

ORDINANCE NO. 2026-0811

NATURAL GAS FRANCHISE BID ORDINANCE

AN ORDINANCE OF THE CITY OF MONTICELLO, KENTUCKY, PROVIDING FOR THE CREATION OF A FRANCHISE FOR THE OPERATION AND MAINTENANCE OF A NATURAL, MANUFACTURED, AND/OR MIXED, GAS DISTRIBUTION SYSTEM WITHIN THE CITY OF MONTICELLO, KENTUCKY, DEFINING THE TERMS AND CONDITIONS THEREOF AND AUTHORIZING THE BID PROCEDURE THEREFORE.

WHEREAS, the City of Monticello may create an exclusive natural gas distribution system franchise, pursuant to Kentucky Constitution Section 163 and Section 164, within the City of Monticello, Kentucky, and request bids therefore; and

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

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

SECTION I

FRANCHISE. The franchise created hereby grants the right, privilege and franchise for furnishing and to furnish to the City of Monticello, Kentucky, and to its businesses and industries, and to its citizens and residents at a future date to be determined, 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 an exclusive franchise, so that 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 be exclusive. Any franchise granted hereunder shall be extended to newly annexed territory upon the same terms and conditions as herein, subject to approval of the state regulatory authorities as applicable.

SECTION II

AUTHORIZATION OF FRANCHISE BID. The Mayor of the City of Monticello, Kentucky, is hereby authorized and directed to offer for public sale a Natural Gas Franchise to the highest and best bidder in accordance with KRS Chapter 45A.

BID CONTENT. The bids for the franchise shall address:

- A. provision of adequate gas volume and pressure to support the current demand and anticipated demand, including future residential service, using a 75-year projection of needs;

- B. construction and operation of at least a .322 w.t. 8" steel natural gas pipeline of sufficient size to serve the communities of the City of Monticello, County of Wayne, and other relevant corridors; the proposal must include a plan for upgrading any existing facilities to be utilized for this project that are not up to these standards;
- C. the franchisee's responsibility for land and right of way acquisition, design, engineering, construction, and operation of the pipeline and all appurtenant facilities, including but not limited to, a tap, meter station, odorizer equipment and preheater equipment; ownership of a constructed and operational natural gas tap and meter facility to which the pipeline will be connected to in order to receive sufficient supply from an interstate pipeline by June 30, 2027;
- D. that all facilities, including the pipeline, shall be designed, constructed and operated in accordance with Pipeline and Hazardous Materials Safety Administration and Kentucky Public Service Commission Rules and Regulations;
- E. the anticipated date of commencement of each phase of construction with pipeline construction to begin no later than July 15, 2027, subject to approval of the Kentucky Public Service Commission and any other administrative or judicial tribunal with jurisdiction;
- F. the franchisee's safety record and safety features, including, but not limited to, leak detection, leak logs, meters, and excess flow valves; the anticipated costs and fees for customers to connect; and the anticipated cost-efficiency compared to existing utilities (electricity, propane);
- G. provision of financial statements for the preceding two (2) years (balance sheet, income statement, statement of changes in retained earnings), or a signed statement explaining why said statements do not exist;
- H. two (2) year projections of income and expense statements as they relate to the Natural Gas System in the City of Monticello;
- I. profiles of the principal participants showing their expertise in the natural gas distribution business;
- J. a detailed plan of initial construction of the system with an estimated time frame for construction and completion of each phase of the project;
- K. plans for the distribution system, including specifications for pipe and metering systems conforming to Kentucky Public Service Commission guidelines;
- L. a signed statement acknowledging that right-of-way agreements for pipeline or proof of ability to deliver natural gas to the Monticello corporate limits will be submitted when they become available, prior to start of construction;
- M. the franchisee's proposed franchise fee (see Section V a below).

SECTION III

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. This franchise shall not restrict in any manner the right of the City of Monticello in the exercise of any regulatory power which it now has or which may hereafter be authorized or permitted by law.

SECTION IV

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 open and close all trenches and exposed places as rapidly as possible, and shall leave the streets in reasonably the same condition as prior to its entry. All such repairs shall be maintained by the franchisee 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 costs 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 have 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 V

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 a percentage (to be determined) of the franchisees' gross revenues received from natural gas distribution services generated within the corporate limits of the City, to be paid as set out in a subsequent Franchise Agreement.

b) Any franchise payments to the City by Franchisee shall 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 Monticello, 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 per occurrence and \$5,000,000 aggregate, for both bodily

injury and property damage, and which shall insure franchisee, and shall likewise 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 both severability of interests and cross-liability provisions.

d) Franchisee shall indemnify and hold harmless the City, 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, if and to the extent such damage or injury is not caused by the City's negligence or misconduct, and franchisee shall regardless be liable for its comparative fault.

e) Defense of litigation: Franchisee shall, at its sole risk and expense, upon demand of the City, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted 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, and thereby protect the City's interests, if and to the extent such damage or injury is not caused by the City's negligence or misconduct.

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

SECTION VI

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 to customers; provided, however, that any such work first be properly approved by the City of Monticello Road Department, 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. 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 reasons 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 VII

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

SECTION VIII

It shall be the duty of the Mayor as soon as practical after the passage of this Ordinance to advertise for bids for fourteen (14) days pursuant to KRS Chapter 45A the franchise and privileges as set forth herein. Said franchise shall be awarded to the highest best available bidder at the next City Council meeting following the bid deadline. The City Clerk shall give notice by advertising pursuant to KRS Chapter 45A for request for bids and the time for receipt of same. Any bidder may include in its bid any special or extraordinary matters or circumstances which relate or apply to its particular business. Pursuant to Kentucky Constitution Section 164, the City has the right to reject any and all bids.

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 bids 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.

Following the award of the bid, if awarded, the City shall enact such further ordinance(s) or municipal orders or contracts as may be necessary or advisable to document all of the terms and provisions of the bid as awarded.

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 day following such determination 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 which does not hold a valid current franchise from the City 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 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 operated 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: August 10, 2026

SECOND READING AND ENACTMENT: September 14, 2026

APPROVED BY:


KENNETH CATRON, MAYOR

ATTEST:


CLERK OF THE CITY COUNCIL

Published this 23 day of September, 2026.