

CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 FRANCHISE GRANTED. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the "Company," its successors and assigns, the right and franchise to acquire, construct, erect, maintain, and operate in the City, a gas distribution system, to furnish natural gas along, under, and upon the streets, 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. This franchise shall be effective for a 20-year period from and after the effective date of the ordinance codified by this chapter.[†] The franchise is nonexclusive.

110.02 RIGHTS AND PRIVILEGES. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa* or as subsequently amended or changed.

110.03 PIPES AND MAINS. The Company shall have the right to excavate in any public street for the purpose of laying, re-laying, repairing, or extending gas pipes, mains, conduits, and other facilities, provided that the same shall be so placed as not to interfere with the construction of any water pipes, drain, or sewer or the flow of water therefrom, which have been or may hereafter be located by authority of the City.

110.04 EXCAVATIONS. In making excavations in any streets, avenues, alleys, and public places for the installation of gas pipes, conduits or apparatus, the Company shall not unreasonably obstruct the use of the streets, and shall replace the surface, restoring the original condition as nearly as practicable. All excavations shall be refilled and all obstructions shall be removed at the expense of the Company and to the satisfaction of the City. In the event that the Company fails to comply with the provisions of this section after having been given reasonable notice, the City may do such work as may be needed to properly repair said area and the cost thereof shall be repaid to the City by the Company.

110.05 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, caused or occasioned, or allegedly caused or occasioned, in whole or in part, by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the gas facilities authorized by this franchise; provided, however, the Company shall not be obligated to defend, indemnify, and save harmless the City for any costs or damages arising from the sole negligence of the City, its officers, employees or agents.

[†] **EDITOR'S NOTE:** Ordinance No. 240, adopting a natural gas franchise for the City, was passed and adopted on June 7, 1999.

110.06 APPLICABLE REGULATIONS. 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.

110.07 QUALITY AND QUANTITY. During the term of this franchise the Company shall furnish natural gas in the quantity and quality consistent with applicable Iowa laws and regulations.

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CHAPTER 111

ELECTRIC FRANCHISE

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111.01 FRANCHISE GRANTED. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the "Company," its successors and assigns, the right and franchise to acquire, construct, erect, maintain, and operate in the City a system for the transmission and distribution of electric energy along, under, over, and upon the streets, 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. This franchise shall be effective for a 20-year period from and after the effective date of the ordinance codified by this chapter.[†] The franchise is nonexclusive.

111.02 RIGHTS AND PRIVILEGES. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa* or as subsequently amended or changed.

111.03 POLES AND WIRES. The Company shall have the right to erect all necessary poles and to place thereon the necessary wires, fixtures and accessories as well as excavate and bury conductors for the distribution of electric energy in and through the City, but all said conduits and poles shall be placed as not to interfere with the construction of any water pipes, drain or sewer, or the flow of water therefrom, which have been or may hereafter be located by authority of the City. The Company is authorized and empowered to cut and trim at its expense, any trees extending into any street, alley or public ground so as to prevent limbs or branches from interfering with the wires and facilities of the Company.

111.04 EXCAVATIONS. In making excavations in any streets, avenues, alleys and public places for the excavation of 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 original condition as nearly as practicable.

111.05 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, caused or occasioned in whole or in part, by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the electric facilities authorized by this franchise; provided, however, the Company shall not be obligated to defend, indemnify, and save harmless the City for any costs or damages arising from the negligence of the City, its officers, employees, or agents.

[†] **EDITOR'S NOTE:** Ordinance No. 239, adopting an electric franchise for the City, was passed and adopted on June 7, 1999.

111.06 APPLICABLE REGULATIONS. The Company shall construct, operate, and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

111.07 QUALITY AND QUANTITY. During the term of this franchise the Company shall furnish electric energy in the quantity and quality consistent with applicable Iowa laws and regulations.

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CHAPTER 112

REGULATION OF CABLE TELEVISION RATES

112.01 Authority

112.02 Rate Regulation Proceedings

112.03 Certification

112.04 Notice of Rate Change

112.05 Delegation of Power

112.01 AUTHORITY. The City has the legal authority to administer and shall enforce against any non-municipally owned cable television system operator, as permitted therein, the provisions of Part 76, Subpart N of the Rules and Regulations of the Federal Communications Commission (FCC), concerning Cable Rate Regulation, 47 C.F.R. §§76.900 *et. seq.*, as they currently read and hereafter may be amended, which are herewith incorporated by reference.

112.02 RATE REGULATION PROCEEDINGS. Any rate regulation proceedings conducted hereunder shall provide a reasonable opportunity for consideration of the views of any interested party, including (but not limited to) the City or its designee, the Cable Operator, subscribers, and residents of the franchise area. In addition to all other provisions required by the laws of the State of Iowa and by the City for such proceedings, and in order to provide for such opportunity for consideration of the views of any interested party, the City shall take the following actions:

1. The City shall publish notice as provided in Section 362.3 of the *Code of Iowa* and shall mail, by certified mail, to the Cable Operator a notice of the intent to conduct a public proceeding on basic service tier rates and/or charges for equipment to receive such basic service tier, as defined by the FCC.

2. The public notice shall state, among other things, that cable television rates are subject to municipal review and explain the nature of the rate review in question; that any interested party has a right to participate in the proceeding; that public views may be submitted in the proceeding, explaining how they are to be submitted and the deadline for submitting any such views; that a decision concerning the reasonableness of the cable television rates in question will be governed by the Rules and Regulations of the FCC; and that the decision of the City is subject to review by the FCC.

3. The City shall conduct a public proceeding to determine whether or not the rates or proposed rate increases are reasonable. The City may delegate the responsibility to conduct the proceeding to any duly qualified and eligible individual or entity. If the City or its designee cannot determine the reasonableness of a proposed rate increase within the time period permitted by the FCC Rules and Regulations, it may announce the effective date of the proposed rates for an additional period of time as permitted by the FCC Rules and Regulations, and issue any other necessary or appropriate order and give public notice accordingly.

4. In the course of the rate regulation proceeding, the City may require additional information from the Cable Operator that is reasonably necessary to determine the reasonableness of the basic service tier rates and equipment charges. Any such additional information submitted to the City shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of affidavit or under penalty of

perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry.

5. The City may request proprietary information, provided that the City shall consider a timely request from the Cable Operator that said proprietary information shall not be made available for public information, consistent with the procedures set forth in Section 0.459 of the FCC Rules and Regulations. Furthermore, said proprietary information may be used only for the purpose of determining the reasonableness of the rates and charges or the appropriate rate level based on a cost-of-service showing submitted by the Cable Operator.

6. The City may exercise all powers under the laws of evidence applicable to administrative proceedings under the laws of the State of Iowa and by the City to discover any information relevant to the rate regulation proceeding, including, but not limited to, subpoena, interrogatories, production of documents, and deposition.

7. Upon termination of the rate regulation proceeding, the City shall adopt and release a written decision as to whether or not the rate or proposed rate increase is reasonable or unreasonable, and, if unreasonable, its remedy, including prospective rate reduction, rate prescription, and refunds.

8. The City may not impose any fines, penalties, forfeitures or other sanctions, other than permitted by the FCC Rules and Regulations, for charging an unreasonable rate or proposing an unreasonable rate increase.

9. Consistent with FCC Rules and Regulations, the City's decision may be reviewed only by the FCC.

10. The City shall be authorized, at any time, whether or not in the course of a rate regulation proceeding, to gather information as necessary to exercise its jurisdiction as authorized by the Communications Act of 1934, as amended, and the FCC Rules and Regulations. Any information submitted to the City shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry.

112.03 CERTIFICATION. The City shall file with the FCC the required certification form (FCC Form 328) by certified mail, and is in the process of doing all things necessary to begin regulating basic service tier cable television rates and equipment charges.

112.04 NOTICE OF RATE CHANGE. With regard to the cable programming service tier, as defined by the Communications Act of 1934, as amended, and the FCC Rules and Regulations, and over which the City is not empowered to exercise rate regulation, the Cable Operator shall give notice to the City of any change in rates for the cable programming service tier or tiers, any change in the charge for equipment required to receive the tier or tiers, and any changes in the nature of the services provided, including the program services included in the tier or tiers. Said notice shall be provided within five (5) business days after the change becomes effective.

112.05 DELEGATION OF POWER. The City may delegate its powers to enforce this chapter to municipal employees or officers (the "cable official"). The cable official will have the authority to:

1. Administer oaths and affirmations;

2. Issue subpoenas;
3. Examine witnesses;
4. Rule upon questions of evidence;
5. Take or cause depositions to be taken;
6. Conduct proceedings in accordance with this chapter;
7. Exclude from the proceeding any person engaging in contemptuous conduct or otherwise disrupting the proceedings;
8. Hold conferences for the settlement or simplification of the issues by consent of the parties; and
9. Take actions and make decisions or recommend decisions in conformity with this chapter.

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