

ORDINANCE 15066

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF MARSHALLTOWN, IOWA BY AMENDING THE TABLE OF SPECIAL ORDINANCES, TABLE I: FRANCHISES BY ESTABLISHING A FRANCHISE AGREEMENT WITH CONSUMERS ENERGY COOPERATIVE FOR AN ELECTRIC UTILITY FRANCHISE

WHEREAS, an ordinance granting to CONSUMERS ENERGY, hereinafter referred to as the "Company," its successors and assigns, the right and franchise to acquire, construct, erect, maintain and operate in the City, works and plants for the manufacture and generation of electricity and a distribution system for electric light, heat and power and the right to erect and maintain the necessary poles, lines, wires, conduits and other appliances for the transmission of electric current along, under and upon the streets, avenues, alleys and public places in the said City; also the right to erect and maintain upon the streets, avenues, alleys and public places, transmission lines through the said City, to supply individuals, corporations, communities, and municipalities both inside and outside of said City with electric light, heat and power for the period of twenty-five (25) years; also the right of eminent domain as provided in Section 364.2 of the Code of Iowa; and

WHEREAS, the City Council of Marshalltown, Iowa finds it in the City's best interest to enact an Electric Utility Franchise of 5% for the uses outlined in the adopted Revenue Purpose Statement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARSHALLTOWN, IOWA, AS FOLLOWS:

Section 1. There is hereby granted to CONSUMERS ENERGY, hereinafter referred to as the "Company," its successors and assigns, the right and franchise to acquire, construct, erect, maintain and operate in the City, works and plants for the manufacture and generation of electricity and a distribution system for electric light, heat and power and the right to erect and maintain the necessary poles, lines, wires, conduits and other appliances for the transmission of electric current along, under and upon the streets, avenues, alleys and public places in the said City; also the right to erect and maintain upon the streets, avenues, alleys and public places, transmission lines through the said City, to supply individuals, corporations, communities, and municipalities both inside and outside of said City with electric light, heat and power for the period of twenty-five (25) years; also the right of eminent domain as provided in Section 364.2 of the Code of Iowa.

Section 2. The poles, lines, wires, circuits, and other appliances shall be placed and maintained so as not to unnecessarily interfere with the travel on said streets, alleys, 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. The said Company, its successors and assigns shall hold the City free and harmless from all damages arising from acts or omissions of the Company that are defined as fault by Section 668.1 of the Code of Iowa, in the erection or maintenance of said system.

Section 3. 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 and if defects are caused shall repair the same.

Section 4. 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 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 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 5. During the term of this franchise, the Company, its successors and assigns, shall furnish and install all meters at its own expense, shall provide the service wire to buildings, and shall furnish electric energy in accordance with the application regulations of the Iowa Utilities Board and the Company's tariffs. The Company will maintain compliance with Iowa Utilities Board regulatory standards for reliability.

Section 6. The system authorized by this Ordinance shall be modern and up-to-date and 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.

Section 7. 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 be performed in accordance with the 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.

Section 8. The franchise granted by this Ordinance shall not be exclusive.

Section 9. 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.

Section 10. Franchise fee. There is hereby imposed a franchise fee of five percent (5%) upon the gross revenue generated from sales of electric by the Company within the corporate limits of the City. The Company shall begin collecting the franchise fee upon receipt of written approval of the required tax rider tariff from the Iowa Utilities Board. Grantor 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. Collection of the franchise fee shall cease at the earlier of the City's repeal of the franchise fee or the end of the Ordinance term.

Section 11. The 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 billing 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 of inaccurate billing by the Company.

Section 12. The City shall be solely responsible for identifying customer classes subject to or exempt from paying the City imposed franchise fee. The Company shall have no obligation to collect franchise fees from customers in annexed areas until and unless such ordinances have been provided to the Company. 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 13. The amount of the franchise fee shall be shown separately on the utility bill to each customer.

Section 14. The Company shall remit franchise fee receipts to the City no more frequently than on or before the last business day of the month following each calendar year quarter.

Section 15. 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 poles, lines, wires, conduits and other appliances for the transmission of electric current along, under and upon the streets, avenues, 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.

Section 16. 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.

Section 17. 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 from passage of this Ordinance.

Section 18. 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 19. This Ordinance sets forth and constitutes the entire agreement between the Company and the City of Marshalltown with respect to the rights contained herein, and may not be supplemented, superseded, modified or otherwise amended without the written approval and acceptance of the Company. Notwithstanding the foregoing, in no event shall the City of Marshalltown 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.

Section 20. Any previous amendments thereto, which are inconsistent with this attachment are hereby specifically repealed and the attachment is enacted as a substitute therefore.

Section 21. The public hearing required on this ordinance shall be held in the Council Chambers of City Hall, 24 N. Center Street, Marshalltown, Iowa at 5:30 p.m. local time, on the 12th day of June 2023 and the City Clerk was directed to cause a publication of the notice of public hearing in one issue of the Marshalltown Times Republican, a newspaper in Marshalltown, Marshall County, Iowa, not less than 4 days nor more than 20 days prior to the date of public hearing fixed herein.

Section 22. This ordinance shall be in effect from and after its final passage and approval, written acceptance by the Company, and publication as required by law. The Company shall begin collecting the franchise fee upon receipt of written approval of the required tax rider tariff from the Iowa Utilities Board.

Passed this 10th day of July 2023, and signed this 11th day of July 2023.