

FRANCHISE

ORDINANCE NO. 132

AN ORDINANCE TO BE ENTITLED:

"AN ORDINANCE GRANTING ARKANSAS WESTERN GAS COMPANY THE RIGHT AND PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A NATURAL GAS SYSTEM AND TO LAY GAS MAINS ALONG THE STREETS, AVENUES, ALLEYS, ROADS AND HIGHWAYS AND OTHER PUBLIC PLACES, FOR THE PURPOSE OF DISTRIBUTING AND SELLING NATURAL GAS AND PROVIDING THE REGULATION FOR THE CONDUCT OF SAID GAS DISTRIBUTION SYSTEM, AND OTHER PURPOSES."

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COTTER, ARKANSAS:

SECTION 1. That the City of Cotter, subject to the terms, conditions and stipulations mentioned in this ordinance, consents and the right, permission and franchise is hereby given to the Arkansas Western Gas Company, a corporation organized and existing pursuant to the laws of the State of Arkansas, Grantee, and to its successors, lessees, and assigns to lay, construct, equip, operate, repair, and maintain a system of gas mains, pipes, conduits, and feeders for the purpose of supplying and distributing natural gas for light, fuel, power, and heat and for any other purpose, to the residents or inhabitants of the said City; and further, the right to lay, construct, operate and maintain a system of gas mains, pipe lines, pipe conduits and feeders and the necessary attachments, connections, fixtures and appurtenances for the purpose of conveying, conducting or distributing natural gas from any point beyond said City limits in order to enable the said Grantee to distribute and sell natural gas to the said City and to the residents or inhabitants thereof, and to others.

SECTION 2. The Grantee herein is expressly given the permit (Subject to the proviso hereinafter contained) to use the streets, avenues, roads, highways, alleys, sidewalks and other public places, as now laid out, or hereafter to be established, for the purpose of laying gas mains, pipe lines, conduits and feeders, and the necessary attachments, fixtures, connections and appurtenances for the purpose of conveying or conducting natural gas from any point within the said City or to any point beyond the City limits of the said City or to any other point, through and beyond the City limits of said City, and to operate and maintain a system of pipe lines, pipes, conduits, feeders and the necessary attachments, connections, fixtures and appurtenances for the distribution of natural gas within said City to serve the said City and the residents and inhabitants thereof, and others; provided, however, that where alleys are accessible for laying mains and pipes, the City shall have the right to require that the mains and pipes shall be laid in the alleys instead of the streets.

SECTION 3. No fees or charges of any kind shall be imposed upon the Grantee or upon any successors, or upon any consumer of natural gas for the breaking or opening of any highway, street, road, avenue, alley, or other public places, or for the laying of any main, service pipe or other connections therein, except as provided herein.

Nothing in this franchise shall be construed in such manner as to in any manner abridge the right of the City to pass and enforce the necessary police regulations for the purpose of protecting the citizens of said City and their property and the property of the Grantee.

Grantee shall at all times keep and display the necessary danger signals and proper guards around all excavations and obstructions and shall keep sufficient space in good condition for the travel of vehicles on at least one side of all excavations and obstructions, and shall as soon as practicable restore all openings on the highway, road, street, avenue, alley and other public places to condition equally as good as before said openings or obstructions were made.

SECTION 4. The Grantee shall do no injury to any highway, road, street, avenue, alley, lane, bridge, stream or water course, park or public place, nor in any manner disturb or interfere unnecessarily with electric lines, nor with any public or private sewer or drainage system, or water lines, now or hereafter laid or constructed by the said Town or by any authorized person or corporation, but no electric conduits or sewer or water pipes shall be so laid as to interfere unnecessarily with any gas main or pipes which shall have been laid prior to the time of laying such electric conduits, sewer or water pipes. The Grantee shall fully indemnify and save harmless the City from any and all claims for damage for which said City shall or might be made or become liable by reason of the granting of this franchise, or any negligence or carelessness on the part of said Grantee, or because of any act or omission of the Grantee in the construction and operation of its system of mains and pipes.

SECTION 5. The Grantee shall supply natural gas under the terms and conditions herein specified to all applicants not in arrears for any bills for natural gas, service, pipes, appliances, or other things, owning or occupying premises on or abutting the streets, avenues, or other public places in which such gas mains or conduits are laid.

SECTION 6. The Grantee shall have the right to make and enforce a written agreement with all applicants for natural gas; and rate to be charged for natural gas, according to Section 12 hereof, the fixing of the minimum monthly bill and service meter moving charge, and specifying an immediate deposit, and fixing the terms and conditions upon which natural gas is to be served the individual applicant, shall be determined by such contract. Such contracts are to conform with the state laws and regulations governing same.

SECTION 7. The Grantee shall lay its service pipes from its main pipes to the curb line and/or the consumers' outer property line at its own expense from the meter on; the consumer shall have the right to select his own gas fitter to lay his pipes and install his fixtures, at the consumers' risk and expense. Grantee shall extend its mains to serve new customers where reasonably assured of enough new customers and revenues therefrom to justify the expenditures necessary to give service.

The Grantee shall have the right to make and enforce as a part of the conditions under which it will supply natural gas for heat, power, light, fuel or other purposes as herein provided, all needful rules and regulations not inconsistent with law and the provisions of this franchise.

SECTION 8. The Grantee shall furnish promptly to the proper authorities any and all information which may be asked for by them in regard to the size, location or depths of any of the pipes, mains, conduits, or service pipes, in any form whatsoever, and any other information in regard to its occupation of roads, highways, streets, avenues, or public grounds of said City, which they may demand. Whenever the word Grantee occurs in this ordinance, it shall mean and it shall be understood to be the Arkansas Western Gas Company, its successors, lessees or assigns, and whenever the words "authorities" or "proper authorities" occur in this franchise they shall mean and shall be understood to mean the authorized officer or officers, committee or board representing the City of Cotter, Arkansas, or Grantor.

SECTION 9. It is contemplated that the City of Cotter will construct a natural gas system to make natural gas available to the City and that Grantee will take over operation of the system under a lease with an option to purchase. The City recognizes that, considering various business factors, including the substantial commitment of the Grantee and the present and anticipated circumstances with respect to Grantee's gas rates in the City in relation to competing fuels in the area, the operation of the gas system by Grantee under the lease purchase agreement can only be economically justified if there is assurance that there will not be an increase in Franchise taxes, if any, which Grantee will consider in reaching its decision whether to operate the system under the lease purchase agreement. As consideration to induce

Grantee to enter into the lease purchase agreement, the City of Cotter does hereby release and exempt for fifteen (15) years from the date of this franchise, Grantee, its successors and assigns from payment of all municipal, occupation, license, franchise and excise taxes and any other character of municipal tax or fee whatsoever which, during said period, might otherwise be due by Grantee and the City does hereby agree not to levy any such tax or fee against the Grantee during such period (does not include ad valorem taxes).

SECTION 10. This franchise shall take effect and continue and remain in force perpetually as provided in Section 44 of Acts of 1935, No. 324, Acts of the State of Arkansas, as same may be amended from time to time, and upon the written acceptance by the Grantee of the terms and conditions of this franchise.

SECTION 11. Be it further ordained that the Arkansas Western Gas Company, Grantee, its successors, lessees and assigns shall have 12 months from the final passage and publication of this ordinance, and not longer, in which to begin the actual laying of pipe lines and laterals for the distribution of natural gas in said City, a failure on the part of the Arkansas Western Gas Company, Grantee, its successors, lessees, or assigns, to comply with the foregoing provisions of this section as to the time in which to begin the work shall render null and void this ordinance; it is further provided, however, that upon a showing by the Grantee, that the actual laying of pipe lines and laterals for the distribution of natural gas in said City has been delayed due to the Grantee's inability to secure necessary pipe or other materials, or due to acts of God, the period allowed above shall be automatically extended for an additional period of six (6) months.

SECTION 12. Be it further ordained that the charges for recorded consumption of natural gas at one point of delivery as per Section 7, shall be as provided in the Grantee's rate schedules attached hereto and made a part hereof by reference.

SECTION 13. If any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional.

SECTION 14. It is ascertained and hereby declared that by reason of there being no gas for either domestic, commercial or industrial uses now in this City, that the domestic, commercial and industrial enterprises within said City demand an adequate supply of gas for their various uses, and that it is necessary to begin the construction of pipe lines and gas system for said City in order that same may be available for use as soon as possible, an emergency is hereby declared to exist; and this Ordinance being necessary for the preservation of the public peace, health and safety shall take effect and be in full force and effect from and after its passage and publication.

ATTEST:

PASSED AND APPROVED the 21 day of September, 1965.



Clerk


Mayor

The Arkansas Western Gas Company, a corporation, grantee, hereby accepts the above franchise subject to the terms and conditions contained therein this 24 day of September 1965.

ARKANSAS WESTERN GAS COMPANY

By _____
President