

CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 FRANCHISE GRANTED. MidAmerican Energy Company and Black Hills Energy, their lessees, successors and assigns, hereinafter referred to as Grantees, have previously been 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 along 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 or purposes in the City for the purpose of transmitting, transporting and conveying such gas into, through or beyond the immediate limits of said City to other cities and customers.

110.02 EXCAVATION OF STREETS. 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 shall 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 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, 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 OTHER 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, 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 agrees for and on behalf of itself, its lessees, successors and assigns, that for and during the term and period of this grant, it will maintain in the City an adequate, modern, standard and sufficient gas system and equipment and to maintain and operate the same in a modern and adequate fashion. 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, that 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 naturally 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 residential, commercial and industrial customers in that order of priority.

110.05 POWER AND AUTHORITY OF 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, powers 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. The Grantee shall, at all times, maintain an adequate pressure and supply of clean, standard gas of the British Thermal Unit heating value of not less than that prescribed in the 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. Should the British Thermal Units fall below the limitation set forth in the appropriate rules and regulations, the rate then in effect shall be automatically and correspondingly lowered and reduced during any period or periods of time in which such lower British Thermal Unit shall be furnished. The City shall have the privilege of requesting Grantee to furnish satisfactory proof of British Thermal Unit content of the gas.

110.07 INDEMNIFICATION. The Grantee shall hold the City harmless from any and all claims and actions, litigation or damage arising out of the passage of the

ordinance codified by this chapter or of the construction, erection, installation, maintenance or operation of its properties operated by authority of this chapter within the corporate limits of the City or the negligence of its employees in the operation thereof, including the Court costs and reasonable attorney fees in making defense against such claims. A copy of the process served upon the City shall be served by the City upon the Grantee. The Grantee shall have the right to defend in the name of the City and to employ counsel for such purpose.

110.08 DEFAULT. If the Grantee shall be in default in the performance of any of the terms and conditions of this chapter and shall continue in default for more than thirty (30) days after receiving notice from the City of such default, the City may, by ordinance duly passed and adopted, terminate all rights granted under this chapter to the Grantee. The said notice of default shall specify the provision or provisions in the performance of which it is claimed the Grantee is in default. Said notice shall be in writing and served in the manner provided by the laws of the State for the service of original notices in civil actions.

110.09 TERM OF FRANCHISE. The right and authority previously granted is nonexclusive and shall continue for a period of twenty-five (25) years from and after the effective date of the ordinance granting the nonexclusive franchise to the respective Grantee.