

ORDINANCE NO. 695

CITY OF WEST BRANCH, IOWA NATURAL GAS FRANCHISE

An Ordinance granting to **INTERSTATE POWER AND 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 West Branch, Cedar 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 West Branch, Cedar County, Iowa, as now or hereafter constituted, for a period of twenty-five (25) 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; and granting to said Company the right of eminent domain.

BE IT ORDAINED BY THE City Council of the City of West Branch, Cedar County, Iowa, hereinafter referred to as the "City":

Section 1. There is hereby granted to INTERSTATE POWER AND LIGHT COMPANY, hereinafter referred to as the "Company," its successors and assigns, the right, franchise and privilege for the term of twenty-five (25) years, subject to a limited right of cancellation as described in Section 7; 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 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 2. 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 3. 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, in accordance with industry practices and standards and state and federal regulations, and 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.

The Company and City agree to meet on annual basis to discuss upcoming projects by either the Company or City which will necessitate the need for cooperation among the parties. Furthermore, absent emergency, the Company shall use reasonable efforts to advise the City and affected customers, in advance, prior to the commencement of major system upgrades or improvements which will have a material impact upon the use of streets, alleys, and public places within the City.

Section 4. The Company shall, at its cost, 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 as defined in Section 26.2(3) of the Code of Iowa, as amended from time to time thereof, 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 any reason other than as specified above, or as the result of the initial request of a commercial or private developer, 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 as part of its relocation request.

The City shall give the Company reasonable advance written notice to vacate a public right-of-way. Prior to vacating a public right-of-way, the Company shall be provided an opportunity to secure an easement to allow it to operate and maintain its existing facilities.

Section 5. 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 6. The franchise granted by this Ordinance shall not be exclusive.

Section 7. The term of the franchise granted by this Ordinance and the rights granted thereunder shall continue for the period of twenty-five (25) years from and after its acceptance by the said Company, as herein provided. The City may cancel this franchise on the eighth (8th), fifteenth (15th) or twentieth (20th) anniversary of the Anniversary Date of this franchise by notifying Company in writing of its desire to do so, said notification to be given within thirty (30) days of the eighth (8th), fifteenth (15th) or twentieth (20th) anniversary respectively of this franchise. If Company is not notified of the cancellation by the eighth (8th), fifteenth (15th) or twentieth (20th) anniversary then this franchise shall continue without cancellation until the twenty-fifth (25th) year. The Anniversary Date shall be the date this franchise is filed with the City Clerk or otherwise effective by operation of law.

Section 8. The expense of the publication of this Ordinance shall be paid by the Company.

Section 9. 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 ninety (90) days from passage of this ordinance.

Section 10. If any section or provision of this ordinance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of any other provisions of this ordinance which can be given effect without the invalid portion or portions and to this end each section and provision of this ordinance is severable.

Section 11. This Ordinance sets forth and constitutes the entire agreement between the Company 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 Company. Upon acceptance by the Company, this Ordinance shall supersede, abrogate and repeal the prior gas system ordinance between the Company and the City as of the date this Ordinance is accepted by the Company. Notwithstanding the foregoing, in no event shall the City enact any ordinance or place any limitations, either operationally or through the assessment of fees, that create additional burdens upon the Company, or which delay utility operations.

Passed and approved this 4th day of June, 2012.

First Reading: May 21, 2012

Second Reading: June 4, 2012

Third Reading:



Don Kessler, Mayor
City of West Branch, Iowa

ATTEST:



Matt Muckler, City Clerk

(CITY SEAL)