

CHAPTER 110

NATURAL GAS FRANCHISE

110.01 Franchise Granted
110.02 Placement of Facilities
110.03 Excavation
110.04 Relocation of Facilities
110.05 Standards of Service
110.06 Franchise Fee

110.07 Nonexclusive Franchise
110.08 Eminent Domain
110.09 Term
110.10 Modification of Franchise Fee
110.11 Repeal or Amendment of Franchise Fee Obligation
110.12 Amendment

110.01 FRANCHISE GRANTED. The City hereby renews and grants unto Interstate Power and Light Company, hereinafter referred to as “Company,” its successors and assigns, the right, franchise and privilege for a term of 25 years from and after the passage of the ordinance codified herein[†] to erect, construct, reconstruct, replace, maintain and operate within the corporate City limits of the City, as the same now exist or as it may hereafter be located or extended, in and along the streets, avenues, alleys, and rights-of-way of the City for the purpose of distributing, supplying, and selling gas to the City and the residents thereof and to persons and corporations beyond the limits thereof; also the right of eminent domain as provided in Section 364.2, *Code of Iowa*. The Company shall maintain the availability of service throughout the entire City, including newly annexed areas, by extending natural gas facilities in a manner consistent with Company tariffs and Iowa law.

110.02 PLACEMENT OF FACILITIES. The mains and pipes of the Company must be so placed as not to unnecessarily interfere with water pipes, drains, sewers and fire plugs which have been or may hereafter be placed in any street, alley or rights-of-way of said City, or unnecessarily interfere with the proper use of the same, including ordinary drainage or with the sewers, underground pipe and other property of the City, and the said Company, its successors and assigns shall hold the City free and harmless from all damages arising from negligent acts or omissions of the Company, its officers, employees, representatives, agents and its successors and assigns, in laying down, erecting, constructing, reconstructing, maintaining and operating said natural gas distribution system. The term “gas” as used in this chapter shall be construed to mean natural gas only.

110.03 EXCAVATION. The Company shall have the right to excavate, at its cost and expense, in any City street, avenue or alley for the purpose of laying, relaying, repairing or extending gas pipes, mains, conduits and other gas system components, provided the same shall be placed in accordance with this chapter. In making any excavations in any street, alley, avenue or public place, the Company, its successors and assigns, including its employees, officers, agents and representatives, shall protect the site while work is in progress by guards, barriers or signals, shall not unnecessarily obstruct the use of the streets, shall backfill all openings in such a manner as to prevent settling or depressions in surface, pavement, or sidewalk of such excavations with same materials, restoring the condition as nearly as practical and if defects or cause shall repair the same. Before commencing any significant excavation of any street, alley, avenue or public place, which would impact or obstruct vehicular or pedestrian travel, the Company shall give the City at least 24 hours’ notice. In the case of an emergency requiring immediate action, the 24-hour notice requirement will be waived, and the Company will provide notice to the City as soon as reasonably possible. Prior to commencing significant construction, excavation, or maintenance projects in any street, alley, sidewalk or public right-of-way, the Company shall use its best

[†] **EDITOR’S NOTE:** Ordinance No. 255 adopting a natural gas franchise for the City, was passed and adopted on September 6, 2011.

efforts to notify the contiguous affected customers. Best efforts shall include, but are not limited to, at least one of the following: door hangers, telephone contact, or direct mail. Notification shall not be required in the event of emergency repairs or natural gas system restoration efforts requiring immediate action by the Company.

110.04 RELOCATION OF FACILITIES. The Company shall, at its cost and expense, locate and relocate its existing facilities or equipment in, on, over or along any public street or alley in the City in such a manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of any street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of such improvement. If the City orders or requests the Company to relocate its existing facilities or equipment for the primary benefit of a commercial or private project or as the result of the initial request of a commercial or private developer or other nonpublic entity, the Company shall receive payment for the cost of such relocation as a precondition to relocating its existing facilities or equipment. The City shall not arbitrarily cause the Company unreasonable additional expenses in exercising its authority under this section. The City and the Company will also work together to provide a reasonable alternative location for the Company's facilities. The City shall consider reasonable alternatives in designing its Public Works projects so as to not arbitrarily cause the Company unreasonable additional expense in exercising its authority under this section. The City shall also provide a reasonable alternative location for the Company's facilities as part of its relocation request. In determining reasonable alternative locations, the City's judgment shall be final. The City agrees to provide the Company with reasonable advance written notice to vacate a public right-of-way. Vacating a public right-of-way shall not deprive the Company of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same are paid to the Company, if required under this chapter or State law. Prior to vacating a public right-of-way, the Company will be provided an opportunity to secure an easement to allow it to operate and maintain its existing facilities.

110.05 STANDARDS OF SERVICE. The Company, its successors and assigns shall, throughout the term of the franchise, furnish and install all meters, at its own and sole expense, and shall provide the service line to buildings as set forth in the Company's tariff filed with the Iowa Utilities Board. The system authorized by this chapter shall be modern and up to date and shall be of sufficient capacity to supply all of the reasonable demands of the City and its inhabitants and shall be kept in a modern and up-to-date condition. The Company agrees to provide and maintain its entire system pursuant to Iowa Utilities Board rules, in such condition that it will furnish safe, adequate, efficient and continuous service. All natural gas service shall be supplied through a meter or other means which shall accurately measure the amount of natural gas supplied to a consumer. Service to be rendered by the Company under this chapter shall be continuous, unless prevented from doing so by fire, acts of God, unavoidable accidents or casualties, or reasonable interruptions necessary to properly service the Company's equipment, and, in such event, service shall be resumed as quickly as is reasonably possible.

110.06 FRANCHISE FEE. The Company, in its monthly billing, shall include a franchise fee of _____ percent on the gross receipts from the sale and distribution of gas for customers within the City limits.

1. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following 90 days of receipt of information required of the City to implement the franchise fee. This information shall include, but not be limited to, a copy of the City's revenue purpose statement and written proof of legal adoption and publication of the revenue purpose statement, City's list of City utility accounts exempt per Iowa law from the franchise fee, and the City's verified utility customer service address list. To the extent allowed by law, the City will keep and maintain the customer service address list confidential and will not divulge the list to any person or entity, except to City employees as necessary, without

the consent of the Company or pursuant to a court order. The City will use due care to avoid disclosure, publication or dissemination of the customer service address list as it would with any nonpublic/confidential record. In the event that the City receives a request to disclose the customer service address list through the Iowa Public Records Act, civil or criminal investigative demand or other similar legal process, the City will provide the Company with notice of such request so that the Company may seek a protective order or other appropriate remedy. Upon the City's completion of its review of the customer service address list for franchise fee collection purposes, the City shall promptly return it to the Company. The City may retain one archival paper copy of the customer service list. The Company shall not commence assessing the franchise fee until it has received written approval of the amended tax rider tariff from the Iowa Utilities Board.

2. The franchise fee shall be applied to all customers' bills in accordance with *Code of Iowa* Section 364.2(F) and Section 423B.5. The amount of the franchise fee shall be shown separately on the utility bill to each customer. The City may grant exemptions or refunds of the franchise fee in accordance with the provisions of the *Code of Iowa*. The Company shall be relieved of its obligation to collect from its customers and remit to the City the franchise fee, if the franchise fee or the manner in which it is collected from customers is ruled to be unlawful by the Supreme Court of Iowa in a final, non-appealable decision.

3. The Company shall remit franchise fee revenues, minus uncollectible amounts, to the City no more frequently than on or before the last business day of the month following each calendar quarter. The Company shall notify the City at least 30 days in advance of any changes made in this collection schedule, including any alterations in the calendar quarters or any other changes in the remittance periods.

4. Upon receipt of a final and unappealable order or approval authorizing annexation or changes in the City limits, the City Clerk shall provide written notification to the Company of such annexation or change in the City limits, and the Company shall apply the franchise fee to the customers who are affected by the annexation or change in the City limits, commencing on an agreed-upon date which is not less than 60 days from receipt of the information required of the City to implement the franchise fee.

5. The Company shall not be liable for collecting franchise fees from any customer originally or subsequently identified, or incorrectly identified, by the City, as being subject to the franchise fee or being exempt from the imposition of the franchise fee. The City shall indemnify the Company from any claims arising out of the City incorrectly identifying or misidentifying any customer as being subject to the franchise fee or being exempt from the franchise fee.

6. The City shall not, pursuant to Section 480A.6 of the *Code of Iowa*, collect or recover any fee for the use of the City's right-of-way in compliance with Section 480A.3. The franchise fee shall be in lieu of any other payments to the City for the Company's use of streets, alleys, right-of-way and public places or other administrative or regulatory costs with regard to said franchise. The Company shall be exempt from any special tax, assessment, license or rental charge during the term of the franchise.

7. The City shall give the Company a minimum six-month notice prior to the request to implement any adjustment in the percentage of franchise fee to be collected pursuant to this chapter. The City agrees to modify the level of franchise fees imposed no more than once in any 12-month period. When any such ordinance increasing, decreasing, modifying or eliminating the franchise fee shall become effective, billings reflecting the change shall commence on an agreed-upon date which is not less than 60 days following written notice to the Company. The Company shall not be required to implement such new percentage unless and until it has received

appropriate official documentation of final action by the City Council. In no event shall the percentage of franchise fee exceed the statutory amount authorized by Iowa law.

8. The City shall be solely responsible for the proper use of any amounts collected as franchise fees as provided by law.

9. The City shall indemnify the Company from claims of any nature arising out of or related to the imposition of the franchise fee. In addition, the Company shall not be liable for collecting franchise fees from any customer originally or subsequently identified, or incorrectly identified, by the City as being subject to the franchise fee or being exempt from the imposition of the franchise fee.

110.07 NONEXCLUSIVE FRANCHISE. The franchise granted by this chapter to the Company shall not be exclusive. This franchise shall apply to and bind the City and the Company and their successors and assigns, provided that any assignment by the Company shall be subject to the approval of the Iowa Utilities Board.

110.08 EMINENT DOMAIN. The Company shall have the power to condemn private property under the right of eminent domain as provided in Section 364.2 of the *Code of Iowa* for the purpose of providing gas utilities to the extent necessary to serve a public use and in a reasonable relationship to an overall plan of distributing gas. The Company agrees to first notify the City prior to commencing any eminent domain proceedings within the City limits. Any exercise of the eminent domain powers shall be conducted in accordance with Iowa law.

110.09 TERM. The term of the franchise granted by this chapter and the rights granted hereunder shall continue for a period of 25 years from the adoption of the ordinance codified in this chapter. The City expressly reserves the right to terminate the franchise granted herein if the Company breaches any of the provisions of the franchise; provided, however, there shall be no termination if the Company shall correct the breach within 60 days following written notice provided by the City to do so.

110.10 MODIFICATION OF FRANCHISE FEE. The obligation to collect and remit the franchise fee imposed by this chapter will be modified as a result of the following conditions:

1. In the event any other person who is authorized to sell, if any other person or entity is authorized to sell gas to customers within the corporate limits of the City, and the City imposes a franchise fee, or its lawful equivalent, at a lesser rate than provided by this chapter, then the obligation of the Company to collect or remit franchise fees may be modified accordingly; or

2. In the event the City adds additional territory by annexation or consolidation and is unable or unwilling to impose a franchise fee upon all persons selling natural gas to customers within the additional territory, then the franchise fee imposed on the revenue from sales by the Company in the additional territory shall be that of the lowest fee being paid by any other retail seller of gas within the additional territory; or

3. The Iowa General Assembly enacts legislation, or any Iowa court issues a final judicial decision regarding franchise fees, or the Iowa Utilities Board issues a final non-appealable order that modifies, but does not repeal, the ability of the City to impose a franchise fee or the ability of the Company to collect and remit a franchise fee from City customers to the City. Within 60 days of the final franchise fee action, the City shall notify the Company and the parties shall meet to determine whether this chapter can be revised and, if so, how to revise the franchise fee on a continuing basis to meet the revised legal requirements.

110.11 REPEAL OR AMENDMENT OF FRANCHISE FEE OBLIGATION. The obligation to collect and remit the fee imposed by this chapter shall be deemed repealed or amended, effective as of the date specified below, with no liability therefor, if:

1. Any of the imposition, collection or remittance of the franchise fee is ruled to be unlawful by the Iowa Supreme Court, effective as of the date of such ruling or as may be specified by the Court; or
2. The Iowa General Assembly enacts legislation making imposition, collection or remittance of a franchise fee unlawful, effective as of the date specified by the statute; or
3. The Iowa Utilities Board or any successor agency denies the Company the right to impose, collect, or remit a franchise fee, provided such denial is affirmed by the Iowa Supreme Court, effective as of the date of the un-appealed final agency order or from the date of the decision of the Iowa Supreme Court.

110.12 AMENDMENT. This chapter sets forth and constitutes the entire agreement between Interstate Power and Light Company and the City, with respect to its rights contained herein and may not be superseded, modified, or otherwise amended without the approval and acceptance of the Company. Upon acceptance by the Company, this Ordinance shall supersede, abrogate and repeal the prior gas system Ordinance between the Company and the City as of the date the franchise is accepted by the Company. This chapter is intended to be and shall be construed as consistent with the reservation of local authority contained in the 25th Amendment to the Iowa Constitution granting municipalities home rule powers. To such end, any limitation on the power of the City is to be strictly construed.