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ORDINANCE NO. 18296

AN ORDINANCE introduced by Mayor James A. McClinton, pertaining to the transportation, distribution, and sale of natural gas or other energy through pipelines or distribution systems in the City of Topeka, requiring a franchise.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. Definitions.

City – shall mean the City of Topeka, Kansas.

Consumer or User – shall mean, without limitation, any individual person, business, corporation, company, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture, trust, municipality, or public corporation served by a Franchised Entity or Provider through a Distribution System.

Distribution System or Distribution Facilities – shall mean a pipeline or system of pipelines, including without limitation, mains, pipes, boxes, reducing and regulating stations, laterals, conduits, and services extensions, together with all necessary appurtenances thereto, or any part thereof, for the purpose of supplying natural gas or Other Energy for light, heat, power, and all other purposes.

Franchise Entity – shall mean any entity that has a franchise granted by the City for supplying of natural gas under the procedures and provisions of K.S.A. 12-2001, et seg., as amended; such entity at the effective date of this Ordinance is Kansas Gas Service, a Division of ONEOK, Inc., as the assign of Gas Service Company.
Gross receipts –

1. Shall mean any and all compensation and other consideration derived directly or indirectly by the Provider from:
   a. Any transportation, distribution, or sale of natural gas to a Consumer for any use, including domestic, commercial, and industrial purposes, and including without limitation interruptible, single, and firm sales; and
   b. Any operation or use of any or all of the Distribution Facilities in the Public Right-of-Way by the provider or others, including without limitation, charges as provided in tariffs filed and approved and shall also include all fees or rental received by the Provider for the lease or use of pipeline capacity within the corporate limits of the City.

2. Except the Gross receipts shall not include;
   a. Connection and disconnection fees, reconnection fees, returned check charges, temporary service charges, and delayed or late payment charges as such terms are used in tariffs or in the natural gas industry; and
   b. Compensation from the sale of natural gas when;
      (i) The Customer purchases the natural gas as a separate and identifiable commodity that is not subject to a regulated tariff rate, and
      (ii) On which the Volumetric Rate is applied; or
   c. Compensation from the sale of natural gas when a franchise fee has been paid by another Franchised Entity on the same transaction.
MCF – shall mean a measurement of natural gas equal to one thousand (1,000) cubic feet. It is assumed for purposes of this Ordinance that one MCF equals one million (1,000,000) British Thermal Units (BTUs).

Other Energy – shall mean energy provided in a gaseous, liquid, or slurry mixture form through pipelines for light, heat, power, and all other purposes as an alternative or replacement for natural gas, but specifically, it shall not include electrical energy.

Provider – shall mean any business, including any individual person, business, corporation, company, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture, trust, municipality, or public corporation providing the transportation, distribution, or sale of natural gas or Other Energy to a Consumer, whether through its own Distribution System, the Distribution System of a Franchised Entity, or through the Distribution System of another, and shall also include a Consumer transporting natural gas or Other Energy for its own use.

Public Right-of-Way – shall mean present and future streets, alleys, rights-of-way, and public easements, including easements dedicated in plats of the City for streets and alleys.

Settlement Prices – shall mean the settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on the fifteenth (15th) day of each month as published daily in the Wall Street Journal (WSJ) on the following business day (or the next day in which a Settlement Price is published).

Volumetric Rate – shall mean $0.2374 per MCF, or such amount as may be hereafter calculated and filed with the City Clerk according to the provisions of this Ordinance.
Section 2. Application of Ordinance.

From and after the effective date of the ordinance, no natural gas or Other Energy shall be transported, distributed, or sold by any Provider to any Consumer for use within the corporate limits of the City through a Distribution System located in whole or in part in the Public Right-of-Way of the City except in accordance with the provisions of this Ordinance. This Ordinance applies to any distribution to a Consumer within the City whether or not the portion of the Distribution System serving the Consumer is in the Public Right-of-Way so long as any portion of the Distribution System of the Provider is in the Public Right-of-Way.

Section 3. Franchise Required.

1. Every Provider subject to this Ordinance shall obtain a franchise from the City under the provisions of K.S.A. 12-2001 et seq., for the use of Distribution Systems located in Public Right-of-Way. Any Provider which only uses the Distribution System of a Franchised Entity and which reports and pays a sum equal to the compensation calculated by Section 4(2) of this Ordinance to the City through such Franchised Entity shall be exempt from the requirement of a separate franchise. Any interstate pipeline transportation company which is otherwise a Provider under this Ordinance shall not be required to obtain a separate franchise under this section, provided that all Users of such interstate pipeline transportation company which are located within the City shall obtain a franchise and shall report and pay a sum equal to the compensation calculated by Section 4(1)(b) of this Ordinance and a sum equal to five percent (5%) of the amount paid for the transportation of such natural gas.
2. The franchise required under this Ordinance shall substantively contain the following elements:
   
a. In consideration of and as compensation for the franchise, the Provider shall agree to pay to the City a sum equivalent to fees calculated in accordance with Section 4.
   
b. The payments and compensation paid by the Provider shall be in lieu of all other licenses, taxes, charges, and fees, except the usual general property taxes and special ad valorem property taxes, sales and excise taxes, and any permit fees and charges for pavement cuts or other permit fees and charges based on restoring premises to their same condition, or charges made for privileges which are not in any way connected with the natural gas or Other Energy business, as such, will be imposed on the Provider and are not covered by the franchise fee payments.
   
c. The Provider shall agree that the City shall have access to and the right to examine and audit all records reasonably necessary to verify the payment of the franchise fees. If any such payment is found to be incorrect, then payment shall be made upon a corrected statement. The Provider shall agree that for each and every month, or any part thereof, that the franchise compensation remains unpaid after the same becomes due and payable by the Provider, there shall be added as a late charge a sum equivalent to the statutory rate for interest on the unpaid amount.
   
d. Provider shall agree to hold the City harmless from any and all damages arising from the exercise of any right or privilege granted under this
Ordinance and the franchise, and from any and all damages accruing from the
neglect or mismanagement of its employees, agents, or servants in the exercise
of any right or privilege granted under this Ordinance and the franchise.

e. Subject to the approval of the regulatory body having jurisdiction
and control over rules and regulations of the Provider at the time in question, the
Provider shall agree that the City has the right to make such reasonable rules
and regulations for the protection of its property and for the distribution and sale
of gas, and the appropriate conduct of business as the City may from time to time
deem necessary.

f. The franchise shall be non-exclusive.

g. The franchise shall be for a term expiring no later than the earliest
date of expiration of the franchise of any Franchised Entity and subject to
reopening and renegotiation upon events materially affecting the rights or
obligations of the City or Provider.

h. In the event the Provider owns or maintains all or any portion of a
Distribution System, it shall agree to provisions on the use of the Public Right-of-
Way and the construction, location, and relocation of facilities, and the quality of
standards of service, all substantively equivalent to those of the Franchised
Entities.

i. The Provider shall agree to file its acceptance in writing of the
provisions, terms, and conditions of the franchise with the City Clerk within thirty
(30) days after final passage and approval of the franchise ordinance.
Section 4. Calculation of Fees.

1. Natural Gas Fees by a Provider Required to Have a Franchise.

   In consideration of and as compensation for the franchise granted to the Provider by the City, the Provider shall make an accounting on a monthly basis to the City of all sales, distribution, or transportation to any Consumer, or User for use within the City by the Provider or by others through the Distribution Facilities of the Provider. The Provider shall pay the City a franchise fee calculated as follows:

   a. A sum equal to five percent (5%) of the Gross Receipts.

   b. A sum equal to the Volumetric Rate multiplied by the number of MCF of natural gas transported or distributed by the Provider.

   Such sums shall be adjusted for uncollectible receivables and for uncollectible receivables which are later collected. Such payments shall be made to the City under procedures established by the City Treasurer within thirty (30) days of the last day of the month to which such accounting shall apply.

2. Natural Gas Fees by a Provider Through a Franchised Entity.

   In consideration of and as compensation for the use of the Public Right-of-Way, any Provider using the Distribution System of a Franchised Entity (other than Provider) shall pay the City through the Franchised Entity a fee calculated in the manner provided in Section 4(1)(b). Such payments shall be made monthly under procedures established by the Franchised Entity.

3. Other Energy Fees.

   In consideration of and as compensation for the franchise granted to the Provider by the City, the Provider shall make an accounting and provide compensation to the
City for the transportation, distribution, and sale of Other Energy to any Consumer, or User for use within the City by the Provider or by others through the Distribution Facilities of the Provider. The Provider shall pay the City a franchise fee that is calculated in a manner provided in each franchise that is substantially equivalent to the fees paid by Providers of natural gas, taking into account the alternative form of energy, its value per unit, and the amount of energy necessary for light, heat, power, or other purposes.

Section 5. Adjustment of Volumetric Rate.

The Volumetric Rate shall be recalculated annually by the City beginning January 1, 2005, based upon the Settlement Prices. The Volumetric Rate calculation form on file with the City Clerk and incorporated herein by reference shall be used for the recalculation of the Volumetric Rate. The recalculation shall be effective each January 1 and shall be based on Settlement Prices for the twelve (12) month period beginning in July of the second (2\textsuperscript{nd}) preceding year and ending in June of the preceding year. For the fifteenth (15\textsuperscript{th}) day of each month during said twelve (12) month period, the Settlement Prices for the next twelve (12) months will be summed and divided by twelve (12) to determine an average Settlement Price. The average Settlement Prices for each of the twelve (12) months shall then be summed and divided by twelve (12) and multiplied by five percent (5\%) to obtain the Volumetric Rate to be effective January 1 of the next succeeding year. The Volumetric Rate shall be calculated in July annually by the City and shall be effective upon filing of the completed Volumetric Rate Calculation Form with the City Clerk without requirement of amendment to this Ordinance.

1. All Providers using the Public Right-of-Way for the transportation, distribution, or sale of natural gas or Other Energy, whether through their own Distribution Facilities, through the Distribution Facilities of a Franchised Entity, or through the Distribution Facilities of another, shall report or register such use with the City's Director of Finance on such forms as are established and furnished by the City's Director of Finance and subject to such administrative fees necessary to cover the costs of the effective administration of the ordinance as established by the City's Director of Finance. Such registration shall include the name, address, and agent for the Provider and shall include such information on the method and means of transportation, distribution, or sale to Consumers as may be reasonably required by the City for enforcement of this Ordinance. The City shall have access to and the right to examine and audit such records necessary to verify the payment of compensation.

2. Franchised Entities may serve as the agent for Providers using the Distribution System of the Franchised Entity for the purposes of reporting and collection under this Ordinance.

3. Franchised Entities with a current and effective franchise and any Provider which reports and pays a sum equal to the fees calculated by Section 4(2) to the City through a Franchised Entity shall be exempt from the separate reporting and registration requirements of the ordinance.

Section 7. Times.

1. All Providers shall make application within thirty (30) days of the effective date of this Ordinance, unless the Provider is exempt from the requirement of a
separate franchise under the provisions of Section 3(1). It is the intent of this Ordinance that a franchise ordinance consistent with the requirements of Section 3 will be submitted to the governing body for consideration according to statutory procedures immediately upon such application.

2. All Providers exempted from the requirement of a separate franchise under Section 3(1) shall be responsible for the fees required by this Ordinance upon the effective date of the franchise ordinance for the Franchised Entity which authorizes the Franchised Entity to collect payments from the Provider on behalf of the City.

3. Any Provider hereafter becoming subject to this Ordinance shall immediately comply with the provisions of the ordinance prior to use of Public Right-of-Way for the transportation, distribution, sale of natural gas, or Other Energy.

4. The fees calculated under Section 4 of this Ordinance shall be assessed and shall be effective as of the first cycle of the monthly billing cycle which begins no later than sixty (60) days after final passage and approval by the City and acceptance by the Provider.

Section 8. Violations.

It shall be unlawful for a Provider to transport, distribute, or sell natural gas or Other Energy to a Consumer in violation of this Ordinance.

Section 9. Penalties.

The City may seek such criminal or civil penalties as are provided by law, ordinance, or regulation. Any person who violates any of the provisions of this Ordinance shall, upon conviction, be deemed guilty of a misdemeanor and shall be
punished by a fine not exceeding four hundred ninety-nine dollars ($499.00). Each and
every day of operation in violation of the ordinance shall constitute a separate offense.

The City shall have the right to seek an injunction or such other equitable relief in
the appropriate court to stop any violation of the ordinance or of any permit of other form
of authorization granted hereunder and shall have such other remedies as are and as
may be from time provided by law, ordinance, or regulation.

**Section 10.** Savings Clause.

If any clause, sentence, or section of this Ordinance shall be held to be invalid, it
shall not affect the remaining provisions of this Ordinance.

**Section 11.** Effective Date of Ordinance.

This Ordinance shall take effect and be in force from and after its passage,
approval, and publication in the official city newspaper.

PASSED and APPROVED by the City Council ____________ JUL 20 2004

ATTEST:

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 3/9/04 BY BBC
TO BE CODIFIED X
NOT TO BE CODIFIED ________________