

ORDINANCE NO. 1907

AN ORDINANCE, GRANTING TO THE KANSAS POWER AND LIGHT COMPANY, A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NATURAL GAS FRANCHISE, PRESCRIBING THE TERMS THEREOF AND RELATING THERETO, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH OR CONFLICTING WITH THE TERMS THEREOF.

Section 1. That in consideration of the benefits to be derived by the City of Clay Center, Kansas, and its inhabitants, there is hereby granted to The Kansas Power and Light Company, hereinafter sometimes designated as company, the company being a Kansas corporation operating a system for the transmission of electric current between two or more incorporated cities in the State of Kansas, and also operating a system for the transmission and distribution of natural gas in the State of Kansas, the right, privilege, and authority for a period of 20 years from the 1 st day of May, 1985, to occupy and use the several streets, avenues, bridges, parks, parkings, and public places of the city for the placing and maintaining of pipelines and other equipment necessary to carry on the business of selling and distributing natural gas for all purposes to the city and its inhabitants, and through the city and beyond the limits thereof; to obtain the natural gas from any source available, and to do all things necessary or proper to carry on the natural gas business in the city.

Section 2. As further consideration for the granting of this franchise, and in lieu of any city occupant, license, or revenue taxes, the company shall pay to the city, two percent of its gross revenue from the sale of natural gas during the term of this franchise to all consumers within the corporate limits of the city, except the city may elect to exempt from the revenue to which the two percent is applied to those revenues from sales to all commercial customers which during the previous calendar year consumed in any month more than 3,000 MC per month and/or all industrial customers which during the previous calendar year consumed in any month more than 3,000 MCF per month. If the city elects to make such exemption, the election must be by class or classes of customers; particular customers within a particular class may not be selectively exempted. Such monthly payment shall be made monthly for the preceding monthly period after the effective date of this franchise. The city will at all times hereinafter indemnify and save harmless the company against all liability, loss, damage, or expense of any kind which it may incur by reason of any action, suit, or proceeding that may be brought against the company or the city for damages based upon discrimination in the determination of the payments to the city provided for in this section or the collection thereof by the company from its customers.

Section 3. That all mains, services, and pipe which shall be laid or installed under this grant shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers, or other structures, already installed.

Section 4. Company shall in the doing of the work in connection with its gas mains, pipes and services, avoid, so far as may be practicable, interfering with the use of any street, alley, avenue, or other public thoroughfare, and where company disturbs the surface of a street, alley, avenue or other public thoroughfare, it shall at its own expense and in a manner satisfactory to the duly authorized representatives of the city replace such paving or surface in substantially as good condition as before the work was commenced.

Section 5. It is recognized that the natural gas to be delivered hereunder is to be supplied from a pipeline system transporting natural gas from distant sources of supply; and the company, by its acceptance of this franchise as hereinafter provided, does obligate itself to furnish natural gas in such quantity and for such length of time, limited by the terms hereof, as the sources and pipelines are reasonably capable of supplying.

Section 6. That company, its successors and assigns, in the construction, maintenance and operation of its natural gas system, shall use all reasonable and proper precaution to avoid damage or injury to persons and property, and shall hold and save harmless the city from any and all damage, injury, or expense caused by the sole negligence of the company, its successors and assigns, or its or their agents or servants.

Section 7. That within 60 days from and after the passage and approval of this ordinance, company shall file with the city clerk of the city its unconditioned written acceptance of this ordinance.

Section 8. That this ordinance shall become effective and be in force and shall be and become a binding contract between the city and the Kansas Power and Light Company, its successors and assigns, after its passage, approval and publication as required by law, and acceptance by the company.

Section 9. That this ordinance, when accepted as above provided shall constitute the entire agreement between the city and the company relating to this franchise and the same shall supercede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written.

Section 10. This franchise is granted pursuant to the provisions of K.S.A. 12- 824

Section 11. That any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed.

Section 12. Should the Kansas Corporation Commission take any action with respect to this franchise ordinance, which would or may preclude The Kansas Power and Light Company from recovering from its customers any cost provided for hereunder, the parties hereto shall renegotiate this ordinance in accordance with the corporation commission's ruling. (3-19-85)