

CHAPTER 110

NATURAL GAS FRANCHISE

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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 Merrill, 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 remain in effective through April 25, 2020.[†] The City reserves the right to terminate this franchise on December 31, 2013, by providing written notice to the Company at least one hundred and eighty (180) days prior to December 31, 2013.

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* 2001, 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 selecting 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 selecting 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

[†] **EDITOR'S NOTE:** Ordinance No. 2003-1, adopting a natural gas franchise for the City, was passed and adopted on June 16, 2003.

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.

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