

ORDINANCE NO. 06-O-2016-2017

AN ORDINANCE REPEALING ORDINANCE NO. 02-O-2007-2008, AS AMENDED BY ORDINANCE NO. 10-O-2012-2013, AND GRANTING TO INTERSTATE POWER & LIGHT COMPANY (“COMPANY”), ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE A NATURAL GAS DISTRIBUTION SYSTEM IN THE CITY OF STORM LAKE, BUENA VISTA COUNTY, IOWA, AND THE RIGHT TO LAY DOWN, OPERATE AND MAINTAIN THE NECESSARY PIPES, MAINS, AND OTHER CONDUCTORS AND APPLIANCES IN, ALONG AND UNDER THE STREETS, AVENUES, ALLEYS AND PUBLIC PLACES OF THE CITY OF STORM LAKE, BUENA VISTA COUNTY, IOWA, AS NOW OR HEREAFTER CONSTITUTED FOR A PERIOD OF TWENTY (20) YEARS, FOR THE PURPOSE OF DISTRIBUTING, SUPPLYING AND SELLING NATURAL GAS TO THE CITY AND ITS INHABITANTS THEREOF AND TO PERSONS AND CORPORATIONS BEYOND THE LIMITS THEREOF.

BE IT ORDAINED by the City Council of the City of Storm Lake, Buena Vista County, Iowa:

Section 1. Ordinance No. 02-O-2007-2008, as amended by Ordinance No. 10-O-2012-2013, is hereby repealed and replaced.

Section 2. There is hereby granted to **INTERSTATE POWER & LIGHT COMPANY**, herein referred to as the “Company,” its successors and assigns, the right, franchise and privilege for the term of twenty (20) years from and after the passage, adoption, approval and acceptance of this Ordinance, to lay down, maintain and operate the necessary pipes, mains and other conductors and appliances in, along and under the streets, avenues, alleys and public places in the City of Storm Lake, Buena Vista County, Iowa as now or hereafter constituted, for the purpose of distributing, supplying and selling gas to said City and the residents thereof and to persons and corporations beyond the limits thereof; also the right of eminent domain as provided in Section 364.2 of the Code of Iowa. The term “gas” as used in this franchise shall be construed to mean natural gas only.

Section 3. The mains and pipes of the Company must be so placed as not to interfere unnecessarily with water pipes, drains, sewers and fire plugs which have been or may hereafter be placed in any street, alley and public places in said City nor unnecessarily interfere with the proper use of the same, including ordinary drainage, or with the sewers, underground pipe and other property of the City, and the Company, its successors and assigns shall hold the City free and harmless from all damages arising from the negligent acts or omissions of the Company in the laying down, operation and maintenance of said natural gas distribution system.

Section 4. In making any excavations in any street, alley, avenue or public place, Company, its successors and assigns, shall protect the site while work is in progress by guards, barriers or signals, shall not unnecessarily obstruct the use of the streets, shall back fill all openings in such manner as to prevent settling or depressions in surface, and shall replace the surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practical and if defects are caused shall repair the same.

Section 5. The Company shall, at its cost and expense, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such a 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 orders or requests the Company to relocate its existing facilities or equipment for the primary benefit of a commercial or private project, or as the result of the initial request of a commercial or private developer or other non-public entity, the Company shall receive payment for the cost of such relocation as a precondition to relocating its existing facilities or equipment. The City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause the Company unreasonable additional expense in exercising its authority under this section. The City shall also provide a reasonable alternative location for the Company's facilities. The City shall give the Company reasonable advance written notice to vacate a public right-of-way. Vacating a public right-of-way shall not deprive the Company of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same are paid to the Company.

Section 6. Said Company, its successors and assigns, shall throughout the term of the franchise distribute to all consumers gas of good quality and shall furnish uninterrupted service, except as interruptible service may be specifically contracted for with consumers; provided, however, that any prevention of service caused by fire, act of God or unavoidable event or accident shall not be a breach of this condition if the Company resumes service as quickly as is reasonably practical after the happening of the act causing the interruption.

Section 7. The franchise granted by this Ordinance shall not be exclusive.

Section 8. There is hereby imposed a franchise fee of three percent (3%) upon the gross revenue generated from sales of natural gas by the Company within the corporate limits of the City from the effective date of this ordinance to July 1, 2017, and a franchise fee of five percent (5%) upon the gross revenue generated from sales of natural gas by the Company within the corporate limits of the City from and after July 1, 2017. The franchise fee shall be remitted by the Company to the City on or before the last business day of the calendar month following close of the calendar quarter in which the franchise fee is charged, with the first remittance due July 31, 2017. City shall be solely responsible for the proper use of any amounts collected as a franchise fee, and shall only use such fees collected for purposes as allowed by applicable law.

Section 9. The franchise fee shall be applied to all customers' bills in accordance with Iowa Code. The Company shall not grant exemptions or refunds of the franchise fee beyond that granted by the Code of Iowa. If at any time the Iowa Utilities Board or another authority having proper jurisdiction, prohibits the collection or payment of a franchise fee, the Company shall be relieved of its obligation to collect and pay to the City the franchise fee.

Section 10. City agrees that Company's obligations related to the franchise fee are limited to those obligations set forth in Sections 8 and 9 herein. City further agrees to bear all costs (including attorney fees), and to defend, indemnify and hold Company harmless from any and all liability, claims, or causes of action associated with disputes related to the billings and/or collection of the franchise fee, provided that the City shall not be obligated to bear such costs or to defend, indemnify and hold Company harmless if such disputes arise from claims or inaccurate billings by the Company.

Section 11. Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the limits of said City, the City Clerk shall provide written notification to an officer of Company of such annexation or change in the limits of said City, and the Company shall apply the franchise fee to its customers who are affected by the annexation or change in the limits of the City, commencing six (6) months from receipt of the written notice.

Section 12. The sum of such additional charges for the franchise fee and any additional charges related to Sections 8 and 9 above shall be shown separately on the utility bill to each customer.

Section 13. That said franchise fee shall be in lieu of any other payments to the City for the Company's use of streets, avenues, alleys and public places in the said City and other administrative or regulatory costs with regard to said franchise; and said pipes, mains, and other conductor and appliances in, along and under the streets, avenues, alleys and public places in the said City for the purpose of distributing, supplying and selling gas to said City and the residents thereof and to persons and corporations beyond the limits thereof shall be exempt from any special tax, assessment, license or rental charge during the entire term of this ordinance.

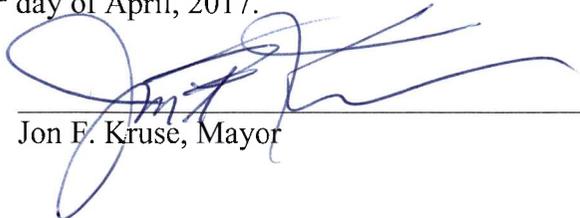
Section 14. The term of the franchise granted by this Ordinance and the rights granted thereunder shall continue for the period of twenty (20) years from and after its acceptance by said Company as herein provided.

Section 15. The expense of the publication of this Ordinance shall be paid by the Company.

Section 16. The franchise granted by this Ordinance shall be conditioned upon acceptance by the Company in writing. The acceptance shall be filed with the City Clerk within thirty (30) days from passage of this Ordinance.

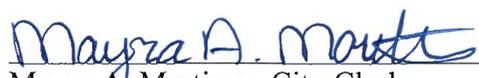
Section 17. This Ordinance sets forth and constitutes the entire agreement between the Company and the City of Storm Lake with respect to the rights contained herein, and may not be superseded, modified or otherwise amended without the approval and acceptance of the Company. Upon acceptance by the Company, this Ordinance shall supersede, abrogate and repeal the prior gas system ordinance between the Company and the City of Storm Lake as of the date this Ordinance is accepted by the Company. Notwithstanding the foregoing, in no event shall the City of Storm Lake enact any ordinance or place any limitations, either operationally or through the assessment of fees other than those approved and accepted by the Company within this Ordinance, that create additional burdens upon the Company, or which delay utility operations.

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



Jon E. Kruse, Mayor

ATTEST:



Mayra A. Martinez, City Clerk