

## CHAPTER 110

# NATURAL GAS FRANCHISE

110.01 Franchise Granted	110.09 Indemnification
110.02 Rights and Privileges	110.10 Information
110.03 Pipes and Mains	110.11 Applicable Regulations
110.04 Construction and Maintenance	110.12 Franchise Fee
110.05 Excavations	110.13 Management Fees
110.06 Utility Easements	110.14 Applicability
110.07 Relocation not Required	110.15 Termination
110.08 Relocation Reimbursement	110.16 Effective

**110.01 FRANCHISE GRANTED.** 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 Clarion, Iowa, (hereinafter called the “City,”) a gas distribution system, to furnish natural gas along, under and upon the right-of-way, 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. 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 twenty-five (25) year period from and after the effective date of this ordinance.†

**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* 2017, or as subsequently amended or changed.

**110.03 PIPES AND MAINS.** Company shall have the right to excavate in any public street for the purpose of laying, relaying, repairing or extending gas pipes, mains, conduits, and other facilities provided that the same shall be so placed as not to unreasonably interfere with any above or below-ground utility services or facilities which have been or may hereafter be located by or under authority of the City.

**110.04 CONSTRUCTION AND MAINTENANCE.** The Company shall, excluding facilities located in private easements (whether titled in Company exclusively or in Company and other entities), in accordance with Iowa law including Company’s tariff on file with and made effective by the Iowa Utilities Board as may subsequently be amended (“Tariff,”) at its cost and expense, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such a manner as the City may reasonably require for the purposes of facilitating the construction reconstruction, maintenance or repair of the street or alley. Relocation expenses for other hard surfaces, including pedestrian and non- motorized vehicle pathways, will be paid by the City. If the City has a reasonable alternative route for the street, right of way or alley or an alternative construction method, which would not cause the relocation of Company installations or would minimize the cost or expense of relocation of

---

† **EDITOR’S NOTE:** Ordinance No. 573, adopting a natural gas franchise for the City, was passed and adopted on April 17, 2017.

Company installations, the City and Company shall work together to consider said alternative route or construction method. The City shall be responsible for surveying and staking the right-of-way for City projects that require relocation of Company facilities. If requested the City shall provide, at no cost to the Company, copies of its relocation plan and profile and cross section drawings. If tree and vegetation removal must be completed by the City as part of the City's project and are necessary whether or not utility facilities must be relocated, the City at its own cost shall be responsible for said removals. If the timing of the tree/vegetation removal does not coincide with the Company facilities relocation schedule and Company must remove trees/vegetation that are included in the City's portion of the project, the City shall either remove the material at its cost or reimburse the Company for the expenses incurred to remove said vegetation or trees. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall attempt to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

**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. The Company in making such excavations shall, if required by ordinance, obtain a City permit therefore and provide City representatives with advance notice prior to the actual commencement of the work, and shall comply with all provisions and requirements of the City in its regulation of the use of City right of way in performing such work. In emergencies which require immediate excavation, the Company may proceed with the work without first applying for or obtaining the permit, provided, however, that Company shall apply for and obtain the excavation permit as soon as possible after commencing such emergency work. The Company shall comply with all City ordinances regarding paving cuts, placement of facilities and restoration of pavement and other public infrastructure. The Company shall replace the surface, restoring the condition as existed prior to the Company's excavation but shall not be required to improve or modify the 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. Company shall complete all repairs in a timely manner. Company agrees any replacement of road surface shall conform to current City ordinances regarding its depth and composition.

**110.06 UTILITY EASEMENTS.** The City's 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 sixty (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 the 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 ten (10) years.

**110.08 RELOCATION REIMBURSEMENT.** Pursuant to relocation of Company facilities as may be required here under, if the City orders or requests the Company to relocate its existing facilities or equipment in order to directly or indirectly facilitate the project of a commercial or private developer or other non-public entity, City shall reimburse or the City shall require the developer or non-public entity to reimburse the Company for the cost of such relocation as a precondition to relocation. The Company shall not be required to relocate in order to facilitate such private project at its expense

**110.09 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 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.

**110.10 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 the public 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. Upon receipt of a request from a third party for information concerning information about the Company's facilities within the City, the City will promptly submit same to Company. If the Company believes any of the information requested constitutes a trade secret which may otherwise be protected from public disclosure by state or federal law, or otherwise 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, then the Company shall provide the City with a written explanation of the basis for such assertion of confidentiality or exemption from disclosure within ten (10) days.

**110.11 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 and Iowa law. During the term of this franchise, the Company shall furnish natural gas 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.

**110.12 FRANCHISE FEE.** There is hereby imposed upon the customers a franchise fee of five (5) percent upon the gross revenues, minus uncollectible accounts, generated from sales of natural gas and distribution service by the Company within the corporate limits of the City. The franchise fee shall be remitted by the Company to the City on or before the last business day of the calendar quarter following the close of the calendar quarter in which the franchise fee is charged.

1. The City agrees to modify the level of franchise fees imposed only once in any 24-month period.
2. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following ninety (90) days of

receipt of information required of the City to implement the franchise fee, including the City's documentation of customer classes subject to or exempted from City-imposed franchise fee.

3. The City shall be solely responsible for identifying customer classes subject to or exempt from paying the City imposed franchise fee. The Company shall have no obligation to collect franchise fees from customers in annexed areas until and unless such ordinances have been provided to the Company by certified mail. The Company shall commence collecting franchise fees in the annexed areas no sooner than sixty (60) days after receiving annexation ordinances from the City.

4. The Company shall not, under any circumstances be required to return or refund any franchise fees that have been collected from customers and remitted to the City. In the event the Company is required to provide data or information in defense of the City's imposition of franchise fees or the Company is required to assist the City in identifying customers or calculating any franchise fee refunds for groups of or individual customers the City shall reimburse the Company for the expenses incurred by the Company to provide such data or information

**110.13 MANAGEMENT FEES.** Upon implementation of a franchise fee, the City shall not, pursuant to Chapter 480A.6 of the *Code of Iowa*, impose or charge Company right-of-way management fees for permits for Company construction, maintenance, repairs, excavation, pavement cutting or inspections of Company work sites and projects or related matters.

**110.14 APPLICABILITY.** This franchise shall apply to and bind the City and Company and their successors and assigns.

**110.15 TERMINATION.** Either City or Company ("party") may terminate this franchise if the other party shall be materially in breach of its provisions. Upon the occurrence of a material breach, the non-breaching party shall provide the breaching party with notification by certified mail specifying the alleged breach. The breaching party shall have sixty (60) days to cure the breach, unless it notifies the non-breaching party, and the parties agree upon a shorter or longer period for cure. If the breach is not cured within the cure period, the non-breaching party may terminate this franchise. A party shall not be considered to be in breach of this franchise if it has operated in compliance with state or federal law. A party shall not be considered to have breached this franchise if the alleged breach is the result of the actions of a third party or the other party.

**110.16 EFFECTIVE.** This ordinance and the rights and privileges herein granted shall become effective and binding upon its approval and passage in accordance with Iowa law and the written acceptance by the Company. The City shall provide Company with an original signed and sealed copy of this ordinance within 10 days of its final passage. The Company shall, within thirty (30) days after the City Council approval of this ordinance, file in the office of the clerk of the City, its acceptance in writing of all the provisions of this ordinance. Following City Council approval, this ordinance shall be published in accordance with the *Code of Iowa*. The effective date of this ordinance shall be the date of publication. In the event that the Company does not file its written acceptance of this ordinance within thirty (30) days after its approval by the City Council, this ordinance shall be void and of no effect.

*(Ch. 110 – Ord. 573 – May 17 Supp.)*