

CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 GRANT OF FRANCHISE. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called “Company,” and to its successors and assigns the right and franchise to acquire, construct, erect, maintain and operate in the City of Polk City, Iowa, hereinafter called the “City,” a gas distribution system, to furnish natural gas along, under and upon the streets, rights of way, avenues, alleys and public places to serve customers within and without the City and to furnish and sell natural gas to the City and its inhabitants. For the term of this franchise, the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. This franchise shall be effective for a 20-year period from and after the effective date of the ordinance codified in this chapter[†], provided, however, that either the City or the Company may, during the first 90 days following the tenth and fifteenth anniversaries of the effective date of the franchise, provide written notice to the other party of its desire to amend the franchise. The parties shall negotiate these amendments in good faith for a period of up to 90 days following receipt of notice. If, at the conclusion of the negotiation period, the City determines in good faith that the franchise, if continued without amendment, will have a material or significant adverse impact on the City or the Company’s electric customers located within the corporate limits of the City, the City may terminate the franchise. The City shall have the burden to objectively demonstrate the material or significant adverse impact. Failure to amend the franchise at the first option does not render invalid the City’s second option to amend the franchise.

110.02 STATE CODE RESTRICTIONS AND LIMITATIONS. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa* 2013, or as subsequently amended or changed.

110.03 CONSTRUCTION AND MAINTENANCE. The Company shall furnish reasonably, adequate and efficient gas service to the residents of the City and shall maintain its systems in reasonable repair and working order and provide adequate facilities for such maintenance. The Company’s plant and equipment, including all transmission lines and other distribution facilities, shall be installed in accordance with good utility practices and shall be located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with the rules of the Iowa Utilities Board or its successor, and the *International Fuel Gas Code* so as not to endanger or interfere with the lives of persons, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic to public ways, places and

[†] **EDITOR’S NOTE:** Ordinance No. 2014-500, adopting a natural gas franchise for the City, was passed and adopted on August 11, 2014.

structures. The erection, installation, construction, replacement, removal, repair, maintenance, and operation of the gas system shall be in accordance with all applicable laws, regulations and codes of the State and all applicable ordinances, regulations and codes of the City. All transmission and distribution structures, lines and equipment erected by the Company within the City shall be located as to cause minimum interference with the properties of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. All said structures, lines and equipment shall be placed so as not to interfere with the construction of any water pipes, drain or sewer, which have been or may hereafter be located by authority of the City.

110.04 RELOCATION OF INSTALLATIONS. The Company shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall use its best efforts to secure said funds and provide them to the Company to compensate the Company for the costs of relocation. The City shall not require the Company to relocate facilities for a project that is intended to benefit a private party.

110.05 EXCAVATIONS. In making excavations in any streets, avenues, alleys, and public places for the installation of gas pipes, conduits, or apparatus, Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring it to the condition as existed immediately prior to excavation. Company agrees any replacement of road surface shall conform to current City code regarding its depth and composition. The Company shall not be required to restore or modify public right-of-way, sidewalks or other areas in or adjacent to the Company project to a condition superior to its immediate previously existing condition or to a condition exceeding its previously existing condition to the extent any alterations are required for the City to comply with City, State or federal rules, regulations or laws. With any new construction or relocation projects, the Company agrees that within 14 days of the completion of the construction, all restorations will be made, or the Company hereby acknowledges the right of the City to perform these restorations and charge the Company for the same. During such 14-day period, the Company may ask the City to extend the 14-day period and the Company and the City shall negotiate a reasonable time for conclusion of the work.

110.06 UTILITY EASEMENTS. Vacating a street, avenue, alley, public ground or public right-of-way shall not deprive the Company of its right to operate and maintain existing facilities on, below, above, or beneath the vacated property. Prior to the City abandoning or vacating any street, avenue, alley, or public ground where the Company has facilities in the vicinity, the City shall provide Company with not less than 60-days' advance notice of the City's proposed action and, upon request grant the Company a utility easement covering existing and future facilities and activities. If the City fails to grant the Company a utility easement for said facilities prior to abandoning or vacating a street, avenue, alley or public ground, the City shall at its cost and expense obtain easements for existing Company facilities.

110.07 RELOCATION NOT REQUIRED. The Company shall not be required to relocate, at its cost and expense, Company facilities in the public right-of-way that have been relocated at Company expense at the direction of the City at any time during the previous five years.

110.08 INDEMNIFICATION. The Company shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs, or expenses, on account of injury or damage to any person or property, to the extent caused or occasioned by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the natural gas facilities authorized by this franchise; provided, however, that the Company shall not be obligated to defend, indemnify and save harmless the City for any costs or damages to the extent arising from the negligence of the City, its officers, employees or agents. The Company shall purchase and maintain insurance to protect the City throughout the duration of the franchise. Coverage may be provided under a program of self-insurance. The Company's indemnification obligations under the franchise shall survive the expiration, cancellation, or termination of the franchise.

110.09 INFORMATION. Upon reasonable request the Company shall provide the City, on a project specific basis, information indicating the horizontal location, relative to boundaries of the right-of-way, of all equipment which it owns or over which it has control that is located in City right-of-way, including documents, maps and other information in paper or electronic or other forms ("Information"). The Company and City recognize the Information may in whole or part be considered a confidential record under State or federal law or both. Therefore, the City shall not release any Information without prior consent of the Company and shall return the Information to Company upon request. City recognizes that Company claims the Information may constitute a trade secret or is otherwise protected from public disclosure by State or federal law on other grounds and agrees to retain the Information in its non-public files. Furthermore, the City agrees that no documents, maps or information provided to the City by the Company shall be made available to the public or other entities if such documents or information are exempt from disclosure under the provisions of the Freedom of Information Act, the Federal Energy Regulatory Commission Critical Energy Infrastructure requirements pursuant to 18 CFR 388.112 and 388.113, or Chapter 22 of the *Code of Iowa*, as such statutes and regulations may be amended from time to time.

110.10 MAINTAIN FACILITIES. The Company shall extend its mains and pipes and operate and maintain the system in accordance with the applicable regulations of the Iowa Utilities Board or its successors and Iowa law.

110.11 QUANTITY AND QUALITY. During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent and in accordance with the applicable regulations of the Iowa Utilities Board the Company's tariff made effective by the Iowa Utilities Board or its successors and Iowa law.

110.12 POLICE REGULATIONS. All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

110.13 FRANCHISE FEE. In consideration of the right and franchise granted to the Company in Section 110.01 herein, a franchise fee is hereby imposed equal to one percent (1%) of the gross receipts minus uncollectable amounts derived by the Company in the City for the delivery and sale of natural gas, effective beginning March 1, 2020.

1. The amount of franchise fee shall be shown separately on the utility bill to each customer. The Company shall remit collected franchise fees to the City on a quarterly basis, within 30 days after the last day of the last revenue month of each quarter of the calendar year (i.e. remitted by April 30, July 31, October 31, and January 31). The City shall not modify the level of the franchise fee more frequently than once in a 12-month period.

2. The City shall be solely responsible for the property use of any amounts collected as franchise fees, and shall only use such franchise fees for purposes allowed by Iowa law and as set forth in the Revenue Purpose Statement previously adopted by the City.
3. The franchise fee shall apply to all customers' bills in accordance with Iowa Code Chapters 364.2(f) and 423B.5, except for the City's bills which shall be exempt from the franchise fee.
4. Upon receipt of a final and unappealable order or approval authorizing annexation or changes in the corporate boundaries of the City, the City Clerk shall provide written notification to the Company of such annexation or change in the corporate boundaries of the City, and the Company shall apply the franchise fee to its customers who are affected by the annexation or change in the corporate boundaries of the City, commencing no more than 90 days after receipt of the written notice and City's verification of the area added to the City.
5. To fulfill the purpose and intent of this section, the City and the Company may enter into an agreement addressing the implementation of the collection of the franchise fee, which agreement shall be approved by resolution of the City.

110.14 PLANS AND PERMITS. All non-emergency installation, replacement or upgrade of pipes, plants, equipment, and distribution facilities with any utility system shall require submission of detailed plans to the City, clearly indicating proposed work, and all applicable City permits shall be approved by the City before proposed utility work commences.

110.15 FORFEITURE AND TERMINATION. The violation of any material portion of the franchise by the Company, or its failure to perform any of the provisions of the franchise, may be cause for forfeiture of the franchise and the termination of all rights under this chapter. If the City determines there to be a default under the franchise, it may provide a written notice to the Company describing the default, stating whether a forfeiture and termination of the franchise will be sought after the cure period, and proposing a reasonable time to cure the default, which shall be not less than 60 days. Company may respond to such notice, proposing a different time to accomplish the cure of the default. If Company has not cured the default within the agreed-upon cure period and any extension thereto, the City may proceed to terminate the franchise agreement and the same shall be deemed forfeited by the Company as provided above. The franchise shall apply and bind the City and the Company, their successors and assigns, provided that any assignment by the Company shall be subject to the approval of the Council by resolution, which shall not be unreasonably withheld, except that no consent shall be required for any assignment or transfer by merger, consolidation or reorganization. The City shall have 60 days after the effective date of the assignment to adopt the resolution. If the City fails to adopt a resolution affirming or rejecting the assignment during the 60-day period, the assignment shall be deemed approved. The Company shall provide notice to the City in the event of an assignment of the franchise.

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