, but does pay for the cost of opening streets, similar to the payments made by the gas and power companies.

### TAXATION OF POWER COMPANY IN ST. PAUL

Under a special provision of the St. Paul Charter, St. Paul has imposed a 5% gross earnings tax on the Northern States Power Company since the early 1900's. The charge is added to the consumer's bill. It yielded about \$740,000 on electric power in 1953. It is in addition to property taxes paid by the company.

### EFFECT ON COMPETITION

Since it is likely that the charge would be passed on at least to some extent to the power consumers and would become a cost of their doing business, the power company claims large industrial consumers may generate their own power as an economy measure. It says that when industrial power rates were dropped, some companies abandoned their own diesel generators.

The company also claims that the charge would tend to make Minneapolis less attractive to industry.

Table 1

NORTHERN STATES POWER COMPANY  
 (INCLUDING MINNEAPOLIS MILL COMPANY AND ST.  
 ANTHONY FALLS WATER POWER COMPANY)  
REAL AND PERSONAL PROPERTY TAXES

	1948	1953	% increase 1953 over 1948
Property tax in Minneapolis:			
State, County and City	1 374 000	2 663 000	93.8%
Minneapolis share	1 061 000	1 980 000	86.6%
Assessed valuation of property in Minneapolis:			
All Property	293 000 000	341 000 000	16.50
N. S. P. Property	10 000 000	18 000 000	75.50
Minneapolis percentage of gross revenues of entire Company system in State of Minnesota	35.01	29.78	-14.9%
Minneapolis percentage of property taxes for entire Company system in State of Minnesota	35.82	40.86	14.1%
Percentage of Minneapolis tax to Minneapolis gross revenues:			
State, County and City	7.66	10.93	42.6%
Minneapolis share	5.92	8.13	37.2%
Percentage of tax to gross revenues of entire Company system in State of Minnesota (both exclusive of Minneapolis)	7.40	6.71	- 9.3%
City Council budget	5 643 000	6 554 000	16.1%
Portion paid by N. S. P.	196 000	343 000	75.00
Ratio	3.48%	5.23%	50.2%

Property, income and other taxes of entire N. S. P. system for 1953 represented 24.6% of system's gross earnings.

Property, income and other taxes applicable to property and operations in the City of Minneapolis for 1953 represented 27.6% of the gross revenues derived from sales of energy within the City of Minneapolis or 12.2% higher than system as a whole.

- Denotes decrease

SOURCE: Prepared by Northern States Power Company, May 1954



However, the company has submitted the following comparison of Minneapolis and St. Paul: The company has 515 large customers in Minneapolis and 56 private plants generate their own electricity. The company has 234 large customers in St. Paul and 23 private plants generate their own electricity.

The power company's business promotion department, which has been active about two years, says no potential customers coming into this area have raised a question about the rate differential between Minneapolis and St. Paul. The probable explanation is that on the average the power cost in operating a factory in this area is only about 0.6% to 1.4% of the total production cost. A higher percentage exists in some industries not found in this area.

## LEGALITY

The Northern States Power Company operates in Minneapolis without specific authority from any state or local body. The company asserts it has a vested right to use the streets without charge by reason of long continued prior use. The City Charter gives the City no power to impose a special tax, such as is in effect in St. Paul.

The City Attorney believes the City has the authority, under the police power, and particularly sec. 300.03 M. S. A., to impose the proposed charge and has given a formal opinion to the Council to this effect. On the other hand, the power company attorneys state that the charge is illegal and base their contention on the proposition that the company's use of the streets antedates legislation authorizing the City to charge for their use, and on the theory that the company has a continuing implied franchise. The company also contended that the proposed charge has no relation to any special benefits received by the company.

Both sides say they have not revealed their full legal arguments, believing the matter is likely to end in the courts.

### POWER LINE AND OTHER UTILITIES CHARGES IN OTHER CITIES IN THE UNITED STATES

The Municipal Finance Officers Association of the United States and Canada and the Tax Institute, Inc., were queried as to charges on power lines measured by route miles elsewhere in the United States. One similar charge was reported. In Philadelphia a fee of \$6.00 per mile of conductors for electric lighting purposes and \$3.75 per mile of conductors used for telegraphic, telephonic or other purposes are imposed. In addition there is a charge of \$1.50 per pole erected in the city.

These fees are not classed as taxes but are imposed under the police powers of the city, and are construed by the courts to represent the cost of inspection of the poles and wire lines. In 1953 they amounted to \$480,000.

The City's research engineer reports that in a survey he made in 1951 he found that there were 259 cities in the United States with population of 10,000 or more which imposed a tax or charge on utilities other than the ad valorem property tax.

These cities represented about 19% of the 1,345 cities over 10,000 population in 1950.

The M. F. O. A., which has published exhaustive post-war studies on how cities get their money, notes that the growing trend is to use gross receipts as a measure of street use privileges, franchise privileges, etc.

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### Arguments made for the charge:

1. The Northern States Power Company is essentially a monopoly and, therefore, does not have the usual worry of being placed at a competitive disadvantage in selling its product locally.
2. The gas company provides a precedent in Minneapolis for the payment of a special charge by a public utility.
3. The charge would be simple to administer and the cost of administration would be low in relation to the revenue to be derived.
4. The City Attorney has advised the Council it has the power to impose the charge. Proponents of the charge in the City Council believe it is the only source of additional revenue readily available.

### Arguments made against the charge:

1. The charge would increase the company's difficulties in competing against the other kinds of power.
2. Power rates are an important factor in getting and keeping industry.
3. The charge probably would be passed on to the public in increased power rates rather than as a separate tax item appearing on the bill. This would avoid making the consumer tax conscious and would permit evasion of political responsibility for imposing a tax or charge. It also makes it impossible for the individual consumer to deduct his share of the charge in computing his net income for income tax purposes.
4. The charge is of questionable legality and, if passed, the City may be faced with expensive legal action and finally no revenue.
5. The proposed charge does not answer all the needs of the City for additional revenue and appears to be prompted by immediate needs rather than part of an overall program.
6. Once the charge is imposed and its legality assured, there is the possibility of further increases as needs occur which would increase the burdens of this form of charge.

7. Although the proposed charge is termed compensation to the City for the privilege of using public property, no evidence has been presented to show the value of the benefit conferred upon the power company. Thus there is no way of knowing to what extent, if any, the company derives benefits from this privilege in excess of those benefits already paid for through real and personal property taxes. In the absence of the showing of this excess benefit, the proposed charge may be discriminatory.

June 7, 1954