

CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 FRANCHISE GRANTED. Black Hills/Iowa Gas Utility Company, LLC, d/b/a Black Hills Energy, its lessees, successors and assigns, hereinafter referred to as Grantee are hereby granted a nonexclusive authority, for a period of twenty-five (25) years, to erect, construct, maintain and operate a gas distribution system, and any and all necessary mains, pipes, services and other appurtenances and equipment thereunto appertaining in, upon, over, across and long the streets, alleys, bridges and public places in the City for the transmission, distribution and sale of natural and/or mixed gas for lighting, heating, industrial and all other uses and purposes in the City and for the purpose of transmitting, transporting and conveying such gas into, through or beyond the immediate limits of the City to other cities and customers.

110.02 EXCAVATIONS. Whenever the Grantee, in the construction or maintenance of its system or in the installation of any extension thereto, shall cut into or take up any pavement or make any excavation in any street, avenue, alley or public place within the corporate limits of the City, the same shall be done in a manner so as not to unreasonably interfere with the use of such thoroughfares by the public. The Grantee shall use such safeguards as may be necessary to prevent injury to persons or property during such construction work and upon its completion, all pavement shall be replaced in as good condition as it was before taken up. All excavations shall be refilled and all obstructions shall be removed at the expense of the Grantee and to the reasonable satisfaction of the City. In the event that the Grantee shall fail to comply with the provisions of this section after having been given reasonable notice and adequate time to repair the excavation, the City may do such work as may be needed to properly repair said thoroughfare and the cost thereof shall be repaid to the City by the Grantee.

110.03 INTERFERENCE WITH PUBLIC IMPROVEMENTS. The Grantee in constructing and maintaining said gas distribution system, and in entering and using said streets, highways, avenues, alleys and public places in the City and in laying and installing mains, services, piping and related appurtenances and equipment, unless otherwise permitted by City, shall not in any manner interfere with or injure any improvement which the City now has or may hereafter have upon any of its streets, alleys, highways or public places.

110.04 OPERATION STANDARDS. Grantee will from time to time during the term of the franchise make such enlargements and extensions of its distribution system as the business of the Grantee and the growth of the City justify, in accordance with its rules and regulations relating to customer connections and main and service line extensions currently in effect and on file from time to time with the State Utilities Board or other competent authority having jurisdiction in the premises; provided, however, no obligation shall extend to, or be binding

upon, the Grantee to construct or extend its mains or furnish natural gas or natural gas service within the City if Grantee is, for any reason, unable to obtain delivery of natural gas at or near the corporate limits of the City or an adequate supply thereof to warrant the construction or extension of its mains, for the furnishing of such natural gas or gas service; and provided further, that when the amount of natural gas supplied to Grantee at or near the limits of the City is insufficient to meet the additional firm requirements of connected or new customers, Grantee shall have the right to prescribe reasonable rules and regulations for allocating the available supply of natural gas for such additional firm requirements to domestic, commercial and industrial customers in that order of priority.

110.05 REGULATION BY CITY. Grantee agrees for and on behalf of itself, its lessees, successors and assigns that all authority and rights in this chapter contained shall at all times be subject to all rights, power and authority now or hereafter possessed by the City to regulate the manner in which Grantee shall use the streets, alleys, bridges and public places of the City and concerning the manner in which Grantee shall use and enjoy the franchise herein granted.

110.06 QUALITY OF GAS. The Grantee shall, at all times, maintain under adequate pressure a supply of clean, standard gas of the British Thermal Unit heating value of not less than that prescribed in its Rules and Regulations relating thereto in effect and on file from time to time with the State Utilities Board or other competent authority having jurisdiction in the premises.

110.07 METERS. The Grantee, its successors and assigns shall furnish and install all meters at its own expense, and shall provide the service line to buildings as set forth in the Grantee's tariff filed with the Iowa Utilities Board.

110.08 SYSTEM REQUIREMENTS. The system authorized by this chapter shall be of sufficient capacity to supply all reasonable demands of the City and the inhabitants thereof and shall be kept in compliance with all state and federal pipeline safety standards.

110.09 NONEXCLUSIVE. The franchise granted by this chapter shall not be exclusive.

110.10 CONTINUOUS SERVICE. Service to be rendered by the Grantee under this chapter shall be continuous unless prevented from so doing by fire, acts of God, unavoidable accidents or casualties, or reasonable interruptions necessary to properly service the Grantee's equipment, and in such event service shall be resumed as quickly as is reasonably possible.

110.11 FRANCHISE FEE.

1. In its monthly billing The Grantee shall include a franchise fee of one percent (1%) on the gross receipts from the sale of natural gas to the Grantee's natural gas customers located within the corporate limits of the City.
2. The franchise fee shall be applied to all customers' bills in accordance with Iowa Code Chapter 364.2 and 423B.5. The amount of the franchise fee shall be shown separately on the utility bill to each customer.
3. The Grantee shall commence collecting the franchise fees on or before the first Grantee billing cycle of the first calendar month following ninety (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, signed Nondisclosure Agreement pertaining to the protection of the confidentiality of utility service address information provided by the Grantee to the City, and the City's verified utility customer service address list. The Grantee shall not commence assessing the franchise fee until it has received written approval of the amended tax rider tariff from the Iowa Utilities Board.

4. Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the corporate limits of said City, the City Clerk shall provide written notification by certified mail to an officer of Grantee of such annexation or change in the limits of said City, and the Grantee shall apply the franchise fee to its customers who are affected by the annexation or change in the corporate limits of the City, commencing on an agreed upon date which is not less than ninety (90) days from receipt of the information required of the City to implement the franchise fee. The Grantee shall have no obligation to collect franchise fees from customers in any annexed area until and unless the following have all been provided to the Grantee by certified mail: such final and unappealable orders or approvals, the City's list of City utility accounts exempt from the franchise fee in the annexed area, and the City's verified utility customer service address list for the annexed area.

5. The City shall indemnify the Grantee from claims of any nature arising out of or related to the imposition and collection of the franchise fee. In addition, the Grantee 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 franchise fees.

6. The Grantee 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 year quarter. Grantee shall notify City at least thirty (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.

7. The City shall give the Grantee a minimum 6-month notice prior to the request to implement any adjustment in the percentage of franchise fee to be collected pursuant to this section. The City agrees to modify the level of franchise fees imposed only once in any 24-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 ninety (90) days following written notice to the Grantee by certified mail. The Grantee shall not be required to implement such new percentage unless and until it determines that it has received appropriate official documentation of final action by the City Council. In no event may 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, and shall only use such fees as collected for a purpose as allowed by applicable law.

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

or individual customers, the City shall reimburse the Grantee for the expenses incurred by the Grantee to provide such data or information.

10. Within ten (10) days of the date of this ordinance, the City shall provide the Grantee with a map of its corporate limits (the "Map"). The Map shall be of sufficient detail to assist Grantee in determining whether their customers reside within the City's corporate limits. The Map along with Grantee's Geographic Information System ("GIS") mapping information shall serve as a basis for determining Grantee's obligation hereunder to collect and pay the franchise fee from customers; provided, however, that if the City's corporate limits are changed by annexation or otherwise, it shall be the City's sole responsibility to (a) update the Map so that such changes are included therein, and (b) provide the updated Map to the Grantee. Grantee's obligation to collect and pay the franchise fee from customers within an annexed area shall not commence until the later: (a) of sixty (60) days after such Grantee's receipt from the City of an updated Map including such annexed area, or (b) such time after such Grantee's receipt from the City of an updated Map including such annexed area as is reasonably necessary for such Grantee to identify the customers in the annexed area obligated to pay the franchise fee.

11. The City shall provide copies of annexation ordinances to Grantee on a timely basis to ensure appropriate franchise fee collection from customers within the corporate limits of the City as set forth herein.

12. The City shall have access to and the right to examine, during normal business hours, Grantee's books, receipts, files, records and documents as is reasonably necessary to verify the accuracy of payments due hereunder; provided, that the City shall not exercise such right more than twice per calendar year. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery such that any under-payment by a Grantee shall be paid within thirty (30) days of recalculation of the amount due, and any over-payment by a Grantee shall be deducted from the next payment of such franchise fee due by such Grantee to the City; provided, that neither party shall have the obligation to correct a mistake that is discovered more than one (1) year after the occurrence thereof.

13. Collection of the franchise fee shall cease at the earlier of the modification or repeal of the franchise fee or the end of the franchise term.

A. The obligation to collect and remit the fee imposed by this chapter is modified if:

(6) Any other person is authorized to sell natural gas to customers within the corporate limits of the City and the City imposes a franchise fee or its lawful equivalent at zero or a lesser rate than provided in this chapter, in which case the obligation of Grantee to collect and remit franchise fee shall be modified to zero or the lesser rate; or

(7) The City adds additional territory by annexation or consolidation and is unable or unwilling to impose the franchise fee upon all persons selling natural gas to consumers within the additional territory, in which case the

franchise fee imposed on the revenue from sales by Grantee in the additional territory shall be zero or equal to that of the lowest fee being paid by any other retail seller of natural gas within the City; or

(8) 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 nonappealable order (collectively, “Final Franchise Fee Action”) that modifies, but does not repeal, the ability of the City to impose a franchise fee or the ability of Grantee to collect from City customers and remit franchise fees to City. Within sixty (60) days of Final Franchise Fee Action, the City shall notify Grantee 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 revised legal requirements. After Final Franchise Fee Action and until passage by the City of revisions to the franchise fee ordinance, Grantee may temporarily discontinue collection and remittance of the franchise fee if in its sole opinion it believes it is required to do so in order to comply with revised legal requirements.

B. The obligation to collect and remit the fee imposed by this chapter is repealed, effective as of the date specified in the franchise ordinance with no liability therefor, if:

(1) Any of the imposition, collection or remittance of a franchise fee is ruled to be unlawful by the Supreme Court of Iowa, effective as of the date of such ruling or as may be specified by that Court; or

(9) The Iowa General Assembly enacts legislation making imposition, collection or remittance of a franchise fee unlawful, effective as of the date lawfully specified by the General Assembly; or

(10) The Iowa Utilities Board, or any successor agency, denies the Grantee the right to impose, collect or remit a franchise fee provided such denial is affirmed by the Supreme Court of Iowa, effective as of the date of the final agency order from which the appeal is taken.

14. The franchise fee shall be in lieu of any other payments to the City for the Grantee’s use of streets, alleys and public places in the said City and other administrative or regulatory costs with regard to said franchise; and said mains, services, piping and related appurtenances and equipment for the distribution of natural gas under the streets, alleys and public places in the said City to supply

individuals, corporations, communities, and municipalities both inside and outside of said City with natural gas shall be exempt from any special tax, assessment, license or rental charge during the entire term of this chapter.

15. The City shall not, pursuant to Chapter 480A.6 of the Code of Iowa, impose or charge right-of-way management fees upon the Grantee or fees for permits for Grantee construction, maintenance, repairs, excavation, pavement cutting or inspections of Grantee work sites and projects or related matters.

110.12 TERM OF FRANCHISE. The term of the franchise granted by this chapter and the rights thereunder shall continue for the period of twenty-five (25) years from the after its acceptance by the Grantee, as herein provided. †

110.13 ENTIRE AGREEMENT. This chapter sets forth and constitutes the entire agreement between the Grantee and the City with respect to the rights contained herein, and may not be superseded, modified or otherwise amended without the approval and acceptance of the Grantee. Upon written acceptance by the Grantee, this franchise ordinance shall supersede, abrogate and repeal the prior natural gas system ordinance between the Grantee and the City as of the date this franchise ordinance is accepted by the Grantee. Notwithstanding the foregoing, in no event shall the City enact any ordinance or place any limitations, either operationally or through the assessment of fees, other than those approved and accepted by the Grantee with this chapter, that create additional burdens upon the Grantee or which delay utility operations.

(Ch. 110-Ord. 2-2013 – Mar. 13 Supp.)

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† **EDITOR'S NOTE:** Ordinance No. 2-2013, adopting a natural gas franchise for the City, was passed and adopted on February 26, 2013.