

Staff Report

APPROVAL OF GAS FRANCHISE WITH INTERSTATE POWER AND LIGHT COMPANY

July 14, 2009

BACKGROUND:

The City of Ames has enjoyed a long and amicable relationship with the Interstate Power and Light Company (IPLC). Therefore, it is our hope that an acceptable gas franchise ordinance can be developed that will satisfy the City as well as IPLC. It appears that after many hours of discussions, there remain only three issues at impasse. As the existing 25 year franchise ordinance is about to expire, IPLC representatives are attempting to secure improvements to the ordinance language related to 1) the power of eminent domain, 2) indemnification, and 3) relocation of facilities that will benefit their company. On the other hand, the City staff is urging for the continuation of the existing language that has served the parties well over the years with no major identifiable problems.

- **Eminent Domain**

By now the Council is well aware that State law allows a city to grant to a gas franchisee the power of eminent domain to purchase land to extend gas facilities as a last resort if negotiations to acquire property fail. It appears that of the three outstanding issues, this is the most important one for IPLC.

Being operators of three major utilities, the City staff understands the importance of this tool of eminent domain for IPLC to assure cost-effective gas service to ITS customers. Although, the staff might support this tool for IPLC, it is understood that the Council is faced with a difficult policy decision as some of your constituents are fearful of granting this power of eminent domain to an entity that is not directly subject to an elected body.

The proposed ordinance that has been offered for your consideration includes the granting of the power of eminent domain to IPLC as directed by the City Council at a previous meeting. There are a number of options for dealing with this issue.

-The Council could choose to eliminate this eminent domain authority in the franchise ordinance. Even though it is not specifically prescribed for in the ordinance, IPLC would still be allowed to approach the Council to seek authorization for eminent domain on a case by case basis through amendment of the franchise ordinance.

-The Council could include in the franchise ordinance a provision that prescribes the power of eminent of domain can be granted to IPLC on a case by case basis by Council resolution.

-The Council could include in the franchise ordinance a provision that grants the power of eminent domain to IPLC, but requires the gas company to first “consult” with the City Council at a public session to justify why the exercise of this power is necessary. This option will, at least, open the proposed condemnation action to public scrutiny.

-The City could include in the franchise ordinance a provision that grants the power of eminent domain to IPLC for the first three to five years of a 25 year franchise with options for the Council to extend this authority in five year increments. This approach will allow the Council to eliminate this authority in a relatively short period of time should you believe that IPLC has abused this power.

The two remaining issues are of greatest importance to the City staff since they directly impact costs to the City.

- **Indemnification**

IPLC is objecting to the language that requires them to be responsible for damages to their facilities by our employees. However, it must be remembered that there is limited space in our right-of-way to accommodate a number of utilities including our own Water, Sewer, and Electric facilities. The granting of this use of this right-of-way increases the possibility of our utility crews damaging the gas facilities. While we want to accommodate IPLC so that our citizens can be served with gas, we do not want to be responsible for damages done to their facilities as we operate our utilities.

This concept seems to be consistent with the position taken by IPLC recently when granting the City an easement for a bike trail along Grand Avenue. The easement language we were required to sign specifies,

“... that Grantee (the City) shall be solely responsible for damages to the Trail and related facilities caused by the Grantor’s (IPLC) construction, operation or maintenance of Grantor’s utility structures and facilities on the Property.”

The staff is recommending that the existing indemnification language be maintained. However, if some movement of our current position is needed to resolve the impasse and finalize an acceptable franchise ordinance, the staff could support modifying the existing indemnification language that would hold the City responsible for damages caused to IPLC’s distribution system because of gross negligence on the part of the City. Section Six of the franchise ordinance could read as follows:

“The Grantee (IPLC) shall hold the said City harmless from any and all causes of action, litigations, or damages which may arise through or by reason of construction, reconstruction, maintenance, and operation of said systems for the distribution of gas and other construction hereby authorized, except only those damages caused by gross negligence on the part of the City to the franchisee’s distribution system.”

- **Relocation**

The staff is recommending that the existing relocation language be maintained. IPLC officials want to revise our ordinance language to require reimbursement should they be required to move their facilities out of our right-of-way on a whim of the City.

This proposal is particularly problematic for the City because much of our utility right-of-way exists on easements located on other entities' property, such as the Iowa Department of Transportation, UP Railroad, and Iowa State University. In many cases, we are required (as a condition for the granting of the easement to the City) to agree to remove our utilities, as well as cause other utilities like IPLC, from these easements at their request.

Here again, the requirement to relocate from the right-of-way upon request that exists in the existing ordinance is similar to the requirement imposed on the City in the recent Bike Trail easement agreement that states,

“If the Trail cannot be relocated within the easement area, the Grantor (IPLC) may terminate the Easement Agreement without liability after giving written notice of termination.”

FINAL COMMENTS:

It would appear that the existence of a viable franchise ordinance has benefits to both the City and IPLC. At your previous meeting, IPLC emphasized the three critical reasons for them wanting to obtain an acceptable franchise agreement: Regulatory, financial, and investments. The City would also benefit from the existence of an acceptable franchise agreement since IPLC would be required to provide gas service to all parts of Ames and it will be possible for the City to someday generate a new source of revenue through the institution of a franchise fee which cannot be collected without a franchise in place.

Staff believes that if there is any indication that IPLC will not accept the Council's final proposal at your Tuesday meeting (whatever it might be), then it is recommended that the hearing be continued again so that the current franchise ordinance can remain in place until August 23, 2009.