

ORDINANCE NO. 94-1 610.7

AN ORDINANCE OF THE CITY OF SMITHS GROVE, KENTUCKY PROVIDING FOR THE SALE OF THE FRANCHISE AND RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LAY, OPERATE, MAINTAIN, REPAIR, REMOVE, AND REPLACE A GAS SYSTEM TO BE USED FOR THE SALE, TRANSMISSION, DISTRIBUTION, AND TRANSPORTATION OF NATURAL GAS, ARTIFICIAL GAS, OR MIXTURE OF SUCH GASES TO THE RESIDENTS AND BUSINESSES LOCATED WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY FOR LIGHT, HEAT, POWER, AND OTHER USES AND THE RIGHT TO USE, FOR THE PURPOSES DESCRIBED ABOVE, THE PRESENT AND FUTURE STREETS, ROADS, HIGHWAYS, ALLEYS, PUBLIC WAYS, AND REAL PROPERTY LOCATED IN, AND OWNED OR CONTROLLED BY, THE CITY; AND PRESCRIBING THE TERMS AND CONDITIONS FOR THE FRANCHISE AND RIGHTS.

BE IT HEREBY ORDAINED by the CITY of SMITHS GROVE, KENTUCKY (hereinafter referred to as the "City") that the Mayor of the City, or such other person as the Mayor may designate, shall offer for sale, to the highest and best bidder, the non-exclusive franchise and right to acquire, construct, install, lay, operate, maintain, repair, remove, and replace a Gas System (as hereinafter defined) to be used for the sale, transmission, distribution, and transportation of Gas (as hereinafter defined) to the residents and businesses located within the municipal boundaries of the City for light, heat, power, and other uses and the right to use, for the purposes described above, the Public Ways (as hereinafter defined) of the City, subject to the terms and conditions hereinafter set forth.

ARTICLE I

DEFINITIONS

For purposes of this Ordinance, the following terms shall have the meanings set forth below:

Section 1.1. Franchisee. The term "Franchisee" shall mean the individual person, corporation, company, partnership, firm, unincorporated association, trustee, or public corporation that is awarded by the City the franchise created by this Ordinance.

Section 1.2. Gas. The term "Gas" shall mean natural gas, artificial gas, and any mixture of such gases.

Section 1.3. Gas System. The term "Gas System" shall mean any and all Pipelines (as hereinafter defined), meters, valves, compressors, anti-corrosion items, facilities, structures,

machinery, equipment, and appurtenances of any kind that Franchisee, in its sole discretion, may deem necessary or advisable for the exercise of the franchise and rights granted to Franchisee pursuant to this Ordinance.

Section 1.4. Pipelines. The term "Pipelines" shall mean any and all above-ground and below-ground pipes, including, but not limited to, mains, distribution lines, secondary lines, laterals, and other pipes, that have been, are being, or are intended to be used at any time in, or in connection with, the sale, transmission, distribution, or transportation of Gas within the City.

Section 1.5. Public Ways. The term "Public Ways" shall mean the present and future streets, alleys, avenues, boulevards, lanes, parkways, sidewalks, roads, highways, rights-of-way, and other public ways and real property located within the municipal boundaries of the City and owned by, or under the control of, the City.

ARTICLE II

TERM

Section 2.1. Term. The term of the franchise and rights created hereby shall be for a period of twenty (20) years, commencing on the later of (i) the date that Franchisee's bid to purchase this franchise is accepted by the City or (ii) the expiration of the natural gas franchise held by Western Kentucky Gas Company immediately preceding this franchise..

ARTICLE III

OBLIGATIONS OF FRANCHISEE

Section 3.1. No Obstruction of Public Property. Franchisee shall not, unnecessarily or for any unreasonable period of time, obstruct or interfere with the public use of any of the Public Ways.

Section 3.2. Repair of Damages. Franchisee shall repair any and all damages caused solely by Franchisee to any of the Public Ways and shall restore, as nearly as practicable, such property to substantially its condition immediately prior to the incident causing such damage. Franchisee shall commence such repairs immediately upon completion of the work or activity in

which Franchisee was involved at the time the damage occurred and shall complete such repairs as promptly as possible.

Section 3.3. Conduct of Work and Activities. Franchisee shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any real or personal property.

Section 3.4. Installation of Underground Pipelines. Franchisee shall, when reasonably practicable, install all Pipelines underground at such depth and in such manner so as not to interfere with the existing pavement, curbs, gutters, underground wires or cables, or water or sewer pipes owned or controlled by the City.

ARTICLE IV

GENERAL PROVISIONS

Section 4.1. Removal of Gas System. Franchisee may remove all or any part of the Gas System upon the expiration or termination of the franchise and rights granted hereby.

Section 4.2. Force Majeure. Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Franchisee is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended. The term "force majeure," as used herein, shall mean any cause not reasonably within Franchisee's control and includes, but is not limited to, acts of God; strikes; lock-outs; wars; riots; orders or decrees of any lawfully constituted federal, state, or local body; contagions or contaminations hazardous to human life or health; fires; storms; floods; wash-outs; explosions; breakages or accidents to machinery or Pipelines; inability to obtain or delay in obtaining rights-of-way, materials, supplies, or labor permits; permanent or temporary failures of gas supply or gas transportation services; or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Ordinance. Nothing in this force majeure provision or the operation hereof shall cause or be deemed to cause the term of

this franchise to extend beyond twenty (20) years as set forth in Section 2.1.

Section 4.3. Assignment. Franchisee is hereby given the right to assign, without the consent of the City, the franchise created by this Ordinance to any person, firm, or corporation that has received from the Kentucky Public Service Commission any and all required certificates of convenience and necessity for obtaining a franchise.

Section 4.4. Binding Effect. This Ordinance shall extend to, be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

Section 4.5. Repeal of Conflicting Ordinances. All other Ordinances of the City or portions thereof that are in conflict or inconsistent with any of the terms or provisions of this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

Section 4.6. Severability. In the event any part of this Ordinance is determined to be invalid or illegal for any reason whatsoever, such invalidity or illegality shall not affect the validity or legality of this Ordinance as a whole or of any other parts hereof.

Section 4.7. Effectiveness of Ordinance. This Ordinance shall be deemed effective upon its publication pursuant to Chapter 424 of the Kentucky Revised Statutes.

Section 4.8. Section and Other Headings. The section and other headings contained in this Ordinance are for reference purposes only and shall not affect in any way the meaning or interpretation of this Ordinance.

ARTICLE V

BID REQUIREMENTS

Section 5.1. Receipt of and Advertisement for Bids. The Mayor, or such other person as the Mayor may designate, shall, after due advertisement, receive bids publicly for the franchise created in this Ordinance. Such bids shall be in writing and shall be delivered to the Mayor or the Mayor's designee by 12:00 p.m. on July 22, 1994 (the "Bid Deadline"). Advertisements for such bids shall be published in a newspaper

meeting the qualifications of Section 424.120 of the Kentucky Revised Statutes once a week for three successive weeks, provided that at least one of such publications shall occur not less than seven (7) nor more than twenty-one (21) days before the Bid Deadline. All costs and expenses for such advertisements shall be borne by Franchisee and shall be paid directly by Franchisee or reimbursed to the City within a reasonable time after the City's acceptance of Franchisee's bid.

Section 5.2. Consideration of Bids. The Mayor shall present all written bids to the City Council at its first meeting scheduled after the Bid Deadline for the City Council's consideration and approval. The City Council reserves the right to reject any and all bids received and, in such event, to direct, by resolution or ordinance, that the franchise created hereby be offered again for sale until a satisfactory bid is received and approved.

Section 5.3. Deposit and Bond Requirements. Each bid shall be accompanied by a deposit and bond in compliance with Section 96.020 of the Kentucky Revised Statutes, provided, however, that no deposit or bond shall be required of a bidder that already owns in the City a plant and equipment sufficient to render the service required under this Ordinance.

Read and passed by the City Council of the City of Smiths Grove, Kentucky with a quorum of such council duly and lawfully assembled and voting, on the first (1st) reading, on the 30th day of June, 1994.

ATTEST:

CITY OF SMITHS GROVE, KENTUCKY

Dorothy J. Neal
City Clerk

By:

James R. Petty
Mayor

Read and passed by the City Council of the City of Smiths Grove, Kentucky with a quorum of such council duly and lawfully assembled and voting, on the second (2nd) and final reading, on the 21st day of June, 1994.

ATTEST:

CITY OF SMITHS GROVE, KENTUCKY

Dorothy J. Neal
City Clerk

By:

James R. Petty
Mayor