

CHAPTER 15 - FRANCHISES

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CHAPTER 15

FRANCHISES

ARTICLE I – AMEREN ILLINOIS

15-1-1 **AMEREN GAS FRANCHISE.** The natural gas franchise agreement between the Village of Pocahontas and Illinois Power Company d/b/a AmerenIP is hereby included in this Chapter as **Appendix “A”**. (Ord. No. 03-10; 03-22-10)

ARTICLE II – AMEREN ILLINOIS ELECTRIC FRANCHISE

15-2-1 **AMEREN ILLINOIS ELECTRIC FRANCHISE.** The electric franchise agreement between the Village of Pocahontas and Ameren Illinois Company d/b/a Ameren Illinois is hereby included in this Chapter as **Appendix “B”**. (Ord. No. 01-14; 01-27-14)

APPENDIX "A"

GAS FRANCHISE

AN ORDINANCE RENEWING AN EXISTING FRANCHISE AND GRANTING FOR A PERIOD OF TWENTY (20) YEARS TO AMERENIP, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE, RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR, PLACE, REMOVE, EXTEND, MAINTAIN, AND OPERATE A GAS UTILITY SYSTEM IN THE VILLAGE OF POCAHONTAS, COUNTY OF BOND AND STATE OF ILLINOIS.

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF POCAHONTAS, COUNTY OF BOND, AND THE STATE OF ILLINOIS, AS FOLLOWS:

SECTION 1. It is the intent of the parties by this Ordinance to extend for an additional term, subject to the terms and conditions here stated, the authorization to AmerenIP, its successors and assigns, to construct, operate and maintain a gas utility system within the Village as originally authorized by Ordinance No. 121 approved on **August 22, 1960**. The parties acknowledge that by so doing they are continuing an existing relationship authorizing the services of a utility for the provision of gas energy and other purposes within the Village for the benefit of its citizens and residents as well as other consumers of gas energy located within its corporate limits.

SECTION 2. There is hereby given and granted to AmerenIP, its successors and assigns (hereinafter referred to as the "Company"), the right, privilege and authority to construct, operate, maintain and/or extend within the corporate limits, as the same now exists or may hereafter be extended, of the Village of Pocahontas (hereinafter referred to as "Municipality"), a gas utility system for the transmission, distribution and/or sale of gas energy and other purposes (the "System"), together with the right, privilege and authority to lay, erect, construct, install, operate and/or maintain all necessary mains, pipes, valves, equipment and/or other apparatus as may be necessary or convenient for the System, in, upon, along, over, under, through and/or across each and all of the streets, avenues, alleys, bridges, easements, rights of way and/or other public places.

SECTION 3. All mains, pipes, valves and apparatus shall, so far as practicable, be placed underground and shall be so located and laid as not to interfere with any pipes, conduits, sewers, drains, pavements, or other public improvements existing at the time of such location, and said Company shall forthwith repair any damage caused to such improvements to the satisfaction of the official or officials of said Municipality having charge of the supervision thereof. There shall be no unnecessary obstruction to the streets, avenues, alleys, and public places of said Municipality in the laying, installation, operation or maintenance of any of said mains, pipes, valves or apparatus. All facilities of Company in said Municipality shall be installed and maintained in accordance with the applicable rules and regulations of the Illinois Commerce Commission.

When any street, avenue, or other public place shall be graded, curbed, paved or otherwise changed so as to make the resetting or relocation of any pipes or other equipment placed or installed under this Ordinance necessary, the Company shall make such resetting or relocation, at the Company's cost and expense. Municipality shall provide the Company with a suitable location for the resetting or relocation of such pipes or other equipment, and the Company's obligation shall be limited to resetting or relocating pipes or other equipment of the same type and configuration as the displaced pipes or other equipment. Company shall make such resetting or relocation within a reasonable time after receiving written notice of the need for the same from the authorized representative of the Municipality, and the establishment by the Municipality of the permanent grade at the new location.

SECTION 4. When any street, avenue, alley, bridge, easement, right of way and/or other public place, upon which or in which any facilities of Company have been placed, shall be graded, curbed, paved or otherwise changed by the Municipality so as to make the resetting or reconstruction of such facilities necessary, Company shall make such necessary change in construction at no cost to Municipality. Should it become necessary or should the Company desire to use conduits or other similar fixtures, Company shall make application to the Municipality for the establishment of permanent grades and such conduits or other similar fixtures shall not be installed until such permanent grades have been established. The Municipality agrees to establish promptly such permanent grades upon such application.

SECTION 5. The rates to be charged by the Company for gas service rendered under this Ordinance shall be such as are approved from time to time by the Illinois Commerce Commission of the State of Illinois and/or such other duly constituted governmental authority as shall have jurisdiction thereof. All Rules and Regulations of the Illinois Commerce Commission of the State of Illinois applicable to the rights, privileges and authority granted by this Ordinance, in the event of conflict herewith, shall govern.

SECTION 6. As a further consideration for the rights, privileges and authorities granted by this ordinance, the Company shall, throughout the period in which Company shall exercise the rights, privileges and authority granted by this Ordinance furnish to the said Municipality compensation in the amount of \$1,950, payable annually, within **thirty (30) days** of the anniversary date.

SECTION 7. The rights, privileges and authority hereby granted shall inure to and be vested in Company, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon Company shall devolve and be binding upon its successors and assigns, successively, in the same manner.

SECTION 8. This Ordinance shall confer no right, privilege or authority on Company, its successors or assigns, unless Company shall within **ninety (90) days** after due notice to the Company of the enactment of this Ordinance, file with the Village Clerk an acceptance of the terms and provisions hereof; provided, however, that if such acceptance be not so filed within said period of **ninety (90) days**, all rights, privileges, and authority herein granted shall become null and void.

SECTION 9. All rights, privileges and authority given and granted by this Ordinance are granted for a term of **twenty (20) years** from and after the acceptance of this Ordinance as hereinafter provided (the "Initial Term"), and thereafter on a year-to-year basis (each a "Subsequent Term") unless either the Company or Municipality notifies the other in writing of its desire to terminate this Ordinance at least **six (6) months** prior to the expiration of the Initial Term or any Subsequent Term.

SECTION 10. The Municipality acknowledges that Company is vested in rights, permissions and authority independent of this Ordinance. Neither acceptance of this Ordinance nor compliance with its provisions shall impair in any way or waive any right, permission or authority which Company may have independent of this Ordinance. In addition, neither use by Company of public property or places as authorized by this Ordinance nor service rendered by Company in said Municipality shall be treated as use solely of the rights, permission and authority provided for by this Ordinance and in no way shall indicate non-use of any right, permission or authority vested in the Company independent of this Ordinance. In the event the Municipality vacates any streets, avenues, alleys, easements, rights of way, bridges or other public places during the term of this Ordinance, Municipality agrees to reserve unto Company the rights, privileges and authority herein given and granted to the Company in upon, under, along, over and across each and all of such vacated premises which are at that time in use by the Company.

SECTION 11. All ordinances and parts of ordinances in conflict with this Ordinance or with any of its provisions are, to the extent of such conflict, hereby repealed.

SECTION 12. This Ordinance shall not relieve Company of the obligation to comply with any ordinance now existing in the Municipality or enacted in the future requiring Company to obtain written permits or other approval from the Municipality prior to commencement of construction of facilities within the streets thereof, except Company shall not be required to obtain permits or other approval from the Municipality for the maintenance, upgrading and repair of its facilities. Except in cases of emergency, prior to engaging in any excavation activity that is expected to create an obstruction or other hazardous condition in any street avenue, alley or public place, the Company shall notify Municipality of the location and extent of the planned excavation. In cases of emergency, Company shall notify Municipality of the location and extent of such activity as soon as practicable after the emergency has been abated.

SECTION 13. If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 14. If, at any time, during the term of this contract, Municipality permits another entity or person to provide gas distribution or similar services, and Company reasonably believes the other entity or person is granted more favorable treatment, terms, or conditions, then Company shall notify Municipality of such treatment, terms, or conditions. Alternatively, if Municipality reasonably believes the other entity or person grants Municipality more favorable treatment, terms, or conditions, then Municipality shall notify Company of such treatment, terms, or conditions. Upon receipt of such notice, Municipality and Company shall negotiate in good faith to amend this Ordinance to provide Company or Municipality such more favorable treatment, terms or conditions on an equivalent basis. Such amendment shall take into consideration all circumstances that distinguish between Company and the entity or person receiving the more favorable or less favorable treatment, terms, or conditions.

SECTION 15. The Company shall be exempt from any special tax, assessment, license, rental or other charge during the term of this Ordinance, on all mains, pipes, valves, equipment and other apparatus placed under the streets, alleys, avenues, bridges, easements, rights of way or other public places within the corporate limits of Municipality.

SECTION 16. This Ordinance shall take effect and the rights, privileges and authority hereby granted and renewed shall vest in Company upon its filing of an acceptance with the Village Clerk according to the terms prescribed herein. This Ordinance shall be in full force from and after its passage, approval and **ten (10) day** period of publication in the manner provided by law.

Passed and approved this 22nd day of March, 2010.

(Ord. No. 03-10; 03-22-10)

APPENDIX "B"

ELECTRIC FRANCHISE

AN ORDINANCE RENEWING AN EXISTING FRANCHISE AND GRANTING FOR A PERIOD OF 20 YEARS TO AMEREN ILLINOIS, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE, RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR, PLACE, REMOVE, EXTEND, MAINTAIN, AND OPERATE AN ELECTRIC UTILITY SYSTEM IN THE VILLAGE OF POCAHONTAS, COUNTY OF BOND AND STATE OF ILLINOIS.

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF POCAHONTAS, COUNTY OF BOND, AND THE STATE OF ILLINOIS, AS FOLLOWS:

SECTION 1. It is the intent of the parties by this Ordinance to extend for an additional term, subject to the terms and conditions here stated, the authorization to Ameren Illinois, its successors and assigns, to construct, operate and maintain a utility system within the Village as originally authorized by Ordinance No. 134 approved September 28, 1964. The parties acknowledge that by so doing they are continuing an existing relationship authorizing the services of a utility for the provision of electric energy and other purposes within the Village for the benefit of its citizens and residents as well as other consumers of electric energy located within its corporate limits. For purposes of construing the terms, rights and obligations of the parties this authorization is granted pursuant to Section 14 of the Electric Supplier Act, 220 ILCS 30/14, and the Illinois Municipal Code, 65 ILCS 5/1-1-1, et seq.

SECTION 2. There is hereby given and granted to Ameren Illinois, its successors and assigns (hereinafter referred to as the "Company"), the right, privilege and authority to construct, operate, maintain and/or extend within the corporate limits, as the same now exists or may hereafter be extended, of the Village of Pocahontas (hereinafter referred to as "Municipality"), an electric utility system for the transmission, distribution and/or sale of electric energy and other purposes (the "System"), together with the right, privilege and authority to erect, construct, install, operate and/or maintain all poles, conductors, wires, cables, conduits, equipment and/or other apparatus as may be necessary or convenient for the System, in, upon, along, over, under, through and/or across each and all of the streets, avenues, alleys, bridges, easements, rights of way and/or other public places.

SECTION 3. All poles and other equipment placed or installed under this Ordinance in streets, alleys, avenues, public places, or right-of-way, shall be so placed as not to interfere unnecessarily with travel on such streets, alleys, avenues, public places, or right-of-way. All poles and other equipment placed or installed under this Ordinance shall be so located as not to injure unnecessarily any pipes, conduits, sewers, drains, pavement or other like public improvements, and said Company shall forthwith repair any damage caused to such improvements to the satisfaction of the official or officials of said Municipality having charge of the supervision thereof and in default thereof said Municipality may repair such damage and charge the cost thereof to, and collect the same from, the Company. All facilities of Company in said Municipality shall be installed and maintained in accordance with the applicable rules and regulations of the Illinois Commerce Commission.

When any roadway within a right-of-way shall be graded, curbed, paved or otherwise changed or when there is a relocation of such right-of-way, so as to make the resetting or relocation of any poles or other equipment placed or installed under this Ordinance necessary, the Company shall make such resetting or relocation, at the Company's cost and expense. Municipality shall provide the Company with a suitable location for the resetting or relocation of such poles or other equipment, and the Company's obligation shall be limited to resetting or relocating poles or other equipment of the same type and configuration as the displaced poles or other equipment. Company shall make such resetting or relocation within a reasonable time after receiving written notice of the need for the same from the authorized representative of the Municipality, and the

establishment by the Municipality of the permanent grade at the new location. Except as expressly stated, nothing in this Section requires the Company to bear responsibility for any costs or expenses to relocate its poles or other equipment for any other reason or cause.

SECTION 4. In order for Company to render efficient, safe, and continuous services, it will be necessary for Company to conduct vegetation management activities, including the trimming or pruning and cutting down of the trunks and branches of trees and/or vines and shrubs along or over the streets, sidewalks, alleys, avenues, squares, bridges and other public places in said Municipality, and areas dedicated to the Municipality for public utility use, wherever the same are likely to interfere with its equipment; therefore, Company is hereby granted the right to conduct such vegetation management activities so as to enable it to erect, operate and maintain its equipment in a regular and consistent form and manner and to enable it to provide the most efficient, safe, and continuous service that the circumstances will permit; provided, however, that Company shall exercise proper care and discretion in its vegetation management activities. Company shall conduct its vegetation management activities in accordance with applicable law, including without limitation, 220 ILCS 5/8-505.1, and any amendments thereto. Notwithstanding the foregoing, to the extent applicable law may be superseded or modified by an agreement between Municipality and Company, Municipality and Company reserve the right to enter into such an agreement.

SECTION 5. The rates to be charged by the Company for electric service rendered under this Ordinance shall be such as are approved from time to time by the Illinois Commerce Commission of the State of Illinois and/or such other duly constituted governmental authority as shall have jurisdiction thereof. All Rules and Regulations of the Illinois Commerce Commission of the State of Illinois applicable to the rights, privileges and authority granted by this Ordinance, in the event of conflict herewith, shall govern.

SECTION 6. As a further consideration for the rights, privileges and authorities granted by this Ordinance, the Company shall, in Year 1 of the agreement, furnish Municipality compensation in the amount of \$7,600, beginning within **thirty (30) days** of the acceptance of this Ordinance by the Municipality. In subsequent years payment will be made after the anniversary date, on the following graduated scale: Year 2 - \$6,675; Year 3 - \$5,750; Year 4 - \$4,825; and Year 5 and all remaining years - \$3,900. Municipality may request a revision to the compensation amount after **five (5) years** from the date of passage of this Ordinance if Municipality has a reasonable belief that its population has increased or decreased by **three percent (3%)** or more. Municipality must request the revision at least **sixty (60) days** prior to the next anniversary date. If Company confirms that the number of customers served by the System within Municipality's corporate limits has increased or decreased by **three percent (3%)** or more, the compensation amount will be revised by that percentage for the next and succeeding payments. Municipality may request similar revisions to compensation amounts under these criteria in additional **five (5) year** periods throughout the term of this Ordinance.

SECTION 7. If, at any time, during the term of this contract, Municipality permits another entity or person to provide electric distribution or similar services, and Company reasonably believes the other entity or person is granted more favorable treatment, terms, or conditions, then Company shall notify Municipality of such treatment, terms, or conditions. Alternatively, if Municipality reasonably believes the other entity or person grants Municipality more favorable treatment, terms, or conditions, then Municipality shall notify Company of such treatment, terms, or conditions. Upon receipt of such notice, Municipality and Company shall negotiate in good faith to amend this Ordinance to provide Company or Municipality such more favorable treatment, terms or conditions on an equivalent basis. Such amendment shall take into consideration all circumstances that distinguish between Company and the entity or person receiving the more favorable or less favorable treatment, terms, or conditions.

SECTION 8. The Company shall be exempt from any special tax, assessment, license, rental or other charge during the term of this Ordinance, on all poles, conductors, wires, cables,

conduits, equipment and other apparatus placed in the streets, alleys, avenues, bridges, easement, rights of way or other public places within the corporate limits of Municipality.

SECTION 9. The rights, privileges and authority hereby granted shall inure to and be vested in Company, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon Company shall devolve and be binding upon its successors and assigns, successively, in the same manner.

SECTION 10. This Ordinance shall confer no right, privilege or authority on Company, its successors or assigns, unless Company shall within **ninety (90) days** after due notice to the Company of the enactment of this Ordinance, file with the Village Clerk an acceptance of the terms and provisions hereof; provided, however, that if such acceptance be not so filed within said period of **ninety (90) days**, all rights privileges, and authority herein granted shall become null and void.

SECTION 11. All rights, privileges and authority given and granted by this Ordinance are granted for a term of **twenty (20) years** from and after the acceptance of this Ordinance as hereinafter provided (the "Initial Term"), and thereafter on a year-to-year basis (each a "Subsequent Term") unless either the Company or Municipality notifies the other in writing of its desire to terminate this Ordinance at least **six (6) months** prior to the expiration of the Initial Term or any Subsequent Term.

SECTION 12. The Municipality acknowledges that Company is vested in rights, permissions and authority independent of this Ordinance. Neither acceptance of this Ordinance nor compliance with its provisions shall impair in any way or waive any right, permission or authority which Company may have independent of this Ordinance. In addition, neither use by Company of public property or places as authorized by this Ordinance nor service rendered by Company in said Municipality shall be treated as use solely of the rights, permission and authority provided for by this Ordinance and in no way shall indicate non-se of any right, permission or authority vested in the Company independent of this Ordinance. In the event the Municipality vacates any streets, avenues, alleys, easements, rights of way, bridges or other public places during the term of this Ordinance, Municipality agrees to reserve unto Company the rights, privileges and authority herein given and granted to the Company in upon, along, over and across each and all of such vacated premises which are at the time in use by the Company.

SECTION 13. All ordinances and parts of ordinances in conflict with this Ordinance or with any of its provisions are, to the extent of such conflict, hereby repealed.

SECTION 14. This Ordinance shall not relieve Company of the obligation to comply with any ordinance now existing in the Municipality or enacted in the future requiring Company to obtain written permits or other approval from the Municipality prior to commencement of construction of facilities within the streets thereof, except Company shall not be required to obtain permits or other approval from the Municipality for the maintenance, upgrading and repair of its constructed facilities. Company shall provide notice of excavation hereunder in accordance with the Illinois Underground Utility Damage Prevention Act (220 ILCS 50/1 et seq.).

SECTION 15. If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 16. Any conflict between the Franchise Ordinance and the provisions contained in the Electric Service Customer Choice and Rate of Relief Law of 1997 (Public Act 90-561) will be resolved by giving the state statute mandatory priority over any contrary language contained in the Franchise Ordinance.

SECTION 17. This Ordinance shall take effect and the rights, privileges and authority hereby granted and renewed shall vest in Company upon its filing of an acceptance with the Village Clerk according to the terms prescribed herein and as provided for in Section 12 and in 35 ILCS 645/5-4. This Ordinance shall be in full force from and after its passage, approval and **ten (10) day** period of publication in the manner provided by law.

Passed and approved this 27th day of January, 2014.

(Ord. No. 01-14; 01-27-14)