

CHAPTER 113

ENERGY PROVIDERS FRANCHISE FEE

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113.01 FRANCHISE FEE ESTABLISHED. The City hereby establishes a franchise fee on every gas company and every other person, firm, or corporation, their successors and assigns, owning, operating, controlling, leasing or managing a gas plant or system and/or generating, manufacturing, selling, distributing or transporting gas (hereinafter referred to, collectively, as “Energy Providers,” and individually, as “Energy Provider”). Energy Providers shall collect from their customers located within the corporate limits of the City as depicted on the Map (as defined below) including the City of West Okoboji and pay to the City an amount equal to one percent of gross receipts Energy Providers derive from the sale, distribution, or transportation of natural gas delivered within the limits of the City. Gross receipts, as used herein, are revenues received from the sale, distribution, or transportation of gas, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

113.02 EXEMPTION FROM OTHER FEES. The amount paid by Energy Providers shall be in lieu of, and Energy Providers shall be exempt from, all other fees, charges, taxes, or assessments which the City may impose for the privilege of doing business within the City, including, without limitation, excise taxes, occupation taxes, licensing fees, or right-of-way permit fees, and in the event the City imposes any such fee, charge, tax, or assessment, the payment to be made by Energy Providers in accordance with this chapter shall be reduced in an amount equal to any such fee, charge, tax or assessment imposed upon the Energy Providers. Ad valorem property taxes imposed generally upon all real and personal property within the City shall not be deemed to affect Energy Providers’ obligations under this chapter.

113.03 PAYMENT. Energy Providers shall report and pay any amount payable under this chapter on a quarterly basis. Such payment shall be made no more than 30 days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of any franchise granted by the City to an Energy Provider.

113.04 BILLING. Energy Providers shall list the franchise fee collected from customers as a separate item on bills for utility service issued to their customers. If at any time the Iowa Utilities Board or other authority having proper jurisdiction prohibits such recovery, Energy Providers will no longer be obligated to collect and pay the franchise fee until an alternate lawful franchise fee can be negotiated and implemented. In addition, with prior approval of the City, Energy Providers may reduce the franchise fee payable for natural gas delivered to a specific customer when such reduction is required to attract or retain the business of that customer.

113.05 MAP. Within 10 days after the adoption of the ordinance codified in this chapter, the City shall provide the Energy Providers with a map of its corporate limits (the “Map”).

The Map shall be of sufficient detail to assist Energy Providers in determining whether their customers reside within the City's corporate limits. The Map, along with Energy Provider's Geographic Information System ("GIS") mapping information, shall serve as the sole basis for determining Energy Provider's obligation hereunder to collect and pay the franchise fee from customers; provided, however, if the City's corporate limits are changed by annexation or otherwise, it shall be the City's sole responsibility to update the Map so that such changes are included therein and provide the updated Map to the Energy Providers. An Energy Provider's obligation to collect and pay the franchise fee from customers within an annexed area shall not commence until the latter of: (i) 60 days after such Energy Provider's receipt from the City of an updated Map including such annexed area; or (ii) such time after such Energy Provider's receipt from the City of an updated Map including such annexed area as is reasonably necessary for such Energy Provider to identify the customers in the annexed area obligated to pay the franchise fee.

113.06 ANNEXATION. The City shall provide copies of annexation ordinances to Energy Providers on a timely basis to ensure appropriate franchise fee collection from customers within the corporate limits of the City as set forth in Section 113.05 above.

113.07 RECORDS. The City shall have access to and the right to examine, during normal business hours, Energy Provider's books, receipts, files, records, and documents as is reasonably necessary to verify the accuracy of payments due hereunder; provided, the City shall not exercise such right more than twice per calendar year. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery such that any under-payment by an Energy Provider shall be paid within 30 days of recalculation of the amount due, and any over-payment by an Energy Provider shall be deducted from the next payment of such franchise fee due by such Energy Provider to the City; provided, neither party shall have the obligation to correct a mistake that is discovered more than one year after the occurrence thereof. The City shall indemnify an Energy Provider from claims of any nature, including attorney fees, arising out of or related to the imposition and collection of the franchise fee. In addition, an Energy Provider shall not be liable for collecting franchise fees from any customer originally or subsequently identified, or incorrectly identified, by the City or by an Energy Provider as being subject to the franchise fee or being subject to a different level of franchise fees or being exempt from the imposition of franchise fees.

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