

BILL NO. 1172

ORDINANCE NO. 1172

An ordinance of the City of Hamilton, Missouri, granting to Missouri Gas Utility, Inc., its successors and assigns, the nonexclusive privilege to construct, maintain, and operate a gas system with all necessary mains, pipes, services, appliances and other appurtenances incidental thereto, in, under, across, and along the streets, lanes, and alleys of the City of Hamilton, Missouri for the purpose of furnishing gas to said City and the inhabitants thereof for a period of twenty years from the first day of December, 2004; establishing a franchise fee; and prescribing the terms and conditions of said grant; and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF HAMILTON, MISSOURI:

SECTION 1. The nonexclusive privilege is hereby granted to Missouri Gas Utility, Inc., its successors and assigns, to construct, maintain and operate a gas system with all necessary mains, pipes, services, appliances and other appurtenances incidental thereto, in, under, across and along the streets, lanes and alleys of the City of Hamilton, Missouri, for the purpose of transmitting and furnishing gas for lighting, heating, industrial, and other purposes, to the City of Hamilton, Missouri, and its inhabitants and others, for a period of twenty (20) years from the first day of December, 2004, and to use and occupy the streets, lanes and alleys of said City for the aforementioned purpose, subject, however, to the reasonable and lawful control and regulation by the governing body of said City including the Missouri Municipal League Model Rights of Way Ordinance if adopted by the City.

SECTION 2. The Grantee, its successors and assigns, shall lay its pipes, mains, services and all other equipment and apparatus, and so locate the same in the streets, lanes and alleys of said City so not to unduly or unreasonably obstruct or interfere with any water pipes, sewers, drains, or other structures already installed or hereafter to be installed, and the Grantee shall, so far as may be practical, avoid interfering with the use of any street, lane, alley, bridge, or other public highway. In case of any disturbance in pavement, sidewalk, driveway, other surfacing, or other public improvement, Grantee shall, at its own cost and expense and in a manner satisfactory to the City, and subject to the jurisdiction of said City with respect thereto, replace and restore all paving, sidewalk, driveway, or surface of any street or alley so disturbed, or other public improvement, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of two (2) years.

Prior to commencing construction of any project requiring disruption of any alley, street, driveway, paving, water line, sewer line, or electric line, or other public improvement, Grantee shall first notify and obtain the consent of Grantor; provided, that in the case of any emergency requiring immediate action to protect the safety of persons or property, Grantee may commence construction immediately, but shall notify Grantor

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of such action as soon as reasonably possible. In the event Grantee shall fail to complete restoration work as provided herein, Grantor may, upon ten (10) days notice to Grantee, complete such restoration, and the cost thereof, including a reasonable administration fee, shall be paid by Grantee.

SECTION 3. It is expressly understood and agreed by and between the Missouri Gas Utility, Inc. and the City of Hamilton that the Grantee shall save the City harmless, indemnify, and become responsible for any and all damages, judgments, decrees, costs, and expenses or demands whatsoever, including court costs and attorney's fees, which the City may legally suffer and incur, or which may be legally obtained against the City, for or by reason of the use and occupation of any street, alley, avenue or other public place in the City by the Grantee pursuant to the terms of this ordinance or legally resulting from the exercise by the Grantee of any privilege herein granted.

SECTION 4. Grantee shall at all times during the term hereof make such reasonable extension of its gas mains from time to time, and install such service connections to the curb lines in streets and to property lines in alleys, as may be reasonably required in order to furnish gas service to applicants located within the corporate limits of the City and all under such reasonable rules, regulations, and conditions, as the governing body of said City may from time to time prescribe.

Grantee shall supply the City of Hamilton and the inhabitants thereof, in accordance with the accepted standard of the industry, gas service to provide for their needs during the term of this franchise, unavoidable accidents and delays and other causes beyond the control of the Grantee excepted. In the event that such service is not given by the Grantee, all rights under this franchise may be terminated and be forfeited.

SECTION 5. The rates that shall be charged by the Grantee for gas shall be fair and reasonable and such as may from time to time hereafter be lawfully fixed by the Missouri Public Service Commission, all in accordance with law. Until such rates shall have been fixed and prescribed, the Grantee may charge such rates as are fair and reasonable.

SECTION 6. Gas within the meaning of this ordinance is defined as gas of a BTU heating value of not less than 900 BTU per cubic foot of gas calculated according to standard measurements.

SECTION 7. Missouri Gas Utility, Inc. agrees that it will, at its expense, furnish, install, maintain, and keep in proper adjustment and repair, meters of modern approved type upon the property of each consumer of gas, that the same shall be read regularly at intervals of approximately monthly and Grantee shall render monthly statements to each consumer based upon such meter readings. Grantee shall, upon request of the City, cooperate in the study of establishment of joint meter reading and billing with the utility

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department of the City upon reasonable terms and conditions. The Grantee shall maintain at its office accurate, complete, and detailed records of such meter readings, for a period of at least five years. The Grantee, at its own expense, shall make careful and accurate tests of each meter at reasonable intervals, or as may otherwise be required by the Missouri Public Service Commission, at specific instances, and shall keep accurate records of the result of such tests. The City, by its authorized agents and representatives, shall have the right and authority to make tests of such gas meters and other equipment and to check the Grantee's tests and readings of meters at such times as it may see fit, and without charge, use Grantee's equipment to make such tests.

SECTION 8. The Grantee shall have powers of eminent domain and regulation of the method of doing business by the Grantee as may from time to time be provided for by law, as permitted by Missouri law.

SECTION 9 This grant shall expire and all rights hereby given to use or occupy the streets and other public ways and places of the City, and all other rights hereby granted or acquired hereunder or claimed by reason of operation or conduct hereunder, or in connection herewith shall fully, absolutely, and automatically terminate twenty-five (25) years from and after the first day of December 2004, and on such termination, or at any time thereafter upon the order of the governing body of the City, the Grantee, its successors or assigns, shall immediately discontinue all operation and neither the failure on the part of the City to order such discontinuance or removal, nor the failure of the Grantee, its successors or assigns, to discontinue operation and to remove its property from the public streets, ways, and places, nor the acceptance by the City of public service, nor the making of additional investments, the construction of extensions, the payment of taxes, fees, charges, nor the regulation of rates and service, nor any act or failure to act of the governing body or the officials of the City, shall confer any additional right whatever upon the Grantee.

SECTION 10. The Grantee may distribute gas to other persons or corporations beyond the corporate limits of the City by and through gas mains and pipes within the boundaries thereof, subject, however, at all times, to priority of right to continued satisfactory and adequate supply of gas to users and customers within the said City.

SECTION 11. The governing body of the City from time to time, may request such extensions of gas mains and service, or new mains and service, or supplemental or supplanting mains and service, as may be reasonably required for the convenient, efficient, continuing and adequate supply of gas throughout the City, consideration being given to the initial cost thereof, the resulting increased expense of operation, the usefulness of the proposed extension in connection with the system as a unit, and the length of the unexpired period of this grant. The Grantee may be required by ordinance to extend or construct its lines into or through any public park or ground. Before making such order, the governing body of the City shall give written notice to the Grantee, and an

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opportunity to be heard. The reasonableness of such regulations and ordinances may be determined by the courts. All such extensions shall be made, and all new mains shall be constructed in accordance with the provisions of such ordinances, as may from time to time be passed by the City of Hamilton, relating thereto, and said ordinances shall be reasonable in their provisions.

SECTION 12. The Grantee shall at all times keep and maintain complete books of accounts and records of its business and operations and such books of accounts and records shall be made available to the City or its duly authorized representatives on reasonable request and at reasonable times. The Grantee shall keep on record in its office in Missouri, for the use of the public and for public inspection, complete maps of all gas mains showing the established location thereof and properties of the time Grantee therein, and same shall be extended from time to time to show the addition of new gas mains.

SECTION 13. This ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law, and provided the Grantee files its unconditional written acceptance thereof within twenty (20) days after the publication hereof.

SECTION 14. The Grantee shall pay a franchise fee to the City equal to 6% of the gross receipts (exclusive of any sales or other taxes collected) derived from the sale of natural gas within the current or future city limits of the City during the term of this Franchise, subject to these provisions:

A. The tax shall be payable in arrears semiannually for the six month periods ending December 31 and June 30 of each year. The Grantee shall submit a statement computing the fee due and payment of the fee within 30 days from the end of each six month period.

B. Notwithstanding anything herein, the franchise fee shall not become effective, and the Grantee shall have no duty to pay such fee, until the City has enacted and made effective an ordinance requiring the payment, in the same percentage and calculated on the same basis, of franchise fees upon the competing hydrocarbon heating fuels of propane and fuel oil.

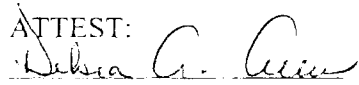
SECTION 15. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Enacted this 1st day of November, 2004

Approved this 1st day of November, 2004



Mayor

ATTEST:


City Clerk

AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF Caldwell) ss

I, John Catron, having been duly sworn upon my oath, state that I am the Mayor of the City of Hamilton, Missouri, that I am duly authorized to make this affidavit on behalf of the City of Hamilton and that the matters and things stated herein are true and correct to the best of my information, knowledge and belief.

It is my belief that the proposed purchase of the Gallatin and Hamilton natural gas systems by Missouri Gas Utility, Inc., an affiliate of Colorado Natural Gas, Inc., is in the interest of Hamilton and its inhabitants. The availability of natural gas service provides an important fuel alternative for both individuals and industry in many areas of Harrison, Daviess and Caldwell counties.

The City of Hamilton continues to desire that natural gas service be available to its citizens. It believes that the best option for attaining this goal is the Missouri Public Service Commission's approval of Missouri Gas Utility's Application.

I encourage the Public Service Commission to provide this approval as soon as is reasonable, so that the future of the Gallatin and Hamilton gas systems can be known and the availability of natural gas to our community ensured.

John Catron
Mayor, City of Hamilton

Subscribed and sworn to before me this 1st day of November, 2004.

Debra A. Allen
Notary Public

My Commission Expires:
DEBRA A. ALLEN
Notary Public - State of Missouri
Caldwell County
My Commission Expires: November 12, 2004