

## CHAPTER 110

# NATURAL GAS FRANCHISE

110.01 Grant of Franchise

110.02 State Code Restrictions and Limitations

110.03 Use of Public Ways

110.04 Relocation of Installations

110.05 Excavations

110.06 Indemnification

110.07 Maintain Facilities

110.08 Quantity and Quality

110.09 Franchise Fee

110.10 Franchise Effective

**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 Perry, Iowa, hereinafter called 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. 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 (20) year period from and after the effective date of the ordinance codified by this chapter, provided, however, that there may be a re-evaluation prior to the end of year 10, with the opportunity for both parties to request amendments. If neither party requests such re-evaluation by means of a written notice to the other party during the last 60 days of year 10, this franchise will continue without change for the remaining 10 years. If the parties are unable to agree to amend the ordinance, then the City may terminate this franchise agreement at the end of year 10.

**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, or as subsequently amended or changed.

**110.03 USE OF PUBLIC WAYS.** 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 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 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 the City has a reasonable alternative route for the street, alley or public improvements, which alternative route would not cause the relocation of the Company installations, the City shall consider said alternative route. If relocation of the Company facilities could be avoided by relocating other franchisee's or facility user's equipment and facilities, and said other franchisee's or user's cost of relocation is less than the Company's cost of relocation, the City shall consider the route that requires the other franchisees or users to relocate. 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.

**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 the original condition as nearly as practicable.

**110.06 INDEMNIFICATION.** Company shall indemnify and save harmless 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 Company's negligence in construction, reconstruction, excavation, operation or maintenance of the gas utilities 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 arising from the negligence of the City, its officers, employees or agents.

**110.07 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.

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

**110.09 FRANCHISE FEE.** In consideration of the right to construct and maintain such natural gas facilities and equipment along, upon, across and under the streets, highways, avenues, alleys, bridges and public places of the City there is hereby imposed upon the Company and, by its acceptance of this franchise, it agrees that there shall be collected from the Company's retail customers within the corporate limits of the City (excluding, however, the sale of natural gas to the City as a customer, St. Patrick's Catholic School, public

school facilities and Dallas County facilities which are or may in the future be located within the Perry corporate limits) and remitted by the Company to the City, a franchise fee in the amount equal to two percent (2%) of the gross receipts derived by the Company from the transmission or distribution of natural gas to customers commencing with gross receipts, less uncollectible accounts, received on or after July 1, 2005. The City may increase, decrease or eliminate the franchise fee. Any resolution revising or eliminating the franchise fee shall become effective and billings shall commence on an agreed upon date which is no less than 60 days following written notice to the Company. For gas transportation customers, the franchise fee shall be equal to two percent (2%) of any billings issued by the Company for natural gas transportation, delivery services and other tariff services provided by the Company for facilities located within the corporate limits of the City. The Company shall not collect nor remit to the City any franchise fees on natural gas sold by the Company or any other provider to any transport customer. The Company will remit franchise fee revenues to the City on or before the last business day of the month following each quarter. The quarters are January, February and March; April, May and June; July, August and September; October, November and December. The City shall provide to the company copies of annexation ordinances in a timely manner to ensure appropriate franchise fee collection from customers within the corporate limits of the City. The City may, by ordinance, exempt certain types of sales from being charged the franchise fee. The obligation to pay the fee imposed by this section is modified if:

1. The City permits any other person to sell natural gas to City consumers and pay a franchise fee or its lawful equivalent at a lesser rate than provided in this section, in which case the Company shall pay at the lesser rate; or
2. The City adds additional territory by annexation or consolidation and is unable to lawfully impose the franchise fee upon any person selling natural gas to consumers within the additional territory, in which case the franchise fee on the revenue from sales by Company in the additional territory shall be equal to that of the lowest fee being paid by any other person selling natural gas within the additional area.

The further provisions of this section to the contrary notwithstanding, the Company shall be relieved of its obligation to pay to the City the franchise fee, effective as of the date specified below, with no liability therefor under each or any of the following conditions:

1. The collection or payment of the franchise fee is ruled to be unlawful by the Supreme Court of Iowa, effective as of the date specified by that Court.

2. The Iowa General Assembly enacts legislation which makes the collection or payment of the franchise fee unlawful, effective as of the date lawfully specified by the General Assembly.
3. The Iowa Utilities Board, or its successor agency, denies the Company the right to collect the franchise fee from its customers provided such denial is affirmed by the Supreme Court of Iowa, effective as of the date of the agency order from which the appeal is taken.

**110.10 FRANCHISE EFFECTIVE.** This chapter 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 Company shall, within 30 days after the City Council approval of the ordinance codified by this chapter file in the office of the Clerk of the City, its acceptance in writing of all terms and provisions of this chapter. Following Council approval, the ordinance shall be published in the *Perry Chief*, the official newspaper for the City of Perry, Iowa. The effective date of the ordinance shall be the date of the publication. In the event that MidAmerican Energy Company does not file its written acceptance of the ordinance within 30 days after its approval by the Council, the ordinance shall be void and of no effect.

**EDITOR'S NOTE**

Ordinance No. 834 adopting a natural gas franchise for the City was passed and adopted on April 4, 2005.

[The next page is 591]