

CHAPTER 114
ELECTRIC FRANCHISE
(LINN COUNTY RURAL ELECTRIC COOPERATIVE
ASSOCIATION)

114.01 Franchise Granted	114.16 Future Agreements
114.02 Construction; Maintenance; Indemnification	114.17 Franchise Fee Billing
114.03 Excavations	114.18 Franchise Fee Exception
114.04 Existing Facilities	114.19 Franchise Fee Collection
114.05 Easements	114.20 Franchise Fee Shown Separately
114.06 System Plans and Maps	114.21 Franchise Fee Remittance
114.07 Annual Planning Meeting	114.22 Refund of Franchise Fee
114.08 Tree Maintenance	114.23 Use of Franchise Fee
114.09 Service Provided	114.24 Notice of Franchise Fee Modification
114.10 Undergrounding	114.25 Administration Cost
114.11 Continuous Service	114.26 Annexed Property
114.12 City Use of Company Facilities	114.27 Term
114.13 Energy Efficiency and Renewable Energy	114.28 Severability
114.14 Streetlights	114.29 Publication Expense
114.15 Non-Exclusive	114.30 Entire Agreement

114.01 FRANCHISE GRANTED. There is hereby granted to Linn County Rural Electric Cooperative Association hereinafter referred to as the "Company," its successors and assigns, the right and non-exclusive franchise to acquire, construct, reconstruct, erect, maintain and operate in the City, works and plants for the manufacture and generation of electricity and a distribution system for electric light, heat and power and the right to erect and maintain the necessary poles, lines, wires, conduits and other appliances for the distribution of electric current along, under and upon the streets, alleys and public places in the said City to supply individuals, corporations, communities, and municipalities both inside and outside of said City with electric light, heat and power for the period of twenty (20) years, subject to a right of cancellation at the end of the 10th and 15th years; also the right of eminent domain as provided in Section 364.2 of the Code of Iowa.

114.02 CONSTRUCTION; MAINTENANCE; INDEMNIFICATION. The poles, lines, wires, circuits, and other appliances shall be placed and maintained so as not to unnecessarily interfere with the travel on said streets, alleys, 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. The said Company, its successors and assigns shall hold the City free and harmless from all damages to the extent arising from the negligent acts or omissions of the Company in the erection or maintenance of said system. In addition to the foregoing hold harmless requirement, the Company's excess liability policy will include the City and its employees as additional insureds by definition.

114.03 EXCAVATIONS. In making any excavations in any street, alley, or public place, Company, its successors and assigns, shall protect the site while work is in progress by guards, barriers or signals, shall not unnecessarily obstruct the use of the streets, and shall back fill all openings in such manner as to prevent settling or depressions in surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practical. The Company shall not be required to restore or modify public right of way, sidewalks or other areas in or

adjacent to the Company project to a condition superior to its immediate previously existing condition. The Company shall make all such restorations in a reasonable amount of time following completion of the work, and shall not cause any undue delay that is not caused by weather, fire, natural disaster, unavoidable accidents or casualties.

114.04 EXISTING FACILITIES. The Company shall, in accordance with Iowa law including Company's tariff on file with and made effective by the Iowa Utilities Board as may subsequently be amended, 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 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.

In the event of a relocation, all facilities and/or equipment shall be relocated or replaced in a manner and to locations consistent with in accordance with all chapters of the Marion City Code of Ordinances, all applicable state and local codes and ordinances, and any policies or standards adopted by the City of Marion. In the case where the Company has private easements in place, the City, if it deems to need use of such easements and requests the Company to move its facilities, shall pay for the cost of a new private easement and further shall pay for the cost of the new facilities and installation of such facilities.

114.05 EASEMENTS. 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, and the City shall utilize reasonable efforts to assist Company in securing an easement or other continued rights of record to continue to operate and maintain its facilities upon such relocation.

114.06 SYSTEM PLANS AND MAPS. Upon reasonable request, the Company shall provide the City, on a project specific basis, information indicating the horizontal location, relative to boundaries of the right of way, of all equipment which it owns or over which it has control that is located in the public right of way, including documents, maps and other information in paper or electronic or other forms ("Information"). The Company and City recognize the Information may in whole or part be considered a confidential record under state or federal law or both. Upon receipt of a request from a third party for information concerning information about the Company's facilities within the City, the City will promptly submit same to Company. If the Company believes any of the information requested constitutes a trade secret which may otherwise be protected from public disclosure by state or federal law, or otherwise exempt from disclosure under the provisions of the Freedom of Information Act, the Federal Energy Regulatory Commission Critical Energy Infrastructure requirements pursuant to 18 CFR 388.112 and 388.113, or Chapter 22 of the Code of Iowa, as such statutes and regulations may be amended from time to time, then the Company shall provide the City with a written explanation of the basis for such assertion of confidentiality or exemption from disclosure within ten (10) days.

114.07 ANNUAL PLANNING MEETING. Company operations staff will, at the request of the City, attend an annual meeting with City Public Works staff, utility staff and other interested city entities to discuss utility reliability standards, including comparisons to regional and national reliability statistics, annual and long-term construction planning for the Company and City, tree trimming plans and other related items. This will not replace any periodic meetings needed on specific projects and issues.

114.08 TREE MAINTENANCE. The Company is authorized and empowered to prune or remove at Company expense any tree extending into any street, alley or public grounds to maintain electric reliability, safety, to restore utility service and to prevent limbs, branches or trunks from interfering with the wires and facilities of the Company. The pruning and removal of trees shall be performed in accordance with Company's then current line clearance vegetation plan as filed, as well as all applicable codes and standards referenced therein. In addition, the pruning and removal of trees shall be performed in accordance with all chapters of the Marion City Code of Ordinances, all state and local codes and ordinances, and any policies or standards adopted by the City of Marion.

114.09 SERVICE PROVIDED. During the term of this franchise, the Company shall furnish electric energy in accordance with the applicable regulations and the Company's tariffs. The system authorized by this Ordinance shall be modern and up-to-date and shall be of sufficient capacity to supply all reasonable demands of said City and its inhabitants thereof and shall be kept in a modern and up-to-date condition. The Company will maintain compliance with Iowa Utilities Board regulatory standards for reliability.

114.10 UNDERGROUNDING. The City may request estimates for the undergrounding of replacement lines, upgrades or new lines, including lines to be adjusted for road moves, for specific projects addressed at the annual planning meeting, as referenced in Section 114.06. When requested, the Company will provide to the City two estimates: 1) An estimate for the cost of the project with overhead construction and 2) An estimate for the cost of the project with underground construction. The City will have no more than 60 days from the estimate date to determine if it wants the line built overhead or placed underground. If the City chooses underground construction for the project, the City or the Company's customers within the City will be responsible for the incremental cost of undergrounding, defined as the differential between the estimate for underground construction and the estimate for overhead construction. Upon receipt of the payment for the incremental cost of undergrounding, the Company will install the underground facilities. The Company reserves the right to bill for the amount that the incremental cost associated with installation exceeds its estimate. The City reserves the right to a refund of overpayment if the incremental costs are less than the amount billed in the estimate. If the City wishes to have a line not scheduled for replacement or upgrade placed underground, the City shall contact the Company to make such a request. The City or the Company's customers within the city shall cover all costs related to this work. If undergrounding of distribution or service lines requires customers of the Company to make adjustments to customer-owned electrical systems, the City bears the responsibility of communication with those customers and, if it chooses, the cost of converting the customer's utility entrance from overhead to underground. The Company reserves the right to review all of the City's communications with its customers. The City may elect to have the Company bill the city directly or bill the Company's customers within the City's boundaries for

any costs attributable to the City under this section or any other applicable sections as provided in the Company's Government Facilities Relocation Rider.

114.11 CONTINUOUS SERVICE. Service to be rendered by the Company under this franchise shall be continuous unless prevented from doing so by fire, acts of God, unavoidable accidents or casualties, or reasonable interruptions necessary to properly service the Company's equipment, and in such event service shall be resumed as quickly as is reasonably possible.

114.12 CITY USE OF COMPANY FACILITIES. The Company, upon request of the City, and without cost to it, shall permit its poles, conduits and other distribution facilities, so far as may be done without interfering with the free use its own wires and fixtures, to be used for the purpose of maintaining thereon any control wires and other appurtenances which may be necessary for any use by the City. The City shall defend, indemnify, and hold the Company harmless from any and all causes of action for injury, litigation or damages which may arise out of or by reason of the placing or maintenance of such control wires and other appurtenances by the City upon facilities of the Company, provided such causes of action did not arise out of the negligence of the Company. Such control wires and other appurtenances shall meet all applicable codes, rules and regulations that may be in effect. Specifically, all installations of said wires and appurtenances shall be conditioned upon compliance with the safety rules of the Company, as well as the requirements of the National Electric safety Code (NESC) or other safety requirements as adopted by the Iowa Utilities Board under 199 IAC Chapter 25. If the Company has a need for space utilized by the City, including conduits, the City will, within a reasonable period of time, remove said control wires and appurtenances or will, at its own cost, provide the Company with a reasonable alternative location, that similarly allows expansion of the electrical distribution system serving the electric customers, without disrupting Company operations.

114.13 ENERGY EFFICIENCY AND RENEWABLE ENERGY. The Company will provide to the City energy efficiency materials and rebate forms for display in the building permit department and other City departments as requested by the City. The Company will participate in neighborhood and community events, when possible, and upon a request from the City or neighborhood organization, to encourage City residents to utilize the Company's energy efficiency programs.

114.14 STREETLIGHTS. No less than once each year, Company shall provide the City with a count of streetlights. If the City would at any time desire to purchase the Company's street lights located within the City, the Company agrees to negotiate the sale of such street lights. The terms and conditions of such a sale will include that the street lights will be purchased at a mutually agreed price and on an as is, where is basis. Upon sale, City shall assume all risk and loss related to the operation and maintenance of the purchased street lighting. Any agreement will require the City to purchase all street lights in the corporate limits of the City that are owned by the Company.

114.15 NON-EXCLUSIVE. The Franchise granted by this Ordinance shall not be exclusive.

114.16 FUTURE AGREEMENTS. The Company, upon request of the City, shall explore with the City agreements that are mutually beneficial, and economically feasible to both parties, for interconnection of alternative energy electrical facilities, use of facilities and purchase of excess alternatively produced power, in a timely manner, adhering to all Federal, State or local codes,

rules and regulations in effect at the time of agreement. The Company will work with the City for fair regulatory treatment of such projects. Agreements are subject to generation reliability requirements.

114.17 FRANCHISE FEE BILLING. There is hereby imposed a franchise fee of four percent (4%) upon the gross revenue generated from sales of electricity by the Company within the corporate limits of the City.

114.18 FRANCHISE FEE EXCEPTION. The franchise fee shall not be applied to any account for the City of Marion or the City of Marion Water Department.

114.19 FRANCHISE FEE COLLECTION. The Company shall begin collecting the franchise fee within 60 days of final approval of the city council of Marion and within statutory requirements.

114.20 FRANCHISE FEE SHOWN SEPARATELY. The amount of the franchise fee shall be shown separately on the utility bill to each customer.

114.21 FRANCHISE FEE REMITTANCE. The Company shall remit franchise fee receipts to the City no more frequently than on or before the last business day of the month following each calendar year quarter.

114.22 REFUND OF FRANCHISE FEE. The Company shall not, under any circumstances be required to return or refund any franchise fees that have been collected from customers and remitted to the City. In the event the Company is required to provide data or information in defense of the City's imposition of franchise fees or the Company is required to assist the City in identifying customers or calculating any franchise fee refunds for groups of or individual customers the City shall reimburse the Company for the expenses incurred by the Company to provide such data or information.

114.23 USE OF FRANCHISE FEE. The City shall be solely responsible for the proper use of any amounts collected as franchise fees, and shall only use such fees as collected for a purpose as allowed by applicable law.

114.24 NOTICE OF FRANCHISE FEE MODIFICATION. The City shall give the Company reasonable, not less than 6 months, notice prior to the request to adjust the franchise fee percentage to be collected pursuant to this Ordinance. The City agrees not to modify the amount more than one time in a two-year period.

114.25 ADMINISTRATION COST. The costs of franchise fee administration are not charged directly to the City. The City and Company agree that the Company may charge an administration fee as in an amount not to exceed the limitation provided for in state statute.

114.26 ANNEXED PROPERTY. The City Clerk shall provide written notification by certified mail to any officer of the Company or designee of any final order authorizing annexation or other change in corporate limits of the City, and the Company shall apply the franchise fee to its customers affected by the annexation or change in corporate limits, commencing on an agreed date, which is not less than ninety (90) days from the receipt of the certified notice. The City shall

include with the notice a list of any utility accounts exempt from the franchise fee within the annexed area.

114.27 TERM. The term of the franchise granted by this Ordinance and the rights granted thereunder shall continue for the period of twenty (20) years from and after written acceptance by the Company, subject to a right of cancellation at the end of the 10th and 15th years. The acceptance shall be filed with the City Clerk within thirty (30) days from passage of this Ordinance.

114.28 SEVERABILITY. If any section or provision of this ordinance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of any other provisions of this ordinance which can be given effect without the invalid portion or portions and to this end each section and provision of this ordinance is severable.

114.29 PUBLICATION EXPENSE. The expense of the publication of this Ordinance shall be paid by the Company.

114.30 ENTIRE AGREEMENT. This Ordinance sets forth and constitutes the entire agreement between the Company and the City with respect to the rights contained herein, and may not be supplemented, superseded, modified or otherwise amended without the written approval and acceptance of the Company. Notwithstanding the foregoing, in no event shall the City enact or maintain any Ordinance or place any limitations, either operationally or through the assessment of fees other than those approved and accepted by the Company within this Ordinance, that create additional burdens upon the Company, or which delay utility operations.

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