COMPARED

INST # 023946
RECORDING FEE 20.00
AUDITOR FEE
RMA FEE 1.00 ECOM 1.00

FILED FOR RECORD
POTTAWATTAMIE CO. IA
2006 JUN 15 AM 11:27
JOHN SCIORTINO
RECORDER

Prepared by: Legal Department, 209 Pearl Street, Council Bluffs, IA 51503 (712) 328-4620
Return to: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503 (712) 328-4616

ORDINANCE NO. 5880

AN ORDINANCE EXTENDING AND AMENDING THE FRANCHISE HERETOFORE GRANTED TO MIDWEST POWER SYSTEMS, INC., PREDECESSOR IN INTEREST TO MIDAMERICAN ENERGY COMPANY, AND GRANTING UNTO MIDAMERICAN ENERGY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE AND PRIVILEGE THROUGH FEBRUARY 2, 2028, TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE IN THE CITY OF COUNCIL BLUFFS, IOWA, AN ELECTRIC SYSTEM AND TO FURNISH AND SELL ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS, AND PRESCRIBING THE TERMS AND CONDITIONS THEREOF AND AUTHORIZING THE COLLECTION OF A FRANCHISE FEE.

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

WHEREAS, pursuant to Ordinance No. 5114, adopted by the City Council on December 14, 1992, and ratified by the voters at a special election on February 2, 1993, the City of Council Bluffs did grant unto Midwest Power Systems, Inc., its successors and assigns, for a period of 25 years from and after the effective date thereof, a franchise to acquire, construct, operate and maintain in the City of Council Bluffs, Iowa, the necessary facilities for the production, distribution, transmission and sale of electric energy for public and private use; to use and occupy the public streets, highways, avenues, alleys, bridges and public places for such purposes, prescribing the terms and conditions thereof; and granting unto said Company the right of eminent domain, the exercise of which is subject to City Council approval; and

WHEREAS, MidAmerican Energy Company is a successor to Midwest Power Systems, Inc.; and

WHEREAS, the City Council has determined that it would be in the best interests of the City of Council Bluffs and its residents to amend said ordinance and to extend the terms thereof for a period of ten years, all as hereinafter provided.

NOW, THEREFORE, BE IT ORDAINED
BY THE CITY COUNCIL OF
THE CITY OF COUNCIL BLUFFS, IOWA:

Section 1. That the franchise heretofore granted to Midwest Power Systems, Inc., to acquire, construct, operate and maintain in the City of Council Bluffs, Iowa ("City"), the necessary facilities for the production, distribution, transmission and sale of electric energy for public and private use; to use and occupy the public streets, highways, avenues, alleys, bridges and public places for such purposes; and prescribing the terms and conditions thereof; and granting to said company the right of eminent domain, the exercise of which is subject to City Council approval, be and the same is hereby extended in the name of MidAmerican Company ("the Company") so that said amended franchise shall continue in effect until February 2, 2028, at which time said franchise shall terminate and expire.

Section 2. This franchise shall not be exclusive and shall not restrict in any manner the right of the City Council or any other governing body of the City in the exercise of any regulatory power which it may now have, or hereafter be authorized, by the laws of the State of Iowa.

Section 3. The Company shall set its poles and place its wires and appliances so as not to interfere with ordinary travel and use of the streets, avenues, alleys, bridges, public ways, places and property of the City, and shall so maintain the same as long as operation shall continue hereunder. The City Council, under reasonable regulations, shall have the right to require Company, at its expense, to remove or relocate its poles, wires, conductors and other appurtenances where these interfere unduly with public traffic or proper public use of the streets and alleys or public improvements being made thereto.

Section 4. The Company shall install and maintain its conduits and cables for underground facilities in such manner and at such locations as will not injure or interfere with water pipes, sewers, or any other municipal improvement in the streets, avenues, alleys, bridges, public ways, places and property of the City, and so as to conform to the grade then or thereafter established.

Section 5. In making excavations in any streets, avenues, alleys, or public places for the erection of poles and wires or other appliances or for the laying of conduits or cables or for any utility purpose, the Company shall not unnecessarily obstruct the use of the streets and shall protect the place where work is in progress by guards, barriers, or signals as required by the city traffic engineer, and shall restore the surface pavement or sidewalk over such excavations with material equivalent to that removed and restore the former condition as nearly as practicable; and if the Company shall fail so to do, the work shall be done by the City, under the supervision of the City Engineer, at the expense of the Company. Company shall annually during the month of January obtain an excavation permit from the City allowing Company to make excavations in City right-of-way during the subsequent 12 months subject to such conditions as the City may reasonably impose. All other work in the city right-of-way as authorized pursuant to this agreement and shall not be subject to further review so long as it is in compliance with the laws of this City and the State of Iowa.

Section 6. The Company shall protect and indemnify the City from damage and loss in any manner arising out of the exercise by Company of the privileges, rights and franchise granted hereby, to the extent caused by excavations, construction or maintenance of Company's equipment.

Section 7. In consideration of the right to construct and maintain such electric facilities and equipment along, upon, across and under the streets, highways, avenues, alleys, bridges and public places of the City there is hereby imposed upon the Company and by its acceptance of this franchise, it agrees that there shall be collected from the Company's retail customers within the corporate limits of the city (excluding however, the sale of electricity to the City as a customer, public school facilities, and Pottawattamie County facilities which are or may in the future be located within the Council Bluffs corporate limits) and remitted by the Company to the City, a franchise fee in the amount equal to two percent (2%) of the gross receipts derived by the Company from the transmission, distribution or sale electricity to customers commencing with gross receipts, less uncollectible accounts, received on or after July 1, 2006.

Sunset Provision

The requirement to collect this fee shall be in full force and effect upon the passage of this ordinance starting July 1, 2006, for a period of four years. It shall cease to be a requirement on July 1, 2010, unless the Council Bluffs City Council by resolution authorizes the continuation of said franchise fee. This subsequent authorization shall be effective for another four years. These four-year authorizations shall be a requirement throughout the term of this franchise agreement. If the Council does not reauthorize the collection of the franchise fee prior to the expiration of one of these four-year terms, it shall have the right to reauthorize the collection of the franchise fee in any subsequent year of the franchise agreement in four-year increments. The City shall provide the Company a copy of any resolution adopted by the Council Bluff City Council to authorize continuation or termination of franchise fees, no less than 60 days prior to each authorization period.

The City may increase, decrease or eliminate the franchise fee. Any ordinance revising or eliminating the franchise fee shall become effective and billings shall commence on an agreed upon date which shall be no less than 60 days following written notice to the Company.

The Company will remit franchise fee revenues to the City on or before the last business day of the month following each quarter. The quarters are; first quarter January, February and March, second quarter April, May and June, third quarter July, August and September, fourth quarter, October, November and December.

The City shall provide to the Company copies of annexation ordinances in a timely manner to ensure appropriate franchise fee collection from customers within the corporate limits of the City.

The City may, by ordinance exempt certain types of sales in a nondiscriminatory manner from being charged the franchise fee.

The obligation to pay the fee imposed by this section is modified if:
1. The City permits any other person to sell electricity to City consumers and pay a franchise fee or its lawful equivalent at a lesser rate than provided in this section, in which case the Company shall pay at the lesser rate; or
2. The City adds additional territory by annexation or consolidation and is unable to lawfully impose the franchise fee upon any person selling electricity to consumers within the additional territory, in which case the franchise fee on the revenue from sales by Company in the additional territory shall be equal to that of the lowest fee being paid by any other person selling electricity within the additional area.

The further provisions of this section to the contrary not withstanding, the Company shall be relieved of its obligation to pay to the City the franchise fee, effective as the date specified below with no liability therefore under each of any of the following conditions:
1. The collection or payment of a franchise fee is ruled to be unlawful by the Supreme Court of Iowa, effective as of the date specified by that Court.
2. The Iowa General Assembly enacts legislation which makes the collection or payment of a franchise fee unlawful, effective as of the date lawfully specified by the General Assembly.
3. The Iowa Utilities Board, or its successor agency, denies the Company the right to collect a franchise fee from its customers provided such denial is affirmed by the Supreme Court of Iowa, effective as of the date of the agency order from which the appeal is taken.

School Share Provision
The City shall remit 61.83% of the revenues collected from 1 cent of the franchise fee to the Council Bluffs Community School District and 16.56% of the revenues collected from 1 cent of the franchise fee to the Lewis Central Community School District. These funds will be collected by the Company upon the gross receipts from the sale or distribution of electricity in the city and remitted to the city commencing with billings for such services on or after July 1, 2006, to the Council Bluffs Community School District, such sums to be disbursed to the school on a quarterly basis on May 15, August 15, November 15, and February 15 of each year for the three-month periods ending respectively March 31, June 30, September 30, and December 31 until any one of the following occurs:

a. Imposition of school's initial local sales and service tax for school infrastructure has ceased.

b. The franchise fee ceases to be collected for any of the reasons set forth in the immediately preceding section.

c. Code of Iowa 422E.3 or any subsequent provision of the Code of Iowa prohibiting the imposition of a local sales and service tax for school infrastructure on the gross receipts from the sale or use of electricity in the city where the gross receipts are subject to a franchise fee is repealed.

d. The City elects not to require the collection of a franchise fee at some date in the future.

Section 8. The City shall have the right to use, without charge, the poles of the Company to support traffic control devices and for the carrying of wires used or its fire alarm and other signal systems that may be established for the use of the City, so long as such use complies with the requirements of the National Electric Safety Code and does not interfere with the use by Company of such poles for the purpose defined herein.

Section 9. The Company shall, during the term hereof, improve, extend and modernize its street lighting system at such times and in such reasonable manner as may be agreed upon by and between the Company and the City.

Section 10. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

Section 11. This amended ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED AND APPROVED April 10, 2006

Thomas Hanafan, Mayor

Attest: Marcia L. Worden

Marcia L. Worden, Deputy City Clerk

First Consideration: 3/13/06
Second Consideration: 3/27/06
Public Hearing: 3/27/06
Third Consideration: 4/10/06

Please return to:
City Clerk
209 Pearl 51503

JOHN
POTTA.
227 Sour.
Council Blut.
712-328-
FAX # 712-328-

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# PROOF OF PUBLICATION

STATE OF IOWA
POTTAWATTAMIE COUNTY

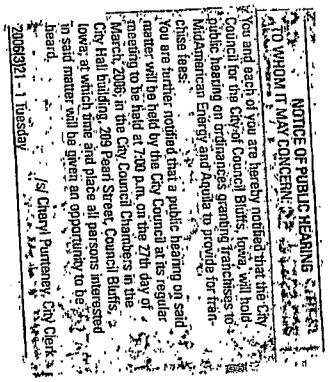
I, Amy McKay, on my oath do solemnly swear that I am the Controller of the COUNCIL BLUFFS DAILY NONPAREIL, a newspaper issued DAILY and printed in said county, COUNCIL BLUFFS, IOWA.

The attached notice was published in said newspaper for 1 consecutive time(s) as follows:

The first publication thereof

began on the 21st day of March, 2006

Signed in my presence by the said Amy McKay and by her sworn to before me this 23rd day of March, A.D. 2006.



NOTICE OF PUBLIC HEARING
TO WHOM IT MAY CONCERN:
You and each of you are hereby notified that the City Council for the City of Council Bluffs, Iowa, will hold a public hearing on ordinances granting franchises to MidAmerican Energy and Aquila to provide for franchise fees.
You are further notified that a public hearing on said matter will be held by the City Council at its regular meeting to be held at 7:00 p.m. on the 27th day of March, 2006, in the City Council Chambers in the City Hall building, 209 Pearl Street, Council Bluffs, Iowa, at which time and place all persons interested in said matter will be given an opportunity to be heard.
/s/ Cheryl Purteney, City Clerk
20060321 - 1 Tuesday

Amy McKay
Daily Nonpareil Controller

Tiffany N. Schmitt
Notary Public

TIFFANY N. SCHMITT
Commission Number 736086
MY COMMISSION EXPIRES
AUGUST 15, 2008

Filed this 23rd day of March, A.D. 2006.
Publication Cost: $ 8.02

4 A&B

Customer Number: 35700
Order Number: 20104000

***CITY OF COUNCIL BLUFFS, IOWA***
***LEGAL DEPARTMENT***
***INTER-OFFICE MEMO***

TO: Honorable Thomas P. Hanafan
& Members of the City Council

FROM: Dick Wade, City Attorney

DATE: March 7, 2006

RE: Franchise Ordinances

The Mayor's budget calls for a four percent franchise fee on gas and electric sales in Council Bluffs. I have drafted two ordinances for Council's consideration which establish these fees. Sales to the City, public schools, and Pottawattamie County are exempted, and there is a four year sunset provision. The ordinances also provide for a yet to be determined amount to be paid to the Council Bluffs Community School District. The only changes of substance from the existing franchise ordinances are contained in Section 2 of the Aquila franchise, and Section 7 of the MidAmerican franchise.

Franchise ordinances require a public hearing prior to final passage so I would ask that the Council set a public hearing on both of these ordinances for March 27th.

Respectfully submitted,

Dick Wade, City Attorney

4A & B

MidAmerican
ENERGY
OBSESSIVELY, RELENTLESSLY AT YOUR SERVICE®

Honorable Thomas Hanafan
and City Council Members
209 Pearl Street
Council Bluffs, IA. 51503

MidAmerican Energy Company, hereby accepts Ordinance No. 5880 amending and granting to MidAmerican Energy Company, its successors and assigns, a ten year extension to Electric Franchise Ordinance 5114. Ordinance No. 5880 was adopted by the City Council of Council Bluffs, Iowa on the 10th day of April, 2006 and shall be effective through February 2, 2028.

Dated this 19th day of April, 2006.

Sincerely,

MIDAMERICAN ENERGY COMPANY

By Gary J. Schillinger

Vice President Municipal and
Community Relations

CLERK'S CERTIFICATE

I, Marcy Worden, do hereby certify that the foregoing is a true and correct copy of the Instrument filed by MidAmerican Energy Company, on April 10, 2006, accepting Franchise Ordinance No. 5880.

Marcia L. Worden

Deputy City Clerk

# PROOF OF PUBLICATION

STATE OF IOWA
POTTAWATTAMIE COUNTY

I, Amy McKay, on my oath do solemnly swear that I am the Controller of the COUNCIL BLUFFS DAILY NONPAREIL, a newspaper issued DAILY and printed in said county, COUNCIL BLUFFS, IOWA.

The attached notice was published in said newspaper for 1 consecutive time(s) as follows:

The first publication thereof

began on the 28th day of April, 2006

Signed in my presence by the said Amy McKay and by her sworn to before me this 28th day of April, A.D. 2006.

Amy McKay
Daily Nonpareil Controller

Tiffany N. Schmitt
Notary Public

TIFFANY N. SCHMITT
Commission Number 736088
MY COMMISSION EXPIRES
AUGUST 15, 2008

Filed this 28th day of April, A.D. 2006.
Publication Cost: $ 131.21

Customer Number: 35700
Order Number: 20108242