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DEC 09 2015

PUBLIC SERVICE
COMMISSION

ROBERT M. WATT, III
DIRECT DIAL: (859) 231-3043
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Robert.Watt@skofirm.com

December 9, 2015

HAND DELIVERED

Hon. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

Case No. 2015-00408

Re: Delta Natural Gas Company, Inc.

Dear Mr. Derouen:

We enclose for filing an original and ten copies of the application of Delta Natural Gas Company, Inc. for a certificate of convenience and necessity to bid on a franchise offered by the City of Berea. We would appreciate prompt attention to this matter as bids are due on December 16, 2015. Thank you in advance for your assistance. Best regards.

Sincerely,

Robert M. Watt, III

rmw:rmw
Enclosures
cc: Mr. John B. Brown (w/o encl.)

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PUBLIC SERVICE
COMMISSION

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

**THE APPLICATION OF DELTA NATURAL)
GAS COMPANY, INC. FOR A CERTIFICATE)
OF CONVENIENCE AND NECESSITY TO)
BID ON A FRANCHISE OFFERED BY THE)
CITY OF BEREA)**

CASE NO. 2015- 00408

APPLICATION

Delta Natural Gas Company, Inc. (hereinafter called "Delta"), pursuant to KRS 278.020, respectfully submits its application herein and states as follows, to-wit:

1. That Delta is a Kentucky corporation, its full name is Delta Natural Gas Company, Inc. and its principal office and place of business is located at 3617 Lexington Road, Winchester, Kentucky 40391.

2. A certified copy of Delta's most recent Amended and Restated Articles of Incorporation has heretofore been filed with this Commission in connection with a prior proceeding of Delta, same being Case No. 2010-00116, *In the Matter of: Application of Delta Natural Gas Company, Inc. for an Adjustment of Rates*, filed on April 23, 2010.

3. Delta is a utility engaged in the natural gas business. Delta purchases, stores and transports natural gas in Bath, Estill, Montgomery, Menifee, Madison, Powell,

Garrard, Jackson, Lee, Bourbon, Jessamine, Rowan, Bell, Knox, Whitley, Laurel, Clay, Leslie, Fayette, Fleming, Clark, Robertson and Mason Counties, Kentucky.

4. That the City of Berea has offered a franchise for the distribution and sale of natural gas. A true copy of the Ordinance Creating Franchise is attached, made a part hereof and designated as Exhibit A for purposes of identification. The legal notice containing the invitation to bid on the franchise is attached, made a part hereof and designated as Exhibit B for purposes of identification.

5. That there is a need and demand for such service by Delta to the City of Berea and Delta is ready, willing and able to provide such service.

6. Copies of all orders, pleadings and other communications related to this proceeding should be directed to:

John B. Brown
Delta Natural Gas Company, Inc.
3617 Lexington Road
Winchester, KY 40391

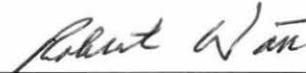
Robert M. Watt, III
Monica H. Braun
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, KY 40507

WHEREFORE, Delta Natural Gas Company, Inc. respectfully prays that the Public Service Commission of Kentucky enter its Order authorizing Delta to bid on the franchise offered by the City of Berea.

Dated: December 9, 2015

Respectfully submitted,

Robert M. Watt, III
Monica H. Braun
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, KY 40507
Phone: 859-231-3000
Fax: 859-253-1093
robert.watt@skofirm.com
monica.braun@skofirm.com



Counsel for Applicant

005522.005777/4466026.1

ORDINANCE # 13 - 15

AN ORDINANCE OF THE CITY OF BEREAS, KENTUCKY, AMENDING ORDINANCE NO.9-94, PROVIDING FOR THE CREATION OF A FRANCHISE FOR THE OPERATION & MAINTENANCE OF A NATURAL, MANUFACTURED, AND/OR MIXED, GAS DISTRIBUTION SYSTEM WITHIN THE CITY OF BEREAS, KENTUCKY, DEFINING THE TERMS AND CONDITIONS THEREOF AND PROVIDED FOR A BID PROCEDURE THEREFOR.

WHEREAS, pursuant to Ordinance No. 9-94, the City of Berea created a non-exclusive natural gas distribution system franchise, pursuant to Kentucky Constitution Section 163 and KRS 96.010, within the City of Berea, Kentucky, and requested bids therefor; and

WHEREAS, Delta Natural Gas Company, Inc. (Delta) submitted a bid and was granted a franchise in Ordinance 18-94; and

WHEREAS, the Delta's franchise for a natural gas distribution system within the corporate limits of the City of Berea, Kentucky, has expired; and

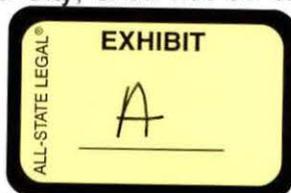
WHEREAS, the City desires to ensure that natural gas distribution services continue to be furnished to its citizens in a reliable and efficient manner; and

WHEREAS, the City desires to amend Ordinance No. 9-94 to update the provisions therefor, and to provide for the sale of natural gas distribution system franchise;

NOW, THEREFORE, be it ordained by the City Council of the City of Berea, Kentucky as follows:

SECTION I

RESTATEMENT FRANCHISE. The franchise created by Ordinance 9-94 is hereby restated to grant the right, privilege and franchise for furnishing and to furnish to the City of Berea, Kentucky, and to its citizens, residents, and industries, and to operate and maintain, a natural gas distribution system, by one or more persons, companies, or corporations, or other entities capable and willing to provide such service by and through a non-exclusive franchise, and such franchisee shall be granted the right to go upon or under the streets, alleys, or other public ways or places of the City, to lay, maintain, operate and remove gas mains, pipelines, feeders, or any other appurtenances necessary to operate and maintain a gas transmission system. This franchise, granted herein by the City, shall not be exclusive and the City reserves the



right to grant a similar franchise to any other person or entity at any time. Any franchise granted hereunder shall be extended to newly annexed territory upon the same terms and conditions herein, subject to approval of the state regulatory authorities is applicable.

SECTION II

TERMS OF FRANCHISE. The franchise hereby created shall be for a set term of twenty (20) years from and after the date the same shall become effective, but is not exclusive, and the City reserves the right to sell similar franchises to others. This franchise shall not restrict in any manner the right of the City of Berea in the exercise of any regulatory power which it now has or which may hereafter be authorized or permitted by law.

SECTION III

OPERATION AND MAINTENANCE. When the franchisee shall enter upon any street for the purpose of constructing, erecting, operating, maintaining, and/or removing equipment and apparatus, it shall prosecute the work, at its own cost and expense, with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible, and shall leave the streets in reasonably the same conditions as prior to its entry. All such repairs shall be maintained by the franchisee for one (1) year in as good condition as the remainder of said street. In the event the franchisee fails, refuses, or neglects to comply with the above provisions, the City shall have the right, after notice in writing having first been given to the franchisee or any officer or agent representing it, to do said work or make said repairs, and the cost and expense thereof shall be paid to the City by the franchisee within thirty (30) days from the date on which an itemized bill is presented to the franchisee.

In the construction, reconstruction, maintenance, or removal of any of said equipment and apparatus, the franchisee shall due regard for the rights of the City and others, and shall avoid interference with and injury to the property of the City or others. The franchisee shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the City as to placing lights, danger signals, or warning signs. Such work by the franchisee shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said streets.

SECTION IV

FRANCHISE REQUIREMENTS. In addition to any other franchise requirements hereunder or made or adopted herein as provided, the following requirements shall apply to any franchise granted hereunder:

a) Franchise fee - In consideration of the granting and exercise of the franchise herein, and in further consideration of the grant to the Franchisee the right to make use of the public streets, alleys, or other public ways in the City, since such public properties are valuable properties acquired and maintained at great expense to the taxpayers of the City, and the grant to Franchisee of the right to use same is a valuable property right without which the Franchisee would be required to invest substantial capital in right of way costs and acquisitions, Franchisee shall pay to the City during the entire life of the franchise a sum equal to three percent (3%) of the franchisee=s gross revenues received from collection and disposal services generated within the corporate limits, to be paid as set out in the Contract.

b) Any franchise payments to the City by Franchisee shall not be *in lieu* of any occupational, income, license, or property tax, or similar levy, assessment, fee or charge which would otherwise apply to be payable by Franchisee.

c) Upon acceptance of such franchise, Franchisee shall file with the City Clerk of the City of Berea, Kentucky, and shall thereafter during the entire term of such franchise, maintain in full force and effect a Comprehensive General Liability Insurance policy with limits of not less than \$1,000,000.00 each occurrence and \$3,000,000.00 aggregate, for both bodily injury and property damage, and which shall insure Franchisee, and shall provide primary coverage for the City, its officers, boards, commissions, agents, and employees against liability for loss or damage occasioned by any activity or operation of Franchisee under such franchise and which shall contain and include a standard cross-liability endorsement thereto.

d) Franchisee shall indemnify and hold harmless, the City of Berea, Kentucky, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages, costs or liabilities (including costs or liabilities of the City with respect to its employees), of every kind and nature whatsoever, including, but not limited to, damages for injury or death or damage to persons or property, and regardless of the merit of any of the same, against all liability to others, and against any loss, costs, and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to actions of Franchisee in the exercise or the enjoyment of any privilege hereunder by Franchisee, of the granting thereof by the City.

e) Defense of litigation. Franchisee shall, at its sole risk and expense, upon demand of the City made by and through the City Attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or institute or had by third person or duly constituted authorities, against or affecting the City, its officers, boards, commissions, agents, or employees, and arising out of or pertaining to action of Franchisee in the exercise or the enjoyment of such franchise, or the granting thereof by the City.

Franchisee shall pay, and satisfy, and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made, or issued against Franchisee, the City, its officers, boards, commissions, agents, or employees in any of these premises, and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking, or other assurance required hereunder, or otherwise; provided, that neither Franchisee nor City shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit or other proceeding, without first obtaining the written consent of the other.

f) Franchisee shall abide by all provisions of this franchise, and shall further agree that it will not, at any future time, set up as against the City the claim that the provisions of this franchise are unreasonable, arbitrary or void.

SECTION V

The purchaser or purchasers of any franchise created hereby shall have the right to break, take up and remove such portion or part of any pavement to make such excavation in the streets and public ways of the City as may be deemed necessary to provide the service so franchises hereby; provided, however, that any such work first be properly approved pursuant to Chapter 20 of the Berea City Code, and further provided that any such work or project so commenced by franchisee hereunder be promptly and diligently prosecuted to completion and upon such completion the streets, alleys, sidewalks and public ways of the City shall exist in as good condition and repair as before such work was commenced, pursuant to Chapter 20 of the Berea City Code. Further, the franchisee shall, upon request by the City, move and adjust any of its facilities or properties as shall be located on City property on right of way at its own expense, during construction or reconstruction of the improvements on such property or right-of-way, and such movement or adjustment shall be accomplished within thirty (30) days after request by the City; provided, however, if franchisee shall not be able to accomplish such movement or adjustment within said time period, franchisee shall notify the City of the reason that compliance will be delayed, and will thereafter effect compliance as soon as practicable. In the event of non-compliance with the foregoing, the franchisee shall be liable to the City or the contractor, as the case may be, for damages for delay in construction occasioned thereby.

SECTION VI

The consideration paid by franchisee hereunder shall be the full and complete consideration for the franchise, privilege and right granted by the City of Berea, and shall be expressly in lieu of any street or alley rental or of any charge for the use or occupancy of said streets, alleys, or public places in the City.

SECTION VII

The franchise created hereby shall not be transferred, assigned, nor delegated without the written consent of the City.

SECTION VIII

It shall be duty of the Mayor as soon as practical after the passage of this ordinance to offer for sale at public auction the franchise and privileges involved herein. Said franchise shall be sold to the best available bidder on the ~~16th~~ day of December, 2015, at 6:30pm o'clock. The City Clerk shall give notice by advertising pursuant to KRS Chapter 424 for request for bids and the time for receipt of same. Any utility subject to the terms and provisions of this ordinance may provide for in its bid any special or extraordinary matters or circumstances which relate or apply to its particular business; all subject, however to the right of rejection of any such bid by the City of Berea.

After the time set for receipt of bids hereunder, the Mayor shall report and submit to the City Council at the time of its next regular meeting the bids and proposals for its approval. The City Council reserves the right for and on behalf of the City to reject any and all bid for said franchises and privileges, and the City Council may direct by resolution or ordinance said franchise or franchises to be again offered for sale from time to time until a satisfactory bid or bids shall be received and approved. Each such bid shall be accompanied by a deposit and each bidder shall post bond in accordance with the provisions of KRS 96.020; provided, however, that such deposit and bond need not be made by any bidder which owns and operates an existing natural gas transmission and distribution system within the corporate limits of the City, the plant and equipment sufficient to render the service or services required by this ordinance.

SECTION IX

In the event that no bids are received for the franchise hereunder, or in the event that the City does not accept any bids received hereunder, then beginning on the ~~16th~~ day of December, 2015, and continuing thereafter until modified by ordinance, each and every person or corporation engaged in operating a natural gas transmission and distribution system within the corporate limits of the City of Berea which does not hold a valid current franchise from the City of Berea to operate within the corporate limits shall have imposed upon it the terms, conditions, and payment of franchise fees set out hereunder, for the right, power and privilege of engaging and operating its respective business within the corporate limits and the right, power and privilege of using the streets, alleys, and other public ways or places in the City for and on behalf of the operation of its business.

SECTION X

Any utility, agency, or other entity providing services herein contemplated which is owned and operate by the City or a subordinate agency thereof is excluded from the terms and provisions hereof.

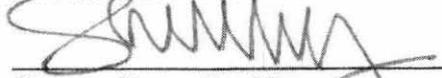
SECTION XI

All ordinances or parts of ordinances in conflict herewith are repealed. This ordinance shall be published according to law.

FIRST READING: October 6, 2015.

SECOND READING AND ENACTMENT: October 20, 2015.

APPROVED BY:

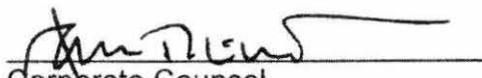

Steven Connelly, Mayor

ATTEST:


Clerk of the City Council

Published this 29th day of October, 2015.

PREPARED BY:


Corporate Counsel

