

CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 FRANCHISE GRANTED. The City hereby grants a nonexclusive franchise to Peoples Natural Gas, a division of UtiliCorp United Inc., a Delaware corporation, (hereinafter called "Grantee"), its lessees, successors and assigns. This repeals the franchise previously granted by Ordinance No. 408. Grantee is hereby granted the right, privilege, franchise, permission and authority to construct, maintain, operate and extend in the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are now within the present or future limits of the City, a natural gas distribution system for the purpose of supplying natural gas or processed gas for all purposes to the inhabitants of the City and consumers in the vicinity thereof, and for the distribution of natural gas from or through the City to points beyond the limits thereof. The City further grants Grantee the right, permission and authority to lay, install, maintain and operate over, across and along all of the streets, avenues, alleys, bridges, public rights-of-way and public places of the City all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of the City and in carrying on such business.

110.02 TERM. The rights and privileges granted by this franchise shall remain in effect for a period of fifteen (15) years from and after the effective date of the ordinance codified by this chapter and for an additional ten (10) years thereafter unless the City provides written notice as provided herein to Grantee at least one hundred and eighty (180) days prior to the expiration of the initial term.

110.03 RULES AND REGULATIONS. This franchise is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by the laws of the State. The rates to be charged by Grantee for service within the present or future corporate limits of the City and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided, however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes Grantee from

recovering from its customers any cost associated with services provided hereunder, then Grantee and the City shall renegotiate the terms of this franchise in accordance with the action taken so as to allow Grantee to be made whole economically. In determining the rights and duties of the Grantee, the terms of this chapter shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the City.

110.04 CONSTRUCTION. Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of the City and to the general public as is reasonably necessary; and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good a condition as existed immediately prior to excavation. 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 replace any street or backfill to meet, at a minimum, the specifications provided in the "Street Excavations Specifications for Surface Restoration of the City of Glenwood Public Works Department" dated March 1998, and as may from time to time be amended. The Grantee shall use such safeguards as may be necessary to prevent the 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 and approval 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.

110.05 MAINTENANCE. Grantee agrees that for the term of this grant, it will use its best efforts to maintain facilities and equipment sufficient to meet the current and future energy requirements of the City, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance, except that in emergency situations, Grantee shall take immediate unilateral actions as it determines are necessary to protect the public health, safety and welfare; in which case, Grantee shall notify the City as soon as reasonably possible.

110.06 EXTENSION OF COMPANY FACILITIES. Upon receipt and acceptance of a valid application for service, Grantee shall make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of the City.

110.07 RELOCATION OF COMPANY FACILITIES. If the City elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from the

City, shall remove and relocate its facilities or equipment situated in the public rights-of-way, if such removal is necessary to prevent interference and not merely for the convenience of the City, at the cost and expense of Grantee. If the City orders or requests Grantee to relocate its facilities or equipment primarily for non-public purposes or the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and not merely for the convenience of the City or other right-of-way user, Grantee shall receive reimbursement for the cost of such relocation as a precondition to relocating its facilities or equipment. The City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause Grantee unreasonable additional expense in exercising its authority under this section. The City shall also provide a reasonable alternative location for Grantee's facilities.

110.08 QUALITY OF SERVICE. 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 Iowa Utilities Board.

110.09 ADEQUATE SYSTEM REQUIRED. Grantee agrees for and in behalf of itself, its lessees, successors and assigns that for and during the term and period of this grant and all extensions thereof, it will maintain in the City an adequate, modern, standard and sufficient gas system and appurtenances, 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 Iowa Utilities Board, 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 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; provided further, that when the amount of natural gas supplied to Grantee at or near the City limits is insufficient to meet the additional firm requirements of connected or new consumers, 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.

110.10 CONFIDENTIAL INFORMATION. The City acknowledges that certain information it might request pursuant to this franchise may be of a proprietary and confidential nature. If Grantee requests that any information provided by Grantee to the City be kept confidential due to such proprietary or commercial value, the City and its employees, agents and representatives shall maintain the confidentiality of that information. If the City is requested or required by legal or administrative process to disclose any such confidential information, the City shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order

or other relief. The City shall use all reasonable efforts to ensure that the confidentiality of Grantee's confidential information is maintained.

110.11 FORCE MAJEURE. It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: (1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; (2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; (3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance.

110.12 HOLD HARMLESS. Grantee, during the term of this franchise, agrees to save harmless and indemnify the City from and against all claims, demands, losses and expenses arising out of the negligence of Grantee, its employees or agents, in the constructing, operating and maintaining of distribution and transmission facilities or appliances of Grantee; provided, however, that Grantee need not save harmless the City from claims, demands, losses and expenses arising out of the negligence of the City, its employees or agents. Grantee shall maintain insurance at all times during the terms of this franchise and any extensions hereof in an adequate amount to cover and protect itself and others to whom Grantee may be held legally liable in the performance of its duties hereunder.

EDITOR'S NOTE

Ordinance No. 654 granting a gas franchise to Peoples Natural Gas, a division of UtiliCorp United Inc., was adopted on May 23, 2000.