

CHAPTER 111

ELECTRIC FRANCHISE

- | | | | |
|--------|---|--------|--|
| 111.01 | Grant of Franchise | 111.14 | Energy Efficiency and Renewable Energy |
| 111.02 | Indemnification | 111.15 | Future Agreements |
| 111.03 | Meters and Service Lines | 111.16 | Publication Expenses |
| 111.04 | Modern System | 111.17 | Repeal of Conflicting Ordinances |
| 111.05 | Relocation | 111.18 | Street Lights |
| 111.06 | Mapping | 111.19 | Franchise Fee |
| 111.07 | Annual Planning Meeting | 111.20 | Use of Company Facilities |
| 111.08 | Right of Way Restoration | 111.21 | Right Of Way Ascension |
| 111.09 | Undergrounding | 111.22 | Notice of Default |
| 111.10 | Non-exclusivity | 111.23 | Severability |
| 111.11 | Continuous Service | 111.24 | Acceptance by Company |
| 111.12 | Tree Trimming | 111.25 | Assignment |
| 111.13 | Emergency Training, Participation and Communication | 111.26 | Eminent Domain |
| | | 111.27 | Closing |

111.01 Grant of Franchise.

There is hereby granted to INTERSTATE POWER AND LIGHT COMPANY, hereinafter referred to as the "Company," its successors and assigns, the right and franchise to construct, reconstruct, repair, maintain and operate in the City of Robins, Linn County, Iowa, systems for the distribution of standard utility (non-transmission) distribution voltage of electric light and power, and the right to construct, reconstruct, repair, maintain and operate the necessary poles, lines, wires, conduits and other appliances for the distribution of electric current along, under and upon the streets, avenues, alleys and public ways in the City of Robins, Linn County, Iowa; also the right to erect and maintain upon the streets, avenues, alleys and public ways, distribution lines through the said City of Robins, Linn County, Iowa, to supply individuals, corporations, communities and municipalities both inside and outside of said City with electric light, and power for the period of twenty-five (25) years, after which such period the franchise shall expire. However, the City of Robins shall retain the right to terminate this right and franchise effective at the end of the tenth (10th), fifteenth (15th), and twentieth (20th) year anniversary of the Anniversary Date as defined within. In order to exercise this right to terminate the right and franchise granted to the Company, the City of Robins must give written notice to the Company no later than six (6) months prior to expiration of the respective Anniversary Date. The Anniversary Date shall be the date this franchise is filed with the City Clerk or otherwise effective by operation of law.

EDITOR'S NOTE: Ordinance No. 1208, adopting an electric franchise for the City, was passed and adopted on December 17th 2012. The Grantee accepted the franchise on January 9, 2013 for a 25 year term.

111.02 Indemnification.

The Company shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs, expenses, or attorneys' fees incurred on account of injury or damage to any person or property, to the extent caused or occasioned 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 to the extent arising from the negligence of the City, its contractors, or either of their employees or agents.

Company shall indemnify and defend City for, from and against any and all mechanic's liens and other liens and encumbrances filed by any person claiming by, through or under Company and against all costs, expenses, losses and liabilities (including reasonable attorney's fees) incurred by City in connection with any such lien or encumbrance or any action or proceeding brought thereon.

The Company shall maintain commercial general liability insurance coverage, or its equivalent, throughout the term of this franchise, so as to protect and indemnify City from suits or claims arising out of Company's negligent acts subject to policy terms and conditions. Such insurance shall be comprehensive in nature, including, but not limited to, contractual liability. In addition, such insurance shall contain limits not less than \$1,000,000 combined single-limit person injury and property damage. Company's failure to meet this insurance requirement shall not relieve Company of its responsibilities under this franchise. Company may be allowed to self-insure the coverages indicated herein resulting from the negligent acts or omissions of Company, Company's agents or employees. Company shall provide City with certificates of insurance or a letter of self-insurance upon request. The requirements of indemnification shall not be a waiver of any right that the City would have to assert defenses on its own behalf under state or federal law. The Company's indemnification obligations under this franchise shall survive the expiration, cancellation, or termination of this franchise in accordance with applicable statutes of limitation in force within the state of Iowa.

111.03 Meters and Service Lines.

The Company, its successors and assigns, shall furnish and install all meters at its own expense, and shall provide the service wire to buildings as set forth in the Company's tariff filed with the Iowa Utilities Board.

111.04 Modern System.

The system authorized by this Ordinance shall be of sufficient capacity to supply all reasonable demands of said City and its inhabitants thereof and shall be kept in a modern and up-to-date condition. The Company will maintain compliance with Iowa Utilities Board regulatory standards for reliability.

111.05 Relocation.

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 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 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, and the City shall utilize reasonable efforts to assist Company in securing an easement or other continued rights of record to continue to operate and maintain its facilities upon such relocation.

111.06 Mapping.

Mapping information provided on a project-specific basis will be used solely and exclusively by the City in administering the use and occupancy of the public right-of-way within the City and shall not be provided to or relied on by any person for any other purpose. At the request of the City, mapping information will be reviewed with the City staff and/or designee or Planning and Zoning Commission. All reviews will be in compliance with the Federal Energy Regulatory Commission's regulations or the regulations of other agencies with authority over the review and dissemination of information related to utility infrastructure, and infrastructure security. Prior to any excavating in the rights-of-way, both parties shall follow the procedures set forth in Iowa Code Chapter 480 or an entity with a similar function utilized by both the City and the Company, currently the Iowa One-Call System.

111.07 Annual Planning Meeting.

Company operations staff will, at the request of the City, attend an annual meeting with City Planning and Zoning Commission and City staff, utility staff and other interested city entities to discuss annual and long-term construction planning for the Company and City, tree trimming plans and other related items. This will not replace any periodic meetings needed on specific projects and issues.

111.08 Right of Way Restoration

Except for emergency purposes and other exigent circumstances where commercially unreasonable to do so, the Company shall via e-mail or other document, provide two (2) days advance notice of construction or excavation in the public right-of-way for preservation of emergency evacuation, traffic control, general oversight of construction, and excavation within the City. In making any excavations in any street, alley, 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, and shall back fill all openings in such manner as to prevent settling or depressions in surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practical.

111.09 Undergrounding.

The City may request estimates for the undergrounding of replacement lines, upgrades or new lines, including lines to be adjusted for road moves and for specific projects including but not limited to projects addressed at the annual planning meeting, as referenced in Section 111.07. When requested, the Company will provide to the City two estimates: 1) An estimate for the cost of the project with overhead construction and 2) An estimate for the cost of the project with underground construction. The City will have no more than 60 days from the estimate date to determine if it wants the line built overhead or placed underground. If the City

chooses underground construction for the project, the City will be responsible for the incremental cost of undergrounding, defined as the differential between the estimate for underground construction and the estimate for overhead construction. Upon receipt of the City's payment for the incremental cost of undergrounding, the Company will install the underground facilities. The Company reserves the right to bill City for the amount that the incremental cost associated with installation exceeds its estimate. The City reserves the right to a refund of overpayment if the incremental costs are less than the amount billed in the estimate. If the City wishes to have a line not scheduled for replacement or upgrade placed underground, the City shall contact the Company to make such a request. The City shall cover all costs related to this work. If undergrounding of distribution or service lines requires customers of the Company to make adjustments to customer-owned electrical systems, the City bears the responsibility of communication with those customers and, if it chooses, the cost of converting the customer's utility entrance from overhead to underground. The Company reserves the right to review all of the City's communications with its customers.

111.10 Non-exclusivity.

The franchise granted by this Ordinance shall not be exclusive.

111.11 Continuous Service.

Service to be rendered by the Company under this franchise shall be continuous unless prevented from doing so by fire, Acts of God, unavoidable accidents or casualties, or reasonable interruptions necessary to properly service the Company's equipment, and in such event service shall be resumed as quickly as is reasonably possible.

111.12 Tree Trimming.

The Company is authorized and empowered to prune or remove at Company expense any tree extending into any street, alley or public grounds to maintain electric reliability, safety, to restore utility service and to prevent limbs, branches or trunks from interfering with the wires and facilities of the Company. The pruning and removal of trees shall performed in accordance with Company's then current line clearance vegetation plan as filed and approved by the Iowa Utilities Board, as well as all applicable codes and standards referenced therein.

111.13 Emergency Training, Participation and Communication.

Each year, the Company will, at the request of the City, participate in one emergency training event and will participate in Linn County Emergency Operations Center activation if requested by the City, and if deemed appropriate by the Company. The Company will provide to the City a direct contact phone number for City fire and law enforcement departments to use only in emergency situations.

111.14 Energy Efficiency and Renewable Energy.

The Company will provide to the City energy efficiency materials and rebate forms for display in the building permit department and other City departments, as requested by the City. The Company will participate in neighborhood and community events, when possible, and upon a request from the City or neighborhood organization, to encourage City residents to utilize the Company's energy efficiency programs.

111.15 Future Agreements.

The Company, upon request of the City, shall explore with the City agreements that are mutually beneficial, and economically feasible to both parties, for interconnection of alternative energy electrical facilities, use of facilities and purchase of excess alternatively produced power, in a timely manner, adhering to all Federal, State or local codes, rules and regulations in effect at the time of agreement. The Company will work with the City for fair regulatory treatment of such projects. Agreements are subject to generation reliability requirements.

111.16 Publication Expenses.

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

111.17 Repeal of Conflicting Ordinances.

All Ordinances, or parts of Ordinances, insofar as they are in direct conflict herewith, are hereby repealed.

111.18 Street Lights.

Annually, upon request by the City, the Company shall provide the City with a count of Company-owned street lights. If the City would at any time desire to purchase the Company's street lights located within the City, the Company agrees to negotiate the sale of such street lights. The terms and conditions of such a sale will include that the street lights will be purchased at a mutually agreed price and on an as is, where is basis. Upon sale, City shall assume all risk and loss related to the operation and maintenance of the purchased street lighting. Any agreement will require the City to purchase all street lights in the corporate limits of the City that are owned by the Company.

111.19 Franchise Fee.

In its monthly billing the Company shall include a franchise fee of zero percent (0%) on the gross receipts from the sale of electricity to the Company's electric customers located within the corporate limits of the City.

The franchise fee shall be applied to all customers' bills in accordance with Iowa Code Chapter 364.2 and 423B.5. The amount of the franchise fee shall be shown separately on the utility bill to each customer.

The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following ninety (90) days of receipt of information required of the City to implement the franchise fee. This information shall include but not be limited to a copy of the City's Revenue Purpose Statement and written proof of legal adoption and publication of the Revenue Purpose Statement, City's list of City utility accounts exempt per Iowa law from the franchise fee, signed Nondisclosure Agreement pertaining to the protection of the confidentiality of utility service address information provided by the Company to the City, and the City's verified utility customer service address list. The Company shall not commence assessing the franchise fee until it has received written approval of the amended tax rider tariff from the Iowa Utilities Board.

The City recognizes that the costs of franchise fee administration are not charged directly to the City and agrees it shall reimburse the Company for any initial or ongoing costs incurred by the Company in collecting franchise fees that the Company in its sole opinion deems to be in excess of typical costs of franchise fee administration.

Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the corporate limits of said City, the City Clerk shall provide written notification by certified mail 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 corporate limits of the City, commencing on an agreed upon date which is not less than ninety (90) days from receipt of the information required of the City to implement the franchise fee.

The Company shall have no obligation to collect franchise fees from customers in any annexed area until and unless the following have all been provided to the Company by certified mail: such final and unappealable orders or approvals, the City's list of City utility accounts exempt from the franchise fee in the annexed area, and the City's verified utility customer service address list for the annexed area.

The City shall indemnify the Company from claims of any nature arising out of or related to the imposition and collection of the franchise fee. In addition, the Company shall not be liable for collecting franchise fees from any customer originally or subsequently identified, or incorrectly identified, by the City as being subject to the franchise fee or being exempt from the imposition of franchise fees.

The Company shall remit franchise fee revenues, minus uncollectible amounts, to the City no more frequently than on or before the last business day of the month following each calendar year quarter. Company shall notify City at least thirty (30) days in advance of any changes made in this collection schedule, including any alterations in the calendar quarters or any other changes in the remittance periods.

The City shall give the Company a minimum 6-month notice prior to the request to implement any adjustment in the percentage of franchise fee to be collected pursuant to this Section. The City agrees to modify the level of franchise fees imposed only once in any 24-month period. When any such Ordinance increasing, decreasing, modifying or eliminating the franchise fee shall become effective, billings reflecting the change shall commence on an agreed upon date which is not less than ninety (90) days following written notice to the Company by certified mail. The Company shall not be required to implement such new percentage unless and until it determines that it has received appropriate official documentation of final action by the city council. In no event may the percentage of franchise fee exceed the statutory amount authorized by Iowa law.

The City shall be solely responsible for the proper use of any amounts collected as franchise fees, and shall only use such fees as collected for a purpose as allowed by applicable law.

The Company shall not, under any circumstances be required to return or refund any franchise fees that have been collected from City customers and remitted to the City. In the event the Company is required to provide data or information in defense of the City's

imposition of franchise fees or the Company is required to assist the City in identifying customers or calculating any franchise fee refunds for groups of customers or individual customers, the City shall reimburse the Company for the expenses incurred by the Company to provide such data or information.

Collection of the franchise fee shall cease at the earlier of the modification or repeal of the franchise fee or the end of the Ordinance term.

The obligation to collect and remit the fee imposed by this Ordinance is modified if:

1. Any other person is authorized to sell electricity to customers within the corporate limits of the City and the City imposes a franchise fee or its lawful equivalent at zero or a lesser rate than provided in this Ordinance, in which case the obligation of Company to collect and remit franchise fee shall be modified to zero or the lesser rate; or

2. The City adds additional territory by annexation or consolidation and is unable or unwilling to impose the franchise fee upon all persons selling electricity to consumers within the additional territory, in which case the franchise fee imposed on the revenue from sales by Company in the additional territory shall be zero or equal to that of the lowest fee being paid by any other retail seller of electricity within the City; or

3. The Iowa General Assembly enacts legislation, or any Iowa court issues a final judicial decision regarding franchise fees, or the Iowa Utilities Board issues a final non-appealable order (collectively, "Final Franchise Fee Action") that modifies, but does not repeal, the ability of the City to impose a franchise fee or the ability of Company to collect from City customers and remit franchise fees to City. Within sixty (60) days of Final Franchise Fee Action, the City shall notify Company and the parties shall meet to determine whether this Ordinance can be revised, and, if so, how to revise the franchise fee on a continuing basis to meet revised legal requirements. After Final Franchise Fee Action and until passage by the City of revisions to the franchise fee Ordinance, Company may temporarily discontinue collection and remittance of the franchise fee if in its sole opinion it believes it is required to do so in order to comply with revised legal requirements.

The obligation to collect and remit the fee imposed by this Ordinance is repealed, effective as of the date specified below with no liability therefor, if:

1. Any of the imposition, collection or remittance of a franchise fee is ruled to be unlawful by the Supreme Court of Iowa, effective as of the date of such ruling or as may be specified by that Court; or

2. The Iowa General Assembly enacts legislation making imposition, collection or remittance of a franchise fee unlawful, effective as of the date lawfully specified by the General Assembly; or

3. The Iowa Utilities Board, or any successor agency, denies the Company the right to impose, collect or remit a franchise fee provided such denial is affirmed by the Supreme Court of Iowa, effective as of the date of the final agency order from which the appeal is taken.

The franchise fee shall be in lieu of any other payments to the City for the Company's use of streets, alleys and public places in the said City and other administrative or regulatory costs with regard to said franchise; and said poles, lines, wires, conduits and other appliances for the distribution of electric current along, under and upon the streets, alleys and public places in the said City to supply individuals, corporations, communities, and municipalities both inside and outside of said City with electric light, heat and power shall be exempt from any special tax, assessment, license or rental charge during the entire term of this Ordinance.

The City shall not, pursuant to Chapter 480A.6 of the Code of Iowa, impose or charge right-of-way management fees upon the Company or fees for permits for Company construction, maintenance, repairs, excavation, pavement cutting or inspections of Company work sites and projects or related matters.

111.20 City Use of Company Facilities.

The Company, upon request of the City, and without cost to the Company, may permit its poles, conduits and other distribution facilities, so far as may be done without interfering with the free use its own wires and fixtures, to be used for the purpose of maintenance thereon any control wires and other appurtances which may be necessary for any use by the City. The City shall defend, indemnify, and hold the Company harmless from any and all causes of action for injury, litigation or damages which may arise out of or by reason of the placing or maintenance of such control wires and other appurtances by the City upon facilities of the Company, provided such causes of action did not arise out of the negligence of the Company. Such control wires and other appurtances shall meet all applicable codes, rules and regulations that may be in effect. Specifically, all installations of said wires and appurtances shall be conditioned upon compliance with the safety rules of the Company, as well as the requirements of the National Electric safety Code (NESEC) or other safety requirements as adopted by the Iowa Utilities Board under 199 IAC Chapter 25. If the Company has a need for space utilized by the City, including conduits, the City will, within a reasonable period of time, remove said control wires and appurtances or will, at its own cost, provide the Company with a reasonable alternative location that similarly allows expansion of the electrical distribution system serving the electric customers, without disrupting Company operations. Upon an agreement between the Company and the City, these parties shall enter into a Pole Attachment Agreement to document the obligations of the parties related to the City's use of the Company's facilities. Prior to the City placing any facilities on the Company's poles, written authorization must be obtained from the Company.

111.21 Right of Way Accessions.

Where any electric distribution or service line is presently or in the future placed anywhere in the corporate limits of the City, either as now existing or hereafter extended, not in a public street and a street shall thereafter be opened or dedicated so as to include said line within the right of way of such street, then the Parties shall mutually agree in good faith to either (1) relocate said electric distribution or service line into an alternative private easement in accordance with and pursuant to Company's private easement rights or (2) permit such electric distribution or service line to be operated and maintained under the terms of this franchise, provided the Company first receives reasonable compensation for any property rights foregone thereby and provided further that the Company shall retain and maintain all of its rights and entitlements to reimbursement of any future relocation expenses as it would

have been afforded had such electric lines remained in the private easement. Notwithstanding anything herein to the contrary, any relocation pursuant to this paragraph 114.21 shall be expressly subject to the Parties' obtainment of any necessary third party consents.

111.22 Notice of Default. If either party determines there is a default under this franchise the other party shall be given written notice describing the default in detail, whether a forfeiture or termination of the franchise will be sought and where curable a reasonable time to cure the default which shall not be less than sixty (60) nor more than one hundred eighty (180) days.

111.23 Severability

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.

111.24 Acceptance by Company

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.

111.25 Assignment.

The Company shall provide to the City notice of any completed sale, transfer, disposition or assignment of this franchise or change in ownership of the Company that would impact or affect this franchise.

111.26 Eminent Domain

The power of eminent domain is reserved by the City, however in the event the Company demonstrates it is necessary to acquire property through the condemnation process, the Company will request a temporary grant from the City to exercise the power of eminent domain which will not be unreasonably withheld.

111.27 Closing

This franchise ordinance sets forth and constitutes the entire agreement between the Company and the City of Robins 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 the effective date, this franchise ordinance shall supersede, abrogate and repeal the prior electric franchise, between the Company's predecessor in interest and the City of Robins. In no event shall the City of Robins 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 with respect to the rights contained herein.