

CHAPTER 111

MIDAMERICAN ENERGY COMPANY ELECTRIC FRANCHISE

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111.01 GRANT OF FRANCHISE. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the “Company,” and its successors and assigns, the right and non-exclusive franchise to acquire, construct, erect, maintain and operate in the City of Polk City, Iowa, hereinafter called the “City,” a system for the transmission and distribution of electric energy and communications signals along, under, over 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 electric energy 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.

111.02 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.

111.03 CONSTRUCTION AND MAINTENANCE. The Company shall furnish reasonably adequate and efficient electric 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 *National Electrical*

[†] **EDITOR’S NOTE:** Ordinance No. 2014-400, adopting an electric franchise for the City, was passed and adopted on August 11, 2014.

Safety 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 structures. The erection, installation, construction, replacement, removal, repair, maintenance, and operation of the electric 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 reasonable 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. The Company shall have the right to erect all necessary poles and to place thereon the necessary wires, fixtures and accessories as well as to excavate and bury conductors for the distribution of electric energy and communications signals in and through the City, but all said conduits and poles 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.

111.04 TREES. The Company is authorized and empowered to prune or remove at Company expense any tree extending into any street, alley or public grounds to maintain electric reliability, safety, to restore utility service and to prevent limbs, branches or trunks from interfering with the wires and facilities of the Company. The pruning and removal of trees shall be done in accordance with current nationally accepted safety and utility industry standards and federal and State law, rules, and regulations.

111.05 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 primarily intended to benefit a private party. With any new construction or relocation projects, the Company agrees that within 14 days of the completion of the construction, it shall complete all restorations. During such 14-day period, the Company may ask the City to extend that 14-day period and Company and City shall negotiate a reasonable time for conclusion of the work. If Company has not completed all restorations within the agreed-upon time, Company acknowledges the rights of the City to perform these restorations and charge Company for the same.

111.06 EXCAVATIONS. In making excavations in any streets, avenues, alleys, rights of way and public places for the installation, maintenance or repair of conductor, conduits or the erection of poles and wires or other appliances, the Company shall not unreasonably obstruct the use of the streets, and shall replace the surface, restoring the condition as existed prior to the Company excavation. 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 required for the City to comply with City, State, or federal rules, regulations or law. Company agrees any replacement of road surface shall conform to current City code regarding its depth and composition.

111.07 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 electric 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.

111.08 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 in the previous five years.

111.09 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 electric 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 and name 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.

111.10 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. The Company and City recognize the information provided will, under current Iowa law, constitute public records, but that nonetheless, some information provided will be confidential under State or federal law, or both. Therefore, the City shall not release any information with respect to the location or type of equipment which the Company owns or controls in the right-of-way which may constitute a trade secret or which may otherwise be protected from public disclosure by State or federal law. 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.

111.11 MAINTAIN FACILITIES. The Company shall construct, operate and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors and Iowa law.

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

111.13 FRANCHISE FEE. In consideration of the right and franchise granted to the Company in Section 111.01 herein, a franchise fee is hereby imposed equal to one percent of

the gross receipts minus uncollectable amounts derived by the Company in the City for the delivery and sale of electric energy, beginning on 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 any 12-month period.
2. The City shall be solely responsible for the proper 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 be applied 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.

111.14 PLANS AND PERMITS. All non-emergency installation, replacement or upgrade of cables, wires and conduits in connection with any utility system shall require submission of detailed plans to the City, of detailed plans clearly indicating proposed work and all applicable City permits shall be approved by the City before proposed utility work commences. Company agrees to continue its policy of undergrounding facilities in City limits where undergrounding practices exist or in new construction areas. In City limit areas where existing overhead facilities are prevalent, the Company reserves the right to upgrade or replace existing equipment with overhead facilities, subject to negotiations with the City. Where possible, following the procedures and standards applicable to such developments, the parties will develop plans to facilitate the placing of overhead electric facilities underground in conjunction with City projects in the public rights-of-way. Any conversion of overhead electric distribution facilities to underground electric distribution facilities shall comply with the Iowa Utilities Board rules and regulations, Company tariffs applicable to City-required conversions of overhead facilities to underground facilities, the *National Electric Code* and the *National Electric Safety Codes* as adopted by the Iowa Utilities Board. The Company shall not be responsible for costs incurred by customers to convert or to upgrade customer wiring due to a change in the electrical distribution system. On the date of transfer from an overhead electric distribution system to an underground electric distribution system, as agreed to by the City and Company, the City shall be responsible to ensure that all structures receiving electrical service are capable, in compliance with the *National Electric Code*, of receiving service from an underground electric distribution system. The Company shall not be liable for expenses incurred by any customer resulting from rewiring or replacement of utilization equipment costs as a result of the inability of a customer to receive electricity from an underground electric distribution system.

111.15 FORFEITURE AND TERMINATION. The continuing 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 sure the default, which shall not be less than 60 days from the date of the written notice. Company may respond to such notice, agreeing to the proposed cure period or 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 extensions thereto, the City may proceed to terminate the franchise agreement and the same shall be deemed forfeited by the Company as provided above.

111.16 ASSIGNMENT. 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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