

ORDINANCE NO. 05-O-2016-2017

AN ORDINANCE REPEALING ORDINANCE No. 09-O-2012-2013 AND GRANTING TO MIDAMERICAN ENERGY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND NON-EXCLUSIVE FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE IN THE CITY OF STORM LAKE, IOWA, AN ELECTRIC SYSTEM AND COMMUNICATIONS FACILITIES AND TO FURNISH AND SELL ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS FOR A PERIOD OF 20 YEARS.

BE IT ENACTED by the City Council of the City of Storm Lake, Iowa:

Section 1. Ordinance No. 09-O-2012-2013 is hereby repealed and replaced.

Section 2. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called "Company," and to its successors and assigns the right and non-exclusive franchise to acquire, construct, erect, maintain and operate in the City of Storm Lake, Iowa, hereinafter called the "City," a system for the transmission and distribution of electric energy and communications signals along, under, over and upon the streets, avenues, alleys and public places to serve customers within and without the City, and to furnish and sell electric energy to the City and its inhabitants. The term of this franchise is twenty (20) years from and after the effective date of this ordinance. The Company is granted the right to appropriate and condemn private property if each such use is approved by the City Council prior to the exercise of powers of eminent domain in regard to a specific project or projects.

Section 3. 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.

Section 4. The Company shall have the right to erect all necessary poles and to place thereon the necessary wires, fixtures and accessories as well as excavate and bury conductors for the distribution of electric energy and communications signals in and through the City, but all said conduits and poles shall be 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. The Company is authorized and empowered to cut and trim at its expense, any trees extending into any right of way, street, alley, or public ground so as to prevent limbs or branches from interfering with the wires and facilities of the Company. Tree trimming will be done to current nationally accepted standards and practices.

Section 5. 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 select 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, the City shall select the route which 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.

Section 6. In making excavations in any streets, avenues, alleys and public places for the excavation of conduits or the erection of poles and wires or other appliances, the Company shall not unreasonably obstruct the use of the streets, and shall replace the surface, restoring the original condition as nearly as practicable. The Company shall be required to restore or modify public right of way, sidewalks or other areas disrupted by the Company project to a condition that meets all current standards, codes, and regulations, federal, state, or local. Company agrees any replacement of road surface shall conform to current City code regarding its depth and composition.

Section 7. 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 in the previous five (5) years.

Section 8. Pursuant to relocation of Company facilities as may be required by Sections 5, 6 and 7, if the City orders or requests the Company to relocate its existing facilities or equipment in order to facilitate the project of a commercial or private developer or other non-public entity, the 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 of its existing facilities or equipment. The Company shall not be required to relocate in order to facilitate such private project at its expense.

Section 9. 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, caused or occasioned in whole or in part, by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the electric 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 arising from the negligence of the City, its officers, employees or agents.

Section 10. The Company shall construct, operate and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

Section 11. During the term of this franchise, the Company shall furnish electric energy in the quantity and quality consistent with applicable Iowa laws and regulations.

Section 12. All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

Section 13. The use of the streets and right of way by the Company shall be subject to reasonable regulations by the City Council not inconsistent with this franchise and shall be

consistent with the use of the streets and right of way for proper street and right of way purposes by the public, by the City, by the public utilities, and others; and, in the case of public grounds, shall be consistent with the use of such public grounds by the City and by the public for the purpose for which they are used and intended. This Ordinance and grant of franchise is not intended in any way to affect or modify or surrender any powers now held by the City or which may hereafter be granted to the City by the State legislature.

Section 14. There is hereby imposed upon and shall be collected from the retail electric customers of the Company receiving service, pursuant to the tariff, located within the corporate limits of the City and remitted by the Company to the city, a franchise fee of three percent (3%) of the gross revenue generated from the sales, minus uncollectible amounts, within the corporate limits of the City from and after the effective date of this Ordinance until July 1, 2017, and a franchise fee of five percent (5%) of the gross revenue generated from the sales, minus uncollectible amounts, within the corporate limits of the City from and after July 1, 2017. Franchise fees shall be remitted on or before the last business day of the month following the close of the calendar quarter in which fees were charged.

Section 15. This Ordinance and the rights and privileges herein granted shall not become effective or binding until this Ordinance has been approved in accordance with Iowa law. The cost and expense of any municipal election relating to the ordinance and franchise shall be paid by the Company. Within thirty (30) days after the approval of this Ordinance, the Company shall file in the office of the clerk of City its acceptance in writing of all the terms and provisions of this Ordinance.

Section 16. Upon the effective date of this Ordinance, all prior electric franchises granted to the Company to furnish electric service to the City and its inhabitants are hereby repealed and all other ordinances or parts of ordinances in conflict herewith are also hereby repealed.

This Ordinance shall be effective once approved in accord with Iowa law.

PASSED AND APPROVED this 3rd day of April, 2017.

CITY OF STORM LAKE, IOWA

By: 
Jon F. Kruse, Mayor

ATTEST:


Mayra A. Martinez, City Clerk