



Memo

City Manager's Office

TO: Mayor and City Council

FROM: Steven L. Schainker, City Manager

DATE: August 21, 2009

SUBJECT: Gas Franchise

I realize everyone is growing impatient as we attempt to develop a franchise ordinance that will be acceptable to the City and our gas service provider, Iowa Electric Light and Power Company.

The good news is that we have come to an agreement on the eminent domain issue which will require a case by case approval by the City Council, as you directed. The only caveat is that ILPC officials had not responded your most recent request for a ten day notification period, although I don't expect a problem here. The proposed language is as follows:

Section Five. The Grantee shall extend its mains as provided by its most current gas tariff and applicable rules promulgated by the governing regulatory body for customers in all cases where bona fide customers apply in writing to be supplied with gas. The Grantee shall furnish the service pipes from the main to the lot line without expense to the customer, so long as it is not prohibited by regulatory agency rules. This ordinance shall allow the franchisee to appropriate and condemn property when necessary to provide gas service to its customers, in accordance with the applicable requirements contained in the Code of Iowa, following approval of the City Council. The Grantee must establish necessity for each taking of private property, and when so established, the City Council may approve the condemnation of private property by resolution. The owners of any property that may be subject to condemnation shall be given notice at least ten days prior to any approval of such condemnation by City Council.

The last time this matter was tabled, the Council wanted more specifics as to what the outstanding issues involve. I have provided below the initial positions from both parties as it relates to the two issues. We have been working these many weeks on developing compromise language from these original positions.

INDEMNIFICATION

City's Initial Position

The Grantee shall hold the said City harmless from any and all causes of action, litigations or damages which may arise through or by reason of the construction, reconstruction, maintenance and operation of said systems for the distribution of gas and other construction hereby authorized, including damage caused by the City to the franchisee's distribution system.

ILPC's Initial Position

The mains and pipes of the Company must be so placed as not to interfere unnecessarily with water pipes, drains, sewers and fire plugs which have been or may hereafter be placed in any street, alley 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, and the Company, its successors and assigns shall hold the City free and harmless from all damages arising from the negligent acts or omissions of the Company in the laying down, operation and maintenance of said natural gas distribution system.

FACILITIES REMOVAL

City's Initial Position

The systems for the distribution of gas shall be constructed, maintained and operated by the Grantee in such a manner as not to endanger persons or property and so as not to interfere unreasonably with any improvements the City may deem proper to make, or to hinder unnecessarily or obstruct the free use of the streets, avenues, alleys, bridges or other public places, and so as not to interfere with the construction or operation of sewers, drainage or water system, electrical facilities, communications and fiber optic facilities and other utility or signal lines in the City. The City of Ames, Iowa, shall have the right to require the grantee to remove at its own cost and expense any gas main or service pipe which interferes with or obstructs the construction, reconstruction or repair of any municipal facilities or public improvements.

ILPC's Initial Position

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 of, 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.

We have attempted to listen to their concerns and offer concessions where we feel it is appropriate. As of Friday afternoon, we have not received word from the ILPC attorney that all of the required officials in the company have approved our latest proposal. Hopefully, we will have an affirmative response to our latest proposal by Tuesday. However, I must tell you that we have reached our "bottom line" and submitted a final proposal that should meet their basic concerns.