

STAFF REPORT

RENEWAL OF NON-EXCLUSIVE GAS FRANCHISE WITH INTERSTATE POWER AND LIGHT COMPANY

PRESENTED TO CITY COUNCIL
JUNE 9, 2009

In July of 1984, the City Council authorized a gas franchise ordinance to be presented to the voters of Ames. The franchise was subsequently approved, and for a period of 25 years, Interstate Power and Light Company (previously Iowa Electric Light and Power Company in 1984) has operated a natural gas utility within the City of Ames.

For the past several months, staff of the City of Ames and Interstate Power and Light Company (IPL) have been working on acceptable language for a renewal franchise. Both sides feel that an effective working relationship has been facilitated by the existing franchise over the past 25 years.

However, this past session, the Iowa Legislature approved legislation (which the Governor has signed) impacting franchise agreements. The key points of the law on franchises are:

- A. Franchises are limited to 25 years in length.
- B. City Councils may dispense with elections on franchise agreements and approve extensions or renewals of franchises, subject to the presentation of a valid petition requesting a vote.
- C. If a franchise fee is assessed, the fee shall have a limit of 5% of gross revenues generated within the City, and allows a maximum .06% "administrative cost" recovery by the franchised gas utility.

Staff is proposing to incorporate language into the franchise which would allow for the institution of a franchise fee by the City Council, **but is setting the fee at 0% at the current time.** This is being done in recognition of the additional burden this would place on consumers at this time.

However, beyond this additional provision for a franchise fee, the City staff is recommending few other changes to the current franchise agreement. One change that staff is recommending is that the Council approve the renewal franchise document, and not submit it to the voters, unless a valid petition were received to do so.

Also, staff has agreed to include a provision for IPL to ask the Council for permission to exercise eminent domain to acquire property for its use, on a case-by-case basis. Current law allows cities to confer the power to condemn property upon the franchised company.

Staff recognizes that in the past, the City has been hesitant to exercise eminent domain (condemnation proceedings) itself, and so deciding to confer this power on a private entity may be sensitive. **In fact, IPL is asking that the City Council confer a general power to condemn property without asking the Council for permission on a case-by-case basis. Staff is proposing a compromise on this point and recognizes that the Council may wish to do nothing in this regard.**

Lastly, IPL is asking for several other revisions to the ordinance which staff finds objectionable and does not support. First, IPL is asking that if the City requires IPL to relocate its facilities for other any reason other than widening a street or improving the right-of-way, then the City should be required to reimburse IPL for this move. Staff does not believe that this issue has been a problem, and so does not see the need for this language revision. In addition, staff is also unwilling to tie the City's hands should a request by one of the City's utilities, an outside entity (such as ISU), or a potential development make relocation of IPL's facilities desirable.

Second, IPL is asking for deletion of language that makes it responsible for all damages which occur to its system, and that the City become liable for those damages which may occur while the City is working in the right-of-way or easement. Since there have not been any problems associated with the existing hold harmless provision, the staff see no reason to expose the City to this liability by revising the language.

At this time, Staff is asking for City Council's guidance on continued negotiations with IPL regarding the three points of impasse stated above.