

By Gordon

Repealing Appendix C of the Minneapolis Code of Ordinances relating to Minnegasco, Inc., Franchise.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Appendix C of the Minneapolis Code of Ordinances be and is hereby repealed.

~~APPENDIX C MINNEGASCO, INC., FRANCHISE~~

~~An ordinance granting Minnegasco, a division of Arkla, Inc., a Delaware corporation, its successors and assigns, a nonexclusive franchise to construct, operate, repair and maintain facilities and equipment for the transportation, distribution, manufacture and sale of gas energy for public and private use and to use the public ground of the City of Minneapolis, Minnesota for such purposes; and prescribing certain terms and conditions thereof.~~

~~Section 1. Definitions.~~

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~~Section 1. Definitions.~~

The following terms shall mean:

~~1.1. Company.~~ ~~Minnegasco, a division of Arkla, Inc., a Delaware corporation, its successors and assigns.~~

~~1.2. Gas.~~ ~~Natural gas, manufactured gas, mixture of natural gas and manufactured gas or other forms of gas energy.~~

~~1.3. City, City Council, City Clerk.~~ ~~This term means respectively, the City of Minneapolis, the Council of the City of Minneapolis, and the Clerk of the City of Minneapolis.~~

~~1.4. Public Ground.~~ ~~All streets, alleys, public ways, utility easements and public grounds of the City as to which it has the right to grant the use to the Company.~~

Section 2. Franchise Generally.

~~**2.1. Grant of Franchise.** There is hereby granted to the Company, for a period of 23 years, the right to import, manufacture, transport, distribute and sell gas for public and private use in the City, and for these purposes to construct, operate, repair and maintain in, on, over, under and across the Public Ground of the City, all facilities and equipment used in connection therewith, and to do all things which are necessary or customary in the accomplishment of these objectives, subject to zoning ordinances, other applicable ordinances, permit procedures, customary practices, and the provisions of this franchise. This franchise shall replace and supersede the franchise dated January 1, 1970 between the City and the Company.~~

~~**2.2. Effective Date; Written Acceptance.** This franchise shall be in force and effect on January 1, 1992, after its passage and publication as required by law, and its acceptance by the Company in writing filed with the City within 20 days after publication.~~

~~**2.3. Nonexclusive Franchise.** This is not an exclusive franchise.~~

~~**2.4. Publication Expense.** The expense of publication of this ordinance shall be paid by the Company.~~

~~**2.5. Default.** If the Company is in default in the performance of any material part of this franchise for more than 90 days after receiving written notice from the City of such default, the City may, by ordinance, terminate all rights granted hereunder to the Company. The notice of default shall be in writing and shall specify the provisions of this franchise under which the default is claimed and state the basis therefor. Such notice shall be served on the Company by personally delivering the notice to an officer thereof at its principal place of business in Minnesota.~~

~~If the Company is in default as to any part of this franchise, the City may, after notice to the Company and the failure of the Company to cure the default within a reasonable time, take such action as may be reasonably necessary to abate the condition caused by the default, and the Company agrees to reimburse the City for all its reasonable costs.~~

~~Nothing in this section shall bar the Company from challenging the City's claim that a default has occurred.~~

Section 3. Conditions of Use.

~~**3.1. Use of Public Ground.** All utility facilities and equipment of the Company shall be located, constructed, installed and maintained so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of Public Ground, and shall be subject to those permit conditions the City has adopted for all utilities.~~

~~**3.2. Restoration.** Upon completion of any work requiring the opening of any Public Ground, the Company shall pay the cost and cooperate with the City to restore the opening in the Public Ground, including paving and its foundations, to as good condition as formerly, insofar as reasonably possible. All restoration work performed will be in accordance with standards used by the City. The restoration shall be completed as promptly as possible to achieve quality restorations with the greatest efficiencies at the lowest cost to the citizens of the City and the Company's rate payers.~~

~~**3.3. Relocation of Utility Facilities.** The Company shall promptly, with due regard for seasonal working conditions, permanently relocate its facilities or equipment whenever the City orders such relocation. If the relocation is a result of the proper exercise of the police power in grading, regrading, changing the location or shape of or otherwise improving any Public Ground or constructing or reconstructing any sewer or water system therein, the relocation shall be at the expense of the Company. If the relocation is not a result of the proper exercise of the police power, the relocation shall be at the expense of the City. If such relocation is done without an agreement first being made as to who shall pay the relocation cost, such relocation of the facilities by the Company shall not be construed as a waiver of its right to be reimbursed for the relocation cost. If the Company claims that it should be reimbursed for such relocation costs, it shall notify the City within thirty (30) days after receipt of such order. The City shall give the Company reasonable notice of plans requiring such relocation.~~

~~Nothing contained in this subsection shall require the Company to remove and replace its mains or to cut and reconnect its service pipe running from the main to a customer's premises at its own expense where the removal and replacement or cutting and reconnecting is made for the purpose of a more expeditious operation for the construction or reconstruction of underground facilities; nor, shall anything contained herein relieve any person from liability arising out of the failure to exercise reasonable care to avoid damaging the Company's facilities while performing any work in any Public Ground.~~

~~**3.4. Relocation When Public Ground Vacated.** The vacation of any Public Ground shall not operate to deprive the Company of the right to operate and maintain its facilities therein. Unless ordered under Section 3.3, the Company need not relocate until the reasonable cost of relocating and the loss and expense of relocating resulting from such relocation are first paid to the Company. When the vacation is for the sole benefit of the City in the furtherance of a public purpose, the Company shall relocate at its own expense.~~

~~**3.5. Street Improvements, Paving or Resurfacing.** The City shall give the Company reasonable written notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the time when the City will start the work, and, if more than one street is involved, the order in which this work is to proceed. The notice shall be given to the Company a sufficient length of time, considering seasonable working conditions, in advance of the actual commencement of the work to permit the Company to make any additions, alterations or repairs to its facilities the Company deems necessary.~~

Section 4. Payments To City.

~~**4.1. Franchise Fee.** During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on the Company in relation to its operations as a public utility, the Company will pay monthly on or before the 25th of each month, a franchise fee to the City on the Company's gross revenues from gas sales and transportation operations in the City for each preceding calendar month.~~

~~The term "gross revenues" means all sums received by the Company for its sale or transportation of natural gas to customers within the City. For natural gas transported but not sold by the Company, "gross revenues" shall include only the revenues for the Company's transportation of natural gas and not the revenues for a third party's sale of natural gas to customers within the City.~~

The franchise fee will be assessed as follows:

- ~~1. For residential buildings with four (4) units or less, the Company will impose a fee as follows: 4% of gross revenue for gas sales and transportation for years 1–9; and 4.25% of gross revenues for gas sales and transportation for years 10–16; and 4.5% of gross revenues for gas sales and transportation for years 17–23.~~
- ~~2. For small volume commercial/industrial/firm or interruptible customers (daily usage of less than 2,000 ccf, including residential buildings with greater than four (4) units, and large volume firm customers (daily usage of 2,000 ccf or more), the Company will impose a fee as follows:
5% for the term of this franchise.~~
- ~~3. For large volume interruptible customers (daily usage of 2,000 ccf or more), the Company will impose a fee as follows:
3% for the term of this franchise; except, however, at such time as the City imposes a franchise fee or tax on all alternate, competing fuels, including but not limited to fuel oil, propane and coal, then the City may, with notice to Company, and without the Company's consent raise the franchise fee payable to the City to the same level as the franchise fee or tax imposed on alternate competing fuels, but in no event more than 5%.~~

Section 4.2. Franchise Fee In Lieu of All Other Fees or Costs.

~~This franchise fee shall be paid to the City in lieu of any other permit or licensing fees, charges, or costs imposed on the Company for providing gas service or performing work necessary to provide gas service in the City during the term of this franchise. The Company shall be required to pay only such other fees, charges, costs or taxes which are generally required to be paid by other businesses or persons in the City.~~

Section 5. Indemnification.

~~The Company shall indemnify, keep and hold harmless the City, its elected officials, officers, employees, and agents from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, maintenance, repair, removal, or operation of the Company's property located in, on, over, under, or across the Public Ground of the City, unless such injury or damage is the result of the negligence of the City, its elected officials, employees, officers, contractors or agents. The City shall not be entitled to reimbursement for its costs incurred prior to notification to the Company of claims or actions and a reasonable opportunity for the Company to accept and undertake the defense. The City shall reimburse the Company for damage to Company property caused by the City's negligence.~~

~~If a claim or action shall be brought against the City under circumstances where indemnification applies, the Company, at its sole cost and expense, shall defend the City if written notice of the claim or action is promptly given to the Company within a period wherein the Company is not prejudiced by lack of such notice. The Company shall have complete control of such claim or action, but it may not settle without the consent of the City, which shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City, and the Company in defending any action on behalf of the City shall be entitled to assert every defense or immunity that the City could assert in its own behalf.~~

Section 6. Assignment.

~~The Company, upon notice to the City shall have the right and authority to assign all rights conferred upon it by this franchise to any person. The assignee of such rights, by accepting such assignment, shall become subject to the terms and provisions of this franchise.~~

Section 7. Change In Form of Government.

~~Any change in the form of government of the City shall not affect the validity of this franchise. Any governmental unit succeeding the City shall, without the consent of the Company, automatically succeed to all of the rights and obligations of the City provided in this franchise.~~

Section 8. Severability.

~~If any portion of this franchise is found to be invalid for any reason whatsoever, the validity of the rest of this franchise shall not be affected.~~

Section 9. Notices.

~~Any notice required by this franchise shall be sufficient if, in any case of notice to the Company, it is delivered to Minnegasco, attention Vice President, Minnesota Operations Division, 201 South Seventh Street, Minneapolis, Minnesota 55402; and, in the case of the City, it is delivered to the City of Minneapolis.~~

Section 10. Inspection of Records by City.

~~City shall have access at all reasonable times to inspect, examine or audit such accounts, books, records, reports, contracts, documents and papers of the Company relating to its utility operations in the City as necessary to verify the accuracy of the Company's franchise fee payments.~~

Section 11. Location in Streets and Public Ways.

~~The Company has filed with the City Engineer maps showing the location and size of all mains in its gas distribution system in the City. Each year hereafter the Company shall file maps showing any changes in or additions to said mains.~~