

ORDINANCE NO. 426

AN ORDINANCE GRANTING TO MIDAMERICAN ENERGY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE IN THE CITY OF BUFFALO, IOWA, A NATURAL GAS SYSTEM AND TO FURNISH AND SELL NATURAL GAS TO THE CITY AND ITS INHABITANTS FOR A PERIOD OF 20 YEARS.

BE IT ENACTED by the City Council of the City of Buffalo, Iowa:

Section 1. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called "Company", and to its successors and assigns the right and franchise to acquire, construct, erect, maintain and operate in the City of Buffalo, Iowa, hereinafter called the "City", a gas distribution system, to furnish natural gas along, under and upon the streets, avenues, alleys and public places to serve customers within and without the City and to furnish and sell natural gas to the City and its inhabitants. For the term of this franchise the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. This franchise shall be effective for a twenty (20) year period from and after the effective date of this ordinance.

Section 2. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa 2007, or as subsequently amended or changed.

Section 3. Company shall have the right to excavate in any public street for the purpose of laying, relaying, repairing or extending gas pipes, mains, conduits, and other facilities provided that the same shall be so 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.

Section 4. 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 or an alternative construction method,

which would not cause the relocation of the Company installations, the City shall select said alternative route, or construction method. If relocation of the Company facilities could be avoided by relocating other franchisee's or facility user's equipment and facilities or by using a different method to perform the street and/or curbing construction, and said other cost of construction or relocation is less than the Company's, the City shall select the route or method that is less expensive. 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 5. In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits or apparatus, Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring the original condition as nearly as practicable.

Section 6. Company shall indemnify and save harmless 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, or allegedly caused or occasioned, in whole or in part, by Company's negligence in construction, reconstruction, excavation, operation or maintenance of the gas utilities 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 7. The Company shall extend its mains and pipes and operate, and maintain the system in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

Section 8. During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent with applicable Iowa laws and regulations.

Section 9. All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

Section 10. If any section, provision, or part of this ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

Section 11. This ordinance and the rights and privileges herein granted shall become effective and binding upon its approval and passage in accordance with Iowa law and the written acceptance by the Company. The Company shall, within (30) thirty days after the City Council

approval of this ordinance, file in the office of the clerk of the City, its acceptance in writing of all the terms and provisions of this ordinance. Following City Council approval this ordinance shall be published in accordance with the Code of Iowa. The effective date of this ordinance shall be the date of publication. In the event that MidAmerican Energy Company does not file its written acceptance of this ordinance within 30 days after its approval by the City Council this ordinance shall be void and of no effect.

Section 12. Upon the effective date of this ordinance, all prior gas franchises granted to Company to furnish natural gas 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.

PASSED AND APPROVED this 2nd day of February, 2009.

CITY OF BUFFALO, IOWA

By: 
Mayor

ATTEST:


City Clerk

I, Tanna Carter, City Clerk of the City of Buffalo, Iowa, hereby certify that the above and foregoing is a true copy of Ordinance No. 426, passed by the City Council of said City at a meeting held February 2, 2009, and signed by the mayor on February 2, 2009, and published as provided by law in the Quad City Times on February __, 2009.


City Clerk

(OFFICIAL SEAL)