

ORDINANCE NO: 006-95

AN ORDINANCE GRANTING TO LONE STAR GAS COMPANY, A DIVISION OF ENSERCH CORPORATION, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF DeLEON, COMANCHE COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE STREETS, ALLEYS, AND PUBLIC WAYS; AND PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DeLEON, TEXAS:

SECTION 1: That the City of DeLeon, Texas, hereinafter called "City", hereby grants to Lone Star Gas Company, a Division of ENSERCH CORPORATION, hereinafter called "Company," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public places, public thoroughfares, and grounds of City for the purpose of laying, maintaining, constructing, operating, and replacing therein and thereon pipelines and all other appurtenant equipment needed and necessary to deliver gas in, out of, and through said City and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, said consent being granted for a term of twenty-five (25) years from and after the effective date of this ordinance.

SECTION 2: Company shall lay, maintain, construct, operate, relocate, and replace its pipes, mains, laterals, and other equipment so as to interfere as little as possible with traffic and shall promptly clean up and restore to approximate original condition all thoroughfares and other surfaces which it may disturb. The location of all mains, pipes, laterals, and other appurtenant equipment shall be fixed under the supervision of the City or an authorized agent appointed by said City; provided that this franchise shall not be construed as an authorization to locate any new high pressure transmission line in the City or to use any property of the City, except for its present and future streets, alleys, highways, thoroughfares, rights-of-way and easements, without the express approval of the City Council.

When the Company is required to relocate its mains, laterals, and other facilities to accommodate construction, and the relocation is the result of construction or improvement to the Federal-Aid System (or any successor thereto), and Company is eligible for reimbursement for its costs and expenses incurred as a result of such construction and improvement from the Federal Government, the County Government, or the State of Texas, as permitted by law pursuant to any reimbursement program, and City requests reimbursement for costs and expenses incurred as a result of such construction or improvement, Company costs and expenses shall be included within any such application for reimbursement,

provided that Company submits the appropriate documentation to City prior to such application. City shall make a reasonable effort to provide sufficient notice to the Company to allow the submittal of appropriate cost information to the City. The Company shall not otherwise be entitled to reimbursement from City from any relocation expenses related to the relocating of Company's facilities for the accommodation of City projects for City purposes.

SECTION 3: When Company shall make or cause to be made excavations or shall place obstructions in any street, alley, or other public place, the public shall be protected by barriers and lights placed, erected, and maintained by Company; and in the event of injury to any person or damage to any property by reason of Company's construction, operation, or maintenance of the gas distribution plant or system of Company, Company shall indemnify and keep harmless City from any and all liability in connection therewith.

SECTION 4: In addition to the rates charged for gas supplied, Company may make and enforce reasonable charges, rules and regulations for service rendered in the conduct of its business including a charge for services rendered in the inauguration of natural gas service, and may require, before furnishing service, the execution of a contract therefor. Company shall have the right to contract with each customer with reference to the installation of, and payment for, any and all of the gas piping from the connection thereof with the Company's main in the streets or alleys to and throughout the customer's premises. Company shall own, operate and maintain all service lines, which are defined as the supply lines extending from the Company's main to the customer's meter where gas is measured by Company. The customer shall own, operate, and maintain all yard lines and house piping. Yard lines are defined as the underground supply lines extending from the point of connection with Company's customer meter to the point of connection with customer's house piping.

SECTION 5: Company shall not be required to extend mains on any street more than one hundred feet (100') for any one customer of gas; provided that no extension of mains is required if the customer will not use gas for space heating and water heating, or the equivalent load, at a minimum.

SECTION 6: Company shall be entitled to require from each and every customer of gas, before gas service is commenced, a deposit in an amount calculated pursuant to the Company's Quality of Service Rules as may be in effect during the term of this franchise. Said deposit shall be retained and refunded in accordance with such Quality of Service Rules and shall bear interest, as provided in Tex. Rev. Civ. Stat. Ann. art. 1440a as it may be amended from time to time. Company shall be entitled to apply said deposit, with accrued interest, to any indebtedness owed Company by the customer making the deposit.

SECTION 7: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of furnishing gas for light, heat, and power to and for City and the inhabitants thereof. Provided, however, City shall not grant more favorable conditions, including franchise fee, to any other gas utility franchisee than are herein granted to Company.

SECTION 8: Company, its successors and assigns, agrees to pay and City agrees to accept, on or before the 1st day of March, 1996, a sum of money which shall be equivalent to two percent (2%) of the gross receipts received by Company from the sale of gas to its residential and commercial customers within the corporate limits of said City (expressly excluding governmental accounts and receipts derived from sales to all other classes of customers in said City) during the preceding calendar year. Company, its successors and assigns, agrees to pay and City agrees to accept, on or before the 1st day of March, 1997, and on or before the same day of each succeeding year ending the life of this franchise, the last payment being made on the 1st day of March, 2020, a sum of money which shall be equivalent to two percent (2%) of the gross receipts received by Company from the sale of gas to its residential and commercial customers within the corporate limits of said City (expressly including governmental accounts, but expressly excluding receipts derived from sales to all other classes of customers in said City) during the preceding calendar year. Each annual payment shall be for the rights and privileges herein granted to Company, including expressly, without limitation, the right to use the streets, alleys, and public ways of said City. The initial payment for the rights and privileges herein provided shall be for the period January 1 through December 31, 1996, and each succeeding payment shall be for the period January 1 through December 31 of the respective year in which the payment is made. And it is also expressly agreed that the aforesaid annual payment shall be in lieu of any and all other and additional occupation taxes, easement, and franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), in lieu of municipal license and inspection fees, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character which City may now impose or hereafter levy and collect, excepting only the usual general or special ad valorem taxes and sales taxes which City is authorized to levy and impose upon real and personal property. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges.

In order to determine the gross receipts received by Company from the sale of gas to residential and commercial customers within the corporate limits of City, Company agrees that on the same date that payments are made, as provided in the preceding paragraph of this Section 8, it will file with the City Secretary a sworn report showing the gross receipts received from the sale of gas to its residential and commercial customers within said corporate limits during the calendar year preceding the date of payment. City may, if it sees fit, have the books and records of Company examined by a representative of said City to ascertain the correctness of the sworn reports agreed to be filed herein.

SECTION 9: City shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Company, whether in receivership, reorganization, bankruptcy, other actions or proceeding, whether voluntary or involuntary, unless:

- a) the receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days; or
- b) the receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction, whereby the receiver or trustee assumes and agrees to be bound by each and every provision of this franchise.

SECTION 10: When this franchise ordinance shall have become effective, all previous ordinances of said City granting franchises for gas distribution purposes which were held by Company shall be automatically cancelled and annulled, and shall be of no further force and effect.


SECTION 11: In order to accept this franchise, Company must file its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by said City. If this franchise ordinance is not accepted by Company within sixty (60) days, the franchise ordinance shall be rendered null and void.


SECTION 12: This ordinance shall become effective on December 8, 1995, provided that prior to December 8, 1995, Company's written acceptance is filed with the City. If Company's written acceptance is filed with City after December 8, 1995, this ordinance shall become effective on the date Company's written acceptance is filed with the City.

PASSED AND APPROVED on first reading on this the 10th day of October, A.D. 1995.

PASSED AND APPROVED on second and final reading on this the 24th day of October, A.D. 1995.

ATTEST:


City Secretary


Mayor
City of DeLeon, Texas