ORDINANCE NO. 94205-0318

AN ORDINANCE AMENDING ORDINANCE NO. 91191-0410 GRANTING TO INTERSTATE POWER AND LIGHT COMPANY (ALLIANT ENERGY), ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE A NATURAL GAS DISTRIBUTION SYSTEM IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA FOR THE PURPOSE OF DISTRIBUTING, SUPPLYING AND SELLING NATURAL GAS TO THE CITY AND ITS INHABITANTS BY INCREASING THE FRANCHISE FEE TO FIVE PERCENT (5%)

WHEREAS, pursuant to Ordinance No. 91191-0410, a franchise was granted to Interstate Power and Light Company (Alliant Energy) for the sale and distribution of natural gas within the city limits of the City of Muscatine;

WHEREAS, the City of Muscatine wishes to amend the franchise ordinance to provide that Interstate Power and Light Company (Alliant Energy) shall remit a franchise fee of five percent (5%) beginning July 1, 2018.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, that Muscatine Ordinance No. 91191-0410, is hereby amended as follows:

SECTION 1. Section 7(A) of Ordinance No. 91191-0410 is hereby deleted in its entirety. Enacted in lieu thereof is a new Section 7(a) as follows:

14-9-7 Franchise Fee.

(A) In its monthly billing Company shall include a franchise fee of five percent (5%) on the gross receipts from the distribution, supply, or sale of natural gas for customers within the limits of the City of Muscatine, Muscatine County, Iowa. The Company shall make all reasonable effort to commence collecting the 5% franchise fee by the date of July 1, 2018, but no later than October 1, 2018. The franchise fee may be increased or decreased by the City on or after January 1, 2019, provided that the franchise fee shall be limited to a maximum of 5%. The City shall give the Company a minimum 90-day notice prior to the request to implement an increase or decrease in the 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. Collection of the franchise fee shall cease at the earlier of the City's repeal of the franchise fee or the end of the Ordinance term.

SECTION 2. Ordinance No. 91191-0410, as amended herein and set forth in Attachment A, attached hereto and by this reference made a part hereof, shall be inserted into the Municipal Code under Title 14, Chapter 1 and made a part of said Code as provided by law.

SECTION 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. If any section, provision, sentence, clause, phrase, or part of this Ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this Ordinance as a whole or any section, subsection, provision, sentence, clause, phrase, or part thereof not adjudged invalid or unconstitutional.

SECTION 5. This ordinance shall be effective from and after its final passage, approval and publication as provided by law.

Passed First Reading by the City Council of Muscatine, Iowa, 8th day of March, 2018.

Passed Second Reading and Waived Third Reading by the City Council of Muscatine, Iowa, the 15th day of March, 2018.

PASSED AND ENACTED by the City Council of Muscatine, Iowa, the 15th day of March, 2018.

Allen Harvey, Mayor Pro Tem

ATTEST:

Gregg Mandsager, City Clerk

1st Reading –

Motion by Council Member Fitzgerald, seconded by Council Member Brackett, first reading of Ordinance No. 94205-0318 (2017/2018).

AYES: 7
NAYS: 0
ABSENT: 0

2nd Reading – _

Motion by Council Member Fitzgerald, seconded Council Member Malcolm, to waive third reading and approve on the second and final reading of Ordinance No. 94205-0318 (2017/2018).

AYES: 7
NAYS: 0
ABSENT: 0

TITLE 5 -
BUSINESS REGULATIONS
CHAPTER 9 - GAS FRANCHISE

SECTIONS:

14-1-1 Granting of Franchise
14-1-2 Construction of Distribution System
14-1-3 Restoration of Public Places
14-1-4 Relocation of Facilities or Equipment
14-1-5 Furnishing of Service
14-1-6 Non-Exclusive
14-1-7 Franchise Fee
14-1-8 Term of Franchise
14-1-9 Publication
14-1-10 Acceptance
14-1-11 Repealer

14-1-1 Granting of Franchise. There is hereby granted to INTERSTATE POWER & LIGHT COMPANY, hereinafter referred to as the "Company," its successors and assigns, the right, franchise and privilege for the term of twenty-five (25) years from and after the passage, adoption, approval and acceptance of this Ordinance, to lay down, maintain and operate the necessary pipes, mains and other conductors and appliances in, along and under the streets, avenues, alleys and public places in the City of Muscatine, Muscatine County, Iowa as now or hereafter constituted, for the purpose of distributing, supplying and selling gas to said City and the residents thereof and to persons and corporations beyond the limits thereof; also the right of eminent domain as provided in Section 364.2 of the Code of Iowa. The term "gas" as used in this franchise shall be construed to mean natural gas only.

14-1-2 Construction of Distribution System. 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.

14-1-3 Restoration of Public Places. In making any excavations in any street, alley, avenue 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, shall back fill all openings in such manner as to prevent settling or depressions in surface, and shall replace the surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practical and if defects are caused shall repair the same.

14-1-4 Relocation of Facilities or Equipment. 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.

14-1-5 Furnishing of Service. Said Company, its successors and assigns, shall throughout the term of the franchise distribute to all consumers gas of good quality and shall furnish uninterrupted service, except as interruptible service may be specifically contracted for with consumers; provided, however, that any prevention of service caused by fire, act of God or unavoidable event or accident shall not be a breach of this condition if the Company resumes service as quickly as is reasonably practical after the happening of the act causing the interruption.

14-1-6 Non-exclusive. The franchise granted by this Ordinance shall not be exclusive.

14-1-7 Franchise Fee.

(A) In its monthly billing Company shall include a franchise fee of five percent (5%) on the gross receipts from the distribution, supply, or sale of natural gas for customers within the limits of the City of Muscatine, Muscatine county, Iowa. The Company shall make all reasonable effort to commence collecting the 5% franchise fee by the date of July 1, 2018, but no later than October 1, 2018. The franchise fee may be increased or decreased by the City on or after January 1, 2019, provided that the franchise fee shall be limited to a maximum of 5%. The City shall give the Company a minimum 90-day notice prior to the request to implement an increase or decrease in the 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. Collection of the franchise fee shall cease at the earlier of the City's repeal of the franchise fee or the end of the Ordinance term.

(B) The franchise fee shall be applied to all customers' bills in accordance with Iowa Code Chapter 364.2(f) and 423B.5. The Company shall not grant exemptions or refunds of the franchise fee beyond that granted by the Code of Iowa. If at any time the Iowa Utilities Board or another authority having proper jurisdiction, prohibits the collection or payment of a franchise fee, the Company shall be relieved of its obligation to collect and pay to the City the franchise fee.

(C) City agrees that Company's obligations related to the franchise fee are limited to those obligations set forth in Sections 7, 8 and 12 herein. City further agrees to bear all costs (including attorney fees), and to defend, indemnify and hold Company harmless from any and all liability, claims or causes of action associated with disputes related to the billing and/ or collection of the franchise fee, provided that the City shall not be obligated

to bear such costs or to defend, indemnify and hold Company harmless if such disputes arise from claims of inaccurate billing by the Company.

(D) Section 10. Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the limits of said City, the City Clerk shall provide written notification to an officer of Company of such annexation or change in the limits of said City, and the Company shall apply the franchise fee to its customers who are affected by the annexation or change in the limits of the City, commencing no more than six (6) months from receipt of the written notice and City's verification of addresses within the annexed area.

(E) Section 11. The amount of franchise fee shall be shown separately on the utility bill to each customer.

(F) The Company shall remit collected franchise fees to the City on a quarterly basis, within thirty (30) days after last day of the last revenue month of the quarter.

(G) That said franchise fee shall be in lieu of any other payments to the City for the Company's use of streets, avenues, alleys and public places in the said City and other administrative or regulatory costs with regard to said franchise; and said pipes, mains, and other conductor and appliances in, along and under the streets, avenues, alleys and public places in the said City for the purpose of distributing, supplying and selling gas to said City and the residents thereof and to persons and corporations beyond the limits thereof shall be exempt from any special tax, assessment, license or rental charge during the entire term of this ordinance.

14-1-8 Term of Franchise. The term of the franchise granted by this Ordinance and the rights granted thereunder shall continue for the period of twenty-five (25) years from and after its acceptance by the said Company, as herein provided.

14-1-9 Publication. The expense of the publication of this Ordinance shall be paid by the Company.

14-1-10 Acceptance. The franchise granted by this Ordinance shall be conditioned upon acceptance by the Company in writing. The acceptance shall be filed with the City Clerk within ninety (90) days from passage of this Ordinance.

14-1-11 Repealer. This Ordinance sets forth and constitutes the entire agreement between the Company and the City of Muscatine with respect to the rights contained herein, and may not be superseded, modified or otherwise amended without the approval and acceptance of the Company. Upon acceptance by the Company, this Ordinance shall supersede, abrogate and repeal the prior gas system ordinance between the Company and the City of Muscatine as of the date this Ordinance is accepted by the Company. Notwithstanding the foregoing, in no event shall the City of Muscatine enact 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.

MUSCATINE

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FINANCE & RECORDS

MEMO

To: Gregg Mandsager, City Administrator

From: Nancy A. Lueck, Finance Director

Date: March 1, 2018

Re: Resolution Approving and Adopting a Revenue Purpose Statement for the Use or Expenditure of Revenues from the Natural Gas Utility Franchise Fee

Introduction:

The City Council of the City of Muscatine, Iowa, established a utility franchise fee for Interstate Power & Light Company for the natural gas distribution system within the city limits of the City of Muscatine with the adoption of Ordinance 91191-0410 in April of 2010. The City of Muscatine budget for the fiscal year beginning July 1, 2018 includes an increase in the utility franchise fee from the current 1% to 5% effective July 1, 2018.

While the original ordinance provides that the franchise fee can be set at rates up to 5%, the City Attorney has stated that a public hearing is required and an ordinance amendment is necessary prior to approving any increase in the utility franchise fee. The resolution setting the date for the hearing for March 8, 2018 was included on the agenda previously distributed for the March 1, 2018 meeting.

Background:

In addition to the public hearing required to be held prior to adoption of the ordinance amendment to increase the franchise fee rate, the City Attorney has advised that the City needs to adopt and publish an updated Revenue Purpose Statement for the use of proceeds from the utility franchise fee.

The City adopted the current Revenue Purpose Statement for the franchise fee in April of 2010 when the franchise fees was first implemented. Proceeds of the franchise fee have been reflected in annual budgets as a funding source for public safety with 50% allocated for the police and 50% for the fire department budgets. The proposed updated Policy includes all of the permissible uses of this fee which continues to include funding for public safety. While other uses are listed in the proposed new policy, the 2018/2019 budget continues to reflect the utility franchise fee as a funding source for the police and fire department budgets.

Recommendation:

Please include the attached resolution approving and adopting a Revenue Purpose Statement for the use or expenditure of revenues from the franchise fee as an added item to the agenda for the March 1, 2018 meeting. Upon its approval the Revenue Purpose Statement will be published as required.

Please contact me if you have any questions or need additional information.

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FINANCE & RECORDS

MEMO

To: Gregg Mandsager, City Administrator

From: Nancy A. Lueck, Finance Director

Date: March 12, 2018

Re: Ordinance on 2nd and Final Reading Amending Ordinance No. 91191-0410 to Increase the Utility Franchise Fee for Interstate Power & Light

Introduction and Background:

The City Council of the City of Muscatine, Iowa, established a utility franchise fee for Interstate Power & Light Company for the natural gas distribution system within the city limits of the City of Muscatine with the adoption of Ordinance 91191-0410 in April of 2010. Section 7 of this Ordinance provides that the utility franchise fee was initially set at 2% of the gross receipts from the distribution, supply, or sale of natural gas for customers within the limits of the City of Muscatine. This fee was lowered to 1% effective July 1, 2012. Section 7 of this Ordinance further provides that the franchise fee may be increased or decreased by the City with the fee limited to 5%. The City of Muscatine budget for the fiscal year beginning July 1, 2018 includes an increase in the utility franchise fee from the current 1% to 5% effective July 1, 2018. The Ordinance provides that the City give the Utility a minimum of a 90 day notice when implementing changes in the franchise fee rate.

Recommendation:

While the original ordinance provides that the franchise fee can be set at rates up to 5%, the City Attorney has stated that a public hearing is required and an ordinance amendment is necessary prior to approving any increase in the utility franchise fee. The public hearing was held and the first reading of the ordinance was approved at the March 8, 2018 In Depth meeting.

Summary:

Please include the attached ordinance on second and final reading to increase the utility franchise fee to 5% on the agenda for the March 15, 2018 In Depth meeting. It is proposed that the City Council approve the ordinance amendment on second and final reading in order to meet the 90-day notice requirement to the utility.

Please contact me if you have any questions or need additional information.

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FINANCE & RECORDS

MEMO

To: Gregg Mandsager, City Administrator

From: Nancy A. Lueck, Finance Director

Date: March 2, 2018

Re: Ordinance on 1st Reading Amending Ordinance No. 91191-0410 to Increase the Utility Franchise Fee for Interstate Power & Light

Introduction and Background:

The City Council of the City of Muscatine, Iowa, established a utility franchise fee for Interstate Power & Light Company for the natural gas distribution system within the city limits of the City of Muscatine with the adoption of Ordinance 91191-0410 in April of 2010. Section 7 of this Ordinance provides that the utility franchise fee was initially set at 2% of the gross receipts from the distribution, supply, or sale of natural gas for customers within the limits of the City of Muscatine. This fee was lowered to 1% effective July 1, 2012. Section 7 of this Ordinance further provides that the franchise fee may be increased or decreased by the City with the fee limited to 5%. The City of Muscatine budget for the fiscal year beginning July 1, 2018 includes an increase in the utility franchise fee from the current 1% to 5% effective July 1, 2018. The Ordinance provides that the City give the Utility a minimum of a 90 day notice when implementing changes in the franchise fee rate.

Recommendation:

While the original ordinance provides that the franchise fee can be set at rates up to 5%, the City Attorney has stated that a public hearing is required and an ordinance amendment is necessary prior to approving any increase in the utility franchise fee. The public hearing is scheduled for March 8, 2018 and the first reading of the ordinance will be included in the agenda for that meeting.

Summary:

Please include the attached ordinance on first reading to increase the utility franchise fee to 5% on the agenda for the March 8, 2018 In Depth meeting. It is proposed that the City Council consider approving the ordinance amendment on second and final reading at the March 15, 2018 meeting in order to meet the 90-day notice requirement to the utility.

Please contact me if you have any questions or need additional information.