

ORDINANCE NO. 1048

AN ORDINANCE GRANTING TO KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC., A NON EXCLUSIVE NATURAL GAS FRANCHISE AND THE RIGHT AND PRIVILEGE TO CONSTRUCT, USE AND MAINTAIN NATURAL GAS SERVICE LINES IN THE PUBLIC RIGHT-OF-WAY WITHIN THE PRESENT OR FUTURE CORPORATE LIMITS OF THE CITY OF EDGERTON, KANSAS FOR THE PURPOSE OF SUPPLYING NATURAL GAS SERVICES TO THE CITY OF EDGERTON, KANSAS AND ITS INHABITANTS PURSUANT TO K.S.A. 12-2001 ET SEQ.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:

Section 1. Definitions. For purposes of this Ordinance, the following words and phrases shall have the meanings given herein:

- (A) The Company shall mean Kansas Gas Service, a division of ONE Gas, Inc., its successors and assigns.
- (B) City shall mean the City of Edgerton, Kansas.
- (C) Facilities shall mean all mains, services, pipes, conduits and appliances and improvements thereto, either on, under or above ground, necessary or convenient for the transmission, transportation, distribution, or sale of natural gas within the City to the inhabitants thereof for any use, including domestic, commercial, and industrial purposes.
- (D) Gas Service shall mean the supplying, selling, transmitting, transporting, or distributing of natural gas within the City through the use of Company facilities.
- (E) Public improvement shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitations, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvement and public projects, which are supported by public funds.
- (F) Public project shall mean any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance or repair of public facilities or public improvements, or any other purpose of a public nature, which is supported by public funds.
- (G) Public Right-of-way shall mean only the area of real property in which the city has a dedicated or acquired right-of-interest in the real property as defined by K.S.A. 17-1902. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way.
- (H) Revenues shall mean those amounts of money which the Company receives from its customers within the City from the sale of gas and from the transportation of gas to customers within the City and for the use of its utility facilities by others within the City under rates, temporary or permanent, and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. "Revenues" shall also include all fees or rentals received by the Company for the lease or use of pipeline capacity within the corporate limits of the City. Included within "Revenues" shall be all amounts paid to the Company by the City. Revenues shall not include other revenues received by the Company, which are not related to the sale or transportation of natural gas. These include, but are not limited to, connection fees, disconnection and reconnection fees, temporary service charges, delayed or late payment charges, collection fees, ad returned check charges as such

terms are used in tariffs filed and approved.

Section 2. Grant of Franchise.

- (A) Pursuant to K.S.A. 12-2001 et seq. there is hereby granted to the Company the right, privilege, franchise, permission and authority to construct, maintain, extend and operate its facilities, in through and along the rights-of-way for the purpose of supplying natural gas or processed gas for all purposes to the City and its inhabitants and consumers in the vicinity thereof, and for the distribution of natural gas from or through said City for the full term of this franchise; subject, however, to the terms and conditions herein set forth. The City further grants the Company the right, privilege, franchise, permission and authority to lay, install, maintain, and operate over, across and along all of the rights-of-way of the City all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of the City and in carrying on such business. Notwithstanding the foregoing, the Company shall comply in all respects with Article 3 of Chapter XII of the City Code governing use and excavation of the public right-of-way. Provided, however, the Company's agreement to comply with Article 3 of Chapter XII of the City Code shall not be construed as waiving the Company's right to contest, object to, or challenge, any requirement therein as provided pursuant to applicable Kansas or federal law.
- (B) Nothing in this franchise ordinance, and the grant hereof, shall be interpreted as granting to the Company the authority to provide non-gas regulated utility services, including electric, telephone, and cable services, without a separate grant of a franchise from the City.

Section 3. Governing Rules and Regulations. This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by the laws of the State of Kansas. The rates to be charged by the Company for service within the present or future corporate limits of the City and the rules and regulations regarding the character, quality and standards of service to be furnished by the Company shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by the Company. Provided however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes the Company from recovering from its customers any cost associated with services provided hereunder, then the City and the Company shall renegotiate the terms of this Ordinance. In determining the rights and duties of the Company, the terms of this franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the City.

Section 4. Use of Right-of-Way. In the use of the right-of-way under this Ordinance, the Company shall be subject to Article 3 of Chapter XII of the City Code, and all other rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power, and is subject to all applicable laws, orders, rules and regulations adopted by the governmental bodies now or hereafter having jurisdiction. In addition, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, beautification, tree care, and other requirements on the use of the public right-of-way, provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulations, policy, resolution, or ordinance proposed, adopted, or promulgated by the City.

Section 5. Franchise Fee.

- (A) In consideration for the grant of this franchise, the Company shall pay the City a sum equal to five percent (5%) of all revenues per annum received from the sale of gas within the City and from revenues received by the Company from the use of its utility facilities by others within the City. In addition, the Company shall pay to the City a sum equal to five percent (5%) of all revenues received by the Company from the transportation of gas for delivery only (not sale of gas) to customers within the City.
- (B) The franchise fee shall be paid monthly by a method approved by the City and Company. An accounting by the Company shall be submitted with the monthly franchise fee to enable the City to determine that all gas distributed, sold, or transported within the City has been properly assessed a franchise fee and such fee has been paid to the City. The Company shall pay the applicable fee to the City within thirty (30) days of the last day of the applicable month for which a fee payment is due and owing. Payments received after the due date shall be subject to a late payment charge equivalent to the statutory rate of interest on the unpaid amount. Payments due and owing as the result of an audit of franchise fee payments shall be subject to a late payment charge equivalent to the statutory rate of interest on the unpaid amount; provided such late payment charges shall 1) begin to accrue forty-five (45) days after notice is mailed to the Company; and 2) the late payment charge shall only apply to audit generated payments agreed to by the City and the Company.
- (C) The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property taxes, sales and excise taxes, and any permit fees and charges for working in the right-of-way, pavement cuts or other permit fees and charges based on restoring premises to their same condition, or charges made for privileges which are not in any way connected with the natural gas business, as such, will be imposed on the Company and are not covered by the payments herein. For any such permit fees that Company is not exempt from paying by virtue of this Franchise, City agrees to make arrangements and cooperate with Company in accepting payments in a form or manner that minimizes delay or disruption to Company's day-to-day activities.
- (D) The City shall provide copies of annexation ordinances to the Company on a timely basis. The City shall provide to Company a copy of the annual boundary resolution adopted by the City. The fees provided for in this Section 5 shall not become effective within any area annexed by the City until the first of the month billing cycle which begins no more than 60 days after the date the City provides Company with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the City detailing the annexed area.
- (E) Payments of the compensation above shall commence with the first cycle of the monthly billing cycle which begins following the "effectiveness" date provided for in Section 15 herein below. Prior to that date, payments shall continue to be calculated and paid in the manner previously provided in Ordinance No. 814.

Section 6. The City shall have access to and the right to examine during normal business hours, those of the Company's books, receipts, files, records and documents that are necessary to verify the correctness of payments due hereunder. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery, such that any under-payment by the Company shall be paid within thirty (30) days of the recalculation and any over-payment by the Company shall be discounted from the next payment(s) due.

Section 7. Sharing of Space. The City encourages the conservation of right-of-way by the sharing of space by all utilities. All said agreements and installations shall be subject to all existing and future

ordinances and regulations of the City. Company agrees that it will not grant any entity rights to occupy the rights-of-way without providing notice to the City.

Section 8. Indemnification and Hold-Harmless. The Company, its successors and assigns, shall at all times save and hold harmless the City from all liability, costs, damages, and expenses of any kind, for the payment of which said City may become liable to any person, firm, or corporation by reason of any claim or damages to the extent caused by the failure of the Company, its employees, agents, or servants to exercise due care and diligence in the construction, installation, maintenance, and operation of gas service facilities within the City or outside the City.

The indemnity provided above does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Company and City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state, without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and the Company and does not create or grant any rights, contractual or otherwise, to any person.

Section 9. Assignment of Franchise. This franchise shall be assignable only in accordance with the laws of the state of Kansas, as the same may exist at the time when any assignment is made. If the Company intends to assign this franchise, the Company shall notify the City in writing at least 60 days prior to the proposed assignment of the franchise.

Section 10. Conditions of Franchise. This contract, franchise, ordinance, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. Each and every provision hereof shall be subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond the Company's control. This franchise shall not be exclusive. It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance provided, however, that this provision shall not obligate a party to settle any labor strike.

Section 11. Notice to Parties. For the purpose of this Agreement, notice to the City will be to: City Clerk, 404 East Nelson, Edgerton, Kansas 66021. For the purpose of this Agreement, notice to the Company will be to: President, Kansas Gas Service, 7421 West 129th Street, Overland Park, Kansas 66213. Notice will be effective upon delivery by hand delivery or by first class mail to the above address until the City or the Company notifies the other, in writing, of a change in address.

Section 12. Length of Franchise Agreement. The rights and privileges granted by this Ordinance shall remain in effect for a period of ten (10) years from the effective date thereof.

Section 13. Rights and Duties of Grantee upon Expiration of Ordinance. Upon expiration, termination, or forfeiture of this Ordinance, whether by lapse of time or by agreement between the Company and the City the Company shall have the right, but not the obligation, unless necessary for the protection of the public health and safety, to remove from right-of-way and public property all of its facilities used in its business within reasonable time after such expiration or forfeiture. It shall be the duty of the Company immediately upon such removal, to restore the right-of-way from which said facilities are removed to as good condition as the same were before said removal was effected without cost to the City.

Section 14. Termination or Forfeiture of Franchise.

- (A) In case of failure on the part of the Company, its successors and assigns, to comply with any of the provisions of this ordinance, or if the Company, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, the Company, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings.
- (B) Before the City proceeds to forfeit said franchise, as in this section prescribed, it shall first serve a written notice as provided by the Notice provisions of this ordinance, setting forth in detail the conditions of neglect, default or failure complained of, and the Company shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such ninety (90) day period the City deems that the conditions of such franchise have not been complied with by the Company and that such franchise is subject to cancellation by reason thereof, the City in order to terminate such franchise shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. If within thirty (30) days after the effective date of said ordinance the Company shall not have instituted an action in the District Court of Johnson County, Kansas to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period.
- (C) If within such thirty (30) day period the Company does institute an action, as above provided, to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event in case the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall terminate thirty (30) days after such final judgment is rendered and available appeals exhausted.

Section 15. Effectiveness. This ordinance shall become effective and be in force and shall be a binding contract between the Company and the City of Edgerton, Kansas, their successors and assigns, from and after the following: 1) the ordinance has been approved by the Company in writing pursuant to Section 19, 2) the ordinance has been adopted by the governing body, and 3) the ordinance has been published in the official city newspaper, all as provided by K.S.A. 12-2001. The Company shall pay for the required publication of this ordinance.

Section 16. Severability. If any provision, section or subsection of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, sections or subsections or applications of this ordinance which can be given effect without the invalid provision, section or subsection or application, and to this end the provisions, sections, and subsections of this ordinance are declared to be severable.

Section 17. Non Waiver. Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

Section 18. Repeal. To the extent of its validity on the date of effectiveness of this ordinance, Ordinance No. 814 is hereby repealed.

Section 19. Company Acceptance. The Company shall, within sixty (60) days, after the final publication of this ordinance, file with the City Clerk its written acceptance of all the terms, conditions, and provisions of this ordinance, and in case its failure so to do, this Ordinance shall be null and void. The acceptance

of this ordinance, shall be in writing, and shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted the ordinance and acceptance shall constitute a contract between the City and the Company subject to the provisions of the laws of the State of Kansas.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF EDGERTON, KANSAS ON THE 9TH DAY OF FEBRUARY, 2017.

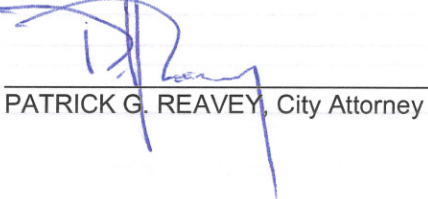
ATTEST:


JANEICE RAWLES, City Clerk




DONALD ROBERTS, Mayor

APPROVED AS TO FORM:


PATRICK G. REAVEY, City Attorney