

2007-230

The Law Offices of

WILSON, HUTCHINSON & POTEAT

611 Frederica Street
Owensboro, Kentucky 42301
Telephone (270) 926-5011
Facsimile (270) 926-9394

William L. Wilson, Jr.
Mark R. Hutchinson
T. Steven Poteat

bill@whplawfirm.com
randy@whplawfirm.com
steve@whplawfirm.com

OVERNIGHT DELIVERY

June 11, 2007

RECEIVED

Honorable Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
PO Box 615
Frankfort, Kentucky 40602

JUN 12 2007

**PUBLIC SERVICE
COMMISSION**

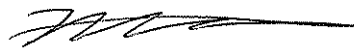
RE: Application of Atmos Energy Corporation for a Certificate
of Public Convenience and Necessity Authorizing it to bid
on Franchise Established by the City of Owensboro, Kentucky

Dear Ms. O'Donnell:

I enclose herewith an original, plus eleven (11) copies, of an Application of Atmos Energy Corporation for a Certificate of Public Convenience and Necessity Authorizing it to Bid on Franchise Established by the City of Owensboro, Kentucky, for filing in your office.

The City has established June 21, 2007 as the deadline for submitting bids. We would therefore appreciate entry of an order prior to that date.

Very truly yours,



Mark R. Hutchinson

BEFORE THE

RECEIVED

JUN 12 2007

PUBLIC SERVICE
COMMISSION

PUBLIC SERVICE COMMISSION OF KENTUCKY

IN THE MATTER OF:

APPLICATION OF ATMOS ENERGY
CORPORATION, OWENSBORO
KENTUCKY FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY
AUTHORIZING IT TO BID ON A FRANCHISE
ESTABLISHED BY THE CITY OF OWENSBORO,
KENTUCKY

CASE
NO. 2007-230

APPLICATION

1

Applicant, Atmos Energy Corporation, a corporation duly qualified under the laws of the Commonwealth of Kentucky to carry on its business in the Commonwealth.

The Company is an operating public utility engaged in the business of supplying natural gas to the public in numerous cities, towns, and communities in Western and South Central Kentucky.

2

A certified copy of Applicant's Amended and Restated Articles of Incorporation is already on file with the Commission in the Matter of: The Application of Atmos Enemy Corporation for An Order Authorizing a \$900,000,000 Universal Shelf Registration, Case No. 2006-00387.

1

The City of Owensboro (sometimes hereinafter called the "City") is a municipal corporation situated in Daviess County, Kentucky and is in an area presently served by Applicant. Applicant has been the owner of a franchise operation of the natural gas system within the City immediately prior to the sale of a new franchise. Applicant is at the present time serving the City and owns and maintains a gas distribution system in such City.

The City Commission of the City has established a natural gas franchise for the City and has directed that bids for the sale thereof be received on or before June 21, 2007. A copy of the resolution establishing such franchise, directing its sale, and setting forth the type and provisions of such franchise is filed herewith as a part hereof.

There is a demand and need for continued natural gas service for the City.

WHEREFORE, Applicant respectfully requests the Commission to enter a certificate of public convenience and necessity authorizing Applicant to bid on the aforesaid natural gas franchise and, if it is awarded such franchise, to operate the natural gas distribution system pursuant to such franchise. A copy of the franchise, if awarded to Applicant, will be filed with the Commission.


Respectfully submitted,



Mark R. Hutchinson
611 Frederica Street
Owensboro, Kentucky 42301
Attorney for Applicant

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The undersigned Affiant, Gary Smith, being first duly sworn, deposes and says that he is Vice President-Marketing and Regulatory Affairs of Atmos Energy Corporation, Kentucky/Mid-States Division having its principal office in Owensboro, Kentucky, which is the Applicant in this proceeding; that he has read the foregoing application and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and that as to those matters he believes them to be true; and that he is duly authorized to sign, execute, verify and file the foregoing application on behalf of Applicant.



Gary Smith

SUBSCRIBED AND SWORN to before me by Gary Smith as Vice President – Marketing and Regulatory Affairs of Atmos Energy Corporation, Kentucky/Mid-States Division, on this the 11th day of June, 2007.



Notary Public

My Commission Expires: 11/15/2007

ORDINANCE 20-2007

AN ORDINANCE OF THE CITY OF OWENSBORO, KENTUCKY, PROVIDING FOR THE CREATION AND SALE OF A FRANCHISE FOR THE PRIVILEGE OF CONSTRUCTING, TRANSPORTING, OPERATING, MAINTAINING AND DISTRIBUTING NATURAL GAS ALONG AND UNDER PUBLIC RIGHT-OF-WAY WITHIN THE CITY OF OWENSBORO, KENTUCKY, FOR A TERM OF FIVE (5) YEARS, IN CONSIDERATION FOR WHICH, THE SUCCESSFUL FRANCHISEE SHALL PAY TO THE CITY AN ANNUAL SUM EQUAL TO A MINIMUM OF TWO PERCENT (2%) OF THE GROSS REVENUES DERIVED FROM THE FRANCHISE AWARDED HEREIN; AND FURTHER ESTABLISHING A PROCESS BY WHICH THE SUCCESSFUL FRANCHISEE SHALL BE PERMITTED TO DISTURB AND EXCAVATE PUBLIC RIGHT-OF-WAY WITHIN THE CITY IN ORDER TO CONSTRUCT, INSTALL, MAINTAIN AND/OR REPAIR ITS GAS FACILITIES, FIXTURES AND OTHER INFRASTRUCTURE ON TERMS AND CONDITIONS SET FORTH HEREIN; AND FURTHER ESTABLISHING A BID PROCEDURE FOR THE AWARD OF SAID FRANCHISE TO THE SUCCESSFUL BIDDER.

WHEREAS, the existing natural gas franchise between the City of Owensboro, Kentucky, and Atmos Energy Corporation (formerly Western Kentucky Gas Company), was extended to August 1, 2007, by agreement of the parties, and will expire on August 1, 2007; and

WHEREAS, the Constitution of the Commonwealth of Kentucky, Sections 163 and 164, and Chapter 96 of the Kentucky Revised Statutes, authorize municipal corporations to require public utilities, including providers of natural gas within their boundaries, to operate under franchise agreements and to grant utilities the right to use public right-of-way on such terms and conditions as are deemed reasonable and necessary; and further KRS 82.082 authorizes the City to exercise any and all powers within its boundaries that are not in conflict with the Kentucky Constitution or state statutes; and

WHEREAS, the Board of Commissioners of the City of Owensboro, Kentucky, has found and determined that the construction, operation, maintenance and utilization of a natural gas franchise over, across or under public right-of-way in the City of Owensboro, benefits said utility and the

customers it serves and the Board has further found and determined that the construction, installation, removal, maintenance and/or repair of utility-owned facilities and other infrastructures does periodic and unavoidable disturbance that gradually results in the degradation of the City's streets and sidewalks, for which the City is entitled to reasonable compensation in order to offset and recover the costs of reconstructing, removing, repairing or resurfacing damaged public right-of-way; and,

WHEREAS, in order to protect the health, safety and welfare of the citizens of Owensboro, Kentucky, to protect and preserve the City's public right-of-way and infrastructure and to provide for the orderly administration of the franchise contemplated herein, it is necessary and appropriate to require the successful franchisee to conduct its business and operations in a lawful manner in compliance with the terms and conditions set forth hereinbelow.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. DEFINITIONS:

As used in this Ordinance, the following words and phrases shall have the following meanings:

(a) *"Franchise"* shall mean the rights and privileges granted by the City of Owensboro to the successful bidder under the terms and provisions of this Ordinance.

(b) *"Franchisee"* shall mean the person, proprietorship, partnership, company, corporation or other entity to which the franchise created herein, is awarded by separate ordinance.

(c) *"Public Right-of-Way"* shall mean the surface, the airspace above the surface and area below the surface of any street, highway, alley, avenue, boulevard, sidewalk, pedestrian/bicycle lane or trail, driveway, bridge, utility easement or any other public ways owned, dedicated by plat, occupied or used by the public for vehicular or pedestrian transportation or access.

(d) *"Gross Revenues"* shall mean all gross cash receipts for Kentucky Public Service Commission regulated natural gas distribution services for

domestic, commercial or industrial consumption within the corporate limits of the City.

(e) "Gas Distribution System" shall mean the system of works, pipes, pipelines, facilities, fixtures, apparatus, lines, machinery, equipment, structures, appliances, appurtenances or other infrastructure reasonably necessary for the storage, transportation, distribution or sale of natural, artificial or mixed gas to residential and commercial customers and the public generally, within the corporate boundaries of Owensboro, Kentucky.

(f) "Force Majeure" shall mean any and all causes beyond the control and without the fault or negligence of franchisee. Such causes shall include but not be limited to acts of God, acts of the public enemy, insurrections, riots, labor disputes, boycotts, labor and material shortages, fires, explosions, flood, breakdowns of or damage to equipment of facilities, interruptions to transportation, embargoes, acts of military authorities, or other causes of a similar nature whether or not foreseen or foreseeable which wholly or partly prevent franchisee from performing one or more of its obligations hereunder.

(g) "New Construction" shall mean installation of piping or other apparatus by franchisee in a new location as opposed to repair or maintenance work on existing piping or other apparatus.

Section 2. CREATION OF FRANCHISE:

(A) There is hereby created a non-exclusive franchise to enter upon, acquire, construct, operate, maintain and repair in the public right-of-way of the City of Owensboro, Kentucky, a gas distribution system within the corporate boundaries of Owensboro, Kentucky, subject to the provisions of this ordinance. The franchise granted hereunder shall be extended to territories that are annexed within the City of Owensboro upon the same terms and conditions herein, subject to the approval of state regulatory authorities, if any such approval is required.

(B) The franchise granted herein by the City of Owensboro, Kentucky, shall not be exclusive and the City reserves the right to grant a similar franchise to any other person or entity at any time. In the event the City of Owensboro

shall grant to another person or entity during the term hereof, a franchise for a gas distribution system within the corporate boundaries of Owensboro, similar to the one herein granted to franchisee, It is agreed that the terms of any such franchise agreement shall be no more favorable to such new additional franchisee than those terms contained in this ordinance. Additionally, it is agreed that any such new/additional franchisee shall have no right to use any portion of the gas distribution system of this franchisee without this franchisee's written consent.

Section 3. TERM OF FRANCHISE:

The franchise created herein shall be for a term of five (5) years from the date of the franchise as awarded by the Owensboro Board of Commissioners.

Section 4. FRANCHISE CONSTITUTES CONTRACT:

The franchise created herein, when awarded and approved by the Board of Commissioners of the City of Owensboro, Kentucky, shall constitute a contract between the City of Owensboro and the franchisee, the terms of which shall be as herein stated and incorporated in a franchise agreement to be executed by the parties thereto.

Section 5. FRANCHISEE'S RIGHTS IN AND TO PUBLIC RIGHT-OF-WAY: The franchisee awarded this franchise shall have the right and privilege of constructing, erecting, laying, operating, maintaining, replacing, removing and/or repairing a gas distribution system through, along, across and under the public right-of-way within the corporate boundaries of the City of Owensboro as it now exists or may hereafter be constructed or extended, subject to the inherent police powers conferred upon or reserved unto the City of Owensboro and the provisions of this ordinance.

Section 6. OPERATION OF FRANCHISE SYSTEM; EXCAVATION OF PUBLIC RIGHT-OF-WAY:

(A) The gas distribution system of the successful franchisee shall, at all times, be installed, operated and maintained in good working condition as will enable the franchisee to furnish adequate and continuous service to all of its residential, commercial and industrial customers. The distribution system shall

be designed, installed, constructed and replaced in locations and at depths which comply with all applicable federal and state laws and regulations regarding minimum safety standards for design, construction, maintenance and operation of gas distribution systems.

(B) Although the Franchisee shall have the right to disturb, break, and excavate in the public right-of-way of the City as may be reasonable and necessary to provide the service authorized by this franchise, it agrees to give the notice and/or obtain the cut permit as required below.

(C) Franchisee agrees to give prior notification to the City Engineer of any construction work by Franchisee on or in any public right-of-way (including streets, sidewalks, curbs, gutters, drainage facilities or other street installations) that will necessarily involve the cutting of any blacktop or concrete on a public right-of-way, or any other excavation in a public right-of-way that is reasonably expected to interrupt the flow of traffic on the public right-of-way. In the event a street, sidewalk, curb or gutter is to be cut, the Franchisee agrees to obtain a "cut permit" from the City.

Nothing in the above provisions is intended to require Franchisee to give a notification to the City Engineer for any routine maintenance or repair work not involving the cutting of a public street, sidewalk, curb or gutter (in which event Franchisee would be required to obtain a "cut permit" from the City Engineer) or not involving an interruption of traffic flow on a city street.

Additionally, nothing herein is intended to impose on Franchisee any obligation to give notification to the City Engineer or obtain a "cut permit" for work on customers' service lines. Provided, Franchisee, shall be required to give advance notification to the City Engineer of installation of a new main within the city limits and provide a copy of the plans to the City Engineer of the new main.

(D) To the extent reasonably practical, Franchisee agrees to schedule and coordinate installation, construction, maintenance, replacement or repairs of its gas distribution system with proposed improvements to the City public-right-of-way that have been designated (and which Franchisee has specifically been advised of) for improvement, resurfacing or repair prior to the commencement

thereof. In the event Franchisee should in the future implement a written program for the systematic replacement of gas distribution system components located in the public right-of-way that have exhausted their useful life, Franchisee shall make a copy of same available to the City Engineer for inspection and shall to the extent practical, use its best efforts to follow same. Any replacement program shall, to the extent reasonably practical, be scheduled to coincide with the City's annual right-of-way pavement program.

(E) When a situation arises that requires immediate attention, Franchisee is authorized to disturb, break or excavate public right-of-way without first obtaining written permission from the City Engineer, provided that Franchisee files for a cut permit as soon thereafter as is reasonably practicable under the circumstances. Any restoration of disturbed or excavated public right-of-way shall be completed in accordance with Section 7 below.

Section 7. DEGRADATION/RESTORATION OF PUBLIC RIGHT-OF-WAY:

(A) When the Franchisee shall enter upon any public right-of-way for the purpose of constructing, erecting, installing, operating, maintaining, repairing and/or removing any part of its gas distribution system, it shall promptly and diligently prosecute the work to completion at its sole expense and shall repave, cover and restore all trenches and exposed areas as quickly as circumstances permit; and shall leave all public right-of-way in as good a condition as existed when Franchisee entered upon same for the purpose of commencing the work. Franchisee agrees to perform such restoration of public right of way work in conformity with all applicable city construction standards. Any repairs to public right of way necessitated by reason of Franchisee's failure to comply with city construction standards shall be performed by Franchisee, at its expense, for a period of twelve (12) months following the date Franchisee completed the particular restoration work. However, notwithstanding the foregoing restoration requirements, Franchisee shall upon request by the City Engineer and at its sole expense, repave all street pavement located within an entire street-block if Franchisee, its employees, contractors or agents, have undertaken an authorized

excavation of street right-of-way that has been repaved within six (6) months of the excavation where Franchisee knew or should have known that it would need to excavate the new pavement within six (6) months of the City notifying Franchisee of the roads that will be repaved. Provided, however, the provisions of the foregoing sentence shall not apply to the extent the excavation was necessitated by an act of the City or by an act of God, or by an act of a third party with whom Franchisee is not in privity of contract or over whom Franchisee has *no control or, in order to fix or repair a potentially, or actual, dangerous condition (e.g. an emergency) or to accommodate a request for service by a new customer.* In the event Franchisee is required to repave an entire street-block of pavement right-of-way, the City shall, once the City Engineer has inspected and approved the completed project, assume responsibility for the maintenance of the improved right-of-way. All restorations or repairs of public right-of-way shall be performed in accordance with the City's Public Improvement Specifications and approved by the City Engineer. All restoration or repairs performed by the Franchisee may be subject to inspection at any time by the City Engineer or his designee. In the event Franchisee fails, refuses or neglects to comply with this provision, the City shall have the right, after Franchisee is first given notice and an opportunity to comply with the foregoing provisions, to repair or restore the affected public right-of-way; and the costs and expenses incurred by the City as a result thereof, shall be paid to the City by Franchisee within ten (10) days from the date on which an itemized bill is submitted to the Franchisee.

(B) In the construction, installation, maintenance, repair or removal of any of its gas distribution system, or any part thereof, Franchisee shall exercise due regard for the rights of the City of Owensboro, pedestrians and motorists, and shall not unreasonably or unnecessarily interfere with or injure, City property, or the private property of others, under, on, over, across or above the ground. Franchisee shall comply with all applicable laws with respect to signalization, placement of lights, danger signals or warning signs. All work performed by Franchisee hereunder shall be done in a workmanlike manner and shall not unnecessarily interfere with public use of the City's right-of-way or property.

(C) Franchisee shall, upon request by the City, remove, move, modify, relocate, reconstruct or adjust any of its gas distribution system located within public right-of-way, at its own expense, if the City of Owensboro, in its sole discretion, constructs, reconstructs, widens, alters, excavates, paves, repaves, repairs, changes or improves any public right-of-way as part of any public improvement project, and such work requested by the City shall be accomplished by Franchisee within thirty (30) days after notice thereof by the City; provided, however, if the work requested of Franchisee cannot be reasonably completed within the said thirty (30) day period, Franchisee shall have such additional time to complete its work as may mutually be agreed upon between Franchisee and the City Engineer.

(D) If the City requires the Franchisee to adapt or conform its gas distribution system or to in any way construct, reconstruct, remove, alter, relocate, adjust or change its system to enable any other person, firm, corporation or entity, whether public or private, other than the City, to utilize public right-of-way, Franchisee shall be reimbursed for all costs incurred by the Franchisee from the person, firm, Franchisee, corporation or entity requesting or required by the City to perform such change, construction, removal, repair, maintenance, alteration or relocation.

Section 8. COMPENSATION FOR USE OF PUBLIC RIGHT-OF-WAY AND CONSIDERATION FOR FRANCHISE: As consideration for the grant of the franchise and rights herein and for the use by Franchisee of the streets, roads, highways, alleys, public ways, and other real property owned or controlled by the City, franchisee shall pay to the City, within thirty (30) days after the end of each calendar quarter, a franchise fee equal to two percent (2%) of Franchisee's Gross Revenues for the preceding calendar quarter. Franchisee may add a line-item surcharge to the monthly bills of customers located within the City, which surcharge may be designated as a City franchise fee in an amount sufficient to recover the franchise fee paid by the Franchisee to the City, in the manner authorized by Franchisee's tariffs on file with the Kentucky Public Service Commission.

The Franchisee fee provided herein, together with any charges of the City for water, sewage, and garbage services provided by the City to Franchisee, and any occupational license fees or property tax payable to the City by the Franchisee, shall constitute the only amount for which Franchisee shall be obligated to pay to the City and shall be in lieu of any and all other costs, levies, assessments, fees, or other amounts, of any kind whatsoever, that the city, currently or in the future, may charge Franchisee or assess against Franchisee's property.

Section 9. ADDITIONAL REQUIREMENTS: INSURANCE AND INDEMNIFICATION:

(A) During the term of this Agreement, Franchisee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance. A certificate of insurance, evidencing same coverage, shall be provided to the City prior to commencement of the performance of this Agreement. Such policy or policies shall be in the minimum amount of Two Million Dollars (\$2,000,000) for bodily injury or death to one person, and Two Million Dollars (\$2,000,000) for bodily injury or death of any two or more persons resulting from one occurrence, Two Million Dollars (\$2,000,000) for property damage resulting from one accident, Two Million Dollars (\$2,000,000) for excess commercial liability and Two Million Dollars (\$2,000,000) for worker's compensation employer liability. Franchisee shall provide any additional workers' compensation coverage in accordance with applicable law.

(B) **Indemnification:** Franchisee shall at all times indemnify and hold harmless the City from and against any and all lawful claims for injury to any person or property by reason of Franchisee's or its employees' failure to exercise reasonable care in installing, maintaining and operating Franchisee' natural gas system within the City. Provided, none of the provisions of this paragraph shall be applicable to the extent the City, its officials, officers, employees, contractors, or agents, were negligent and such negligence was the sole or contributing factor in bringing about the damages sued upon. That is to say, any judgment and all of the costs of defense, including attorney fees, provided for above shall be

apportioned between the City and the Franchisee based upon the percentage of fault assigned to each by a court of competent jurisdiction.

Section 10. TRANSFER OR ASSIGNMENT OF FRANCHISE:

Franchisee may transfer or assign the franchise created by this ordinance to any other person, proprietorship, partnership, firm or corporation without the consent of the City, upon approval of the Kentucky Public Service Commission.

Section 11. CITY'S RIGHT OF INSPECTION AND ACCESS TO FACILITIES OF FRANCHISEE:

The City, through its City Commission, City Manager, City Engineer, City Attorney, or such other assistants as it may employ or designate, at all times reasonable, shall have access to, and the right to inspect, the gas distribution system installed under this franchise and may inspect, examine or verify all or any of franchisee's non-confidential (as determined from time to time by the Kentucky Public Service Commission) books and records that are necessary to confirm the accuracy of the amount of franchise fee being paid to the City.

Section 12. SALE OF FRANCHISE BY SEALED BID PROCESS:

(A) Offer of Sale; Sealed Public Bid:

It shall be the duty of the City Manager or his designated representative, as soon as practical after the passage of this ordinance, to offer for sale under sealed public bids, the franchise and privileges created herein. Said franchise and the privileges attendant thereto shall be sold to the highest and best bidder at the time and place fixed by the City Manager or his designee after the City Clerk has given notice by advertising pursuant to KRS Chapter 424, of request for bids and the time for receipt of same.

(B) Bid Requirement and Opening:

Sealed bid proposals for the purchase and acquisition of the franchise and privileges established under this ordinance shall be in writing and delivered to the City Manager or his designee, upon the date and at the time fixed in said advertisements for receiving same. Thereafter, the City Manager shall report and submit to the Board of Commissioners, at the time of its next regularly scheduled meeting, said bids and proposals for its approval. The City reserves

the right to reject any and all bids for said franchise and privileges not in conformity with the requirements of this ordinance; and in the event the bids reported by the City Manager are rejected by the Board of Commissioners, the Board may direct by municipal order or ordinance that said franchise and associated privileges again be offered for sale, from time to time, until a satisfied bid therefor 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 within the corporate limits of the City of Owensboro, a plant and equipment sufficient to render the service or services required by this ordinance.

(C) **Bids to Include Acceptance of Terms of Franchise:**

Sealed bids offered for purchase of this franchise shall state the bidder's acceptance of the terms and conditions set forth in this ordinance. In addition to the highest and best bid, the successful bidder, in consideration of the terms and award of this franchise, agrees to pay to the City a sum equal to the cost of the advertising and selling of this franchise, upon proper billing by the City to the franchisee.

(D) **Proration of Franchise Fees:**

If this gas distribution franchise is awarded to the same company that currently holds a gas distribution franchise within the City of Owensboro, then payments for the franchise established by this ordinance shall be prorated from the effective date of the current franchise.

(E) In the event that no bids are received for the franchise created under this ordinance, the bids submitted are unresponsive or in the event the City does not accept any bids received hereunder, then commencing on the date of the bid opening if no bid is received, or commencing on the date that a submitted bid is rejected, and continuing thereafter until modified by ordinance, that public utility engaged in the operation of its respective business within the corporate limits of the City of Owensboro which does not hold a valid, current franchise from the City of Owensboro to operate its business within the corporate limits of

the City, shall continue to operate under the terms of the most recent franchise agreement until a new franchise is awarded.

Section 13. BREACH OF FRANCHISE; REMEDIES:

If the Franchisee materially breaches any of the substantive terms or conditions of this franchise and fails to cure same within a reasonable time (not less than 30 days) after written notice from the City describing the default and the actions the City believes the Franchisee must take to correct same, the City shall have the right to terminate the franchise on the basis of non-performance by the Franchisee. Provided, however, the termination by the City shall not become effective until the parties have endeavored to resolve any differences between them through a mediator who will be selected by the mutual agreement of City and Franchisee. The provisions of this Section shall not impair or abrogate the statutory or common law rights Franchisee as owner has as to its gas distribution system.

Section 14. 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, and the time during which Franchisee is so prevented shall not be counted against it for any reason.

Section 15. SEVERABILITY:

If any section, subsection or provision of this ordinance or any part thereof is for any reason found unconstitutional or held to be in conflict with any applicable statute or rule of law, or is otherwise held to be unenforceable, the invalidity of any such section, subsection or provision shall not affect any or all other remaining sections and provisions of this ordinance, which shall remain in full force and effect.

Section 16. CONFLICTING ORDINANCES; ORDERS REPEALED:

All prior ordinances, municipal orders, or policies or parts thereof in conflict herewith, are to the extent of such conflict, hereby repealed.

Section 17. GENERAL PROVISIONS:

(A) Franchisee may remove all or any part of its Gas Distribution System upon the expiration or termination of the franchise and rights granted hereby.

(B) This Agreement shall extend to, be binding upon, and inure to the benefit of, the parties hereto, and their respective successors and assigns.

(C) In the event of a conflict between the provisions of any Ordinances of the City or portions thereof, and any of the terms and provisions of this Agreement, the terms of this Agreement shall prevail.

(D) The City, by granting of this franchise, does not surrender to any extent, lose, waiver, imperil, or lessen the lawful powers and rights now or hereinafter vested in the City under the constitution and statutes of the Commonwealth of Kentucky; provided, however, that no ordinance, law, regulation or rule adopted or enacted by the City shall in any way impair, alter, lessen, modify or restrict the rights of the Franchisee under and established by this Agreement including, but not limited to, the use of the Public-Rights-of-way in connection with Franchisee's acquisition, construction, ownership, installation, laying, operation, maintenance, repair or removal of the Gas Distribution System.

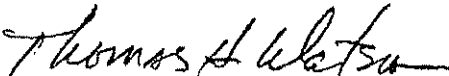
Section 18. EFFECTIVE DATE OF FRANCHISE AND ORDINANCE:

The franchise created by this ordinance shall become effective when a responsive bid is accepted and notice of award is given to the successful bidder. This ordinance shall become effective upon its legal adoption and publication in the manner prescribed by statute.

**INTRODUCED AND PUBLICLY READ ON FIRST READING, this the
15th day of May, 2007.**

PUBLICLY READ AND FINALLY APPROVED ON SECOND READING,

this the 5th day of June, 2007.



Mayor

ATTEST:



Carol Blake, City Clerk