

ORDINANCE NO. 74

AN ORDINANCE GRANTING TO THE TRUSTEES OF THE NORTHEAST OKLAHOMA PUBLIC FACILITIES AUTHORITY, THEIR SUCCESSORS AND ASSIGNS, FOR A TERM OF TWENTY-FIVE (25) YEARS FROM AND AFTER FEBRUARY 23, 1971, A NON-EXCLUSIVE FRANCHISE TO INSTALL, CONSTRUCT, MAINTAIN AND OPERATE A SYSTEM OF PIPES, EQUIPMENT AND OTHER PHYSICAL FACILITIES IN, UPON, ACROSS AND UNDER PARTICULAR STREETS, ALLEYS AND OTHER PUBLIC GROUNDS AND WAYS WITHIN THE CITY FOR THE PURPOSE OF TRANSMITTING, DISTRIBUTING AND SELLING NATURAL GAS, ALL COSTS AND EXPENSES RELATING TO CONSTRUCTION, INSTALLATION, MAINTENANCE AND OPERATION OF SAID SYSTEM, INCLUDING PAYMENT OF INDEBTEDNESS INCURRED THEREFOR, TO BE DEFRAYED SOLELY FROM THE TRUST ESTATE, FOR WHICH THE CITY AND ITS TAXPAYERS SHALL IN NO MANNER WHATSOEVER BE LIABLE OR OBLIGATED AND FOR WHICH NO TAXES SHALL BE LEVIED, ALL AS PROVIDED IN THE DECLARATION OF TRUST OF THE NORTHEAST OKLAHOMA PUBLIC FACILITIES AUTHORITY; EXPRESSLY RESERVING ALL MUNICIPAL AND GOVERNMENTAL POLICE POWERS; MAKING PROVISIONS RELATING TO LEASING, ASSIGNING AND ALIENATION OF FRANCHISE; PROVIDING FOR ANNUAL PAYMENT OF A PERCENTAGE OF GROSS RECEIPTS ARISING FROM USE OF FRANCHISE AND PLANT USED THEREWITH; PROVIDING FOR CONVEYANCE OF SYSTEM WITHIN CITY TO IT WHEN INDEBTEDNESS SHALL HAVE BEEN LIQUIDATED AND FOR PURCHASE OF PROPERTY AND PLANT BY THE CITY, PRESCRIBING CONDITIONS AND PROCEDURE THEREFOR; AND PRESCRIBING METHOD OF ACCEPTANCE.

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF STILWELL:

SECTION 1. Pursuant to and in conformity in all respects to the provisions of the Constitution of the State of Oklahoma and of the Charter of the City of Stilwell, for and in consideration of the acceptance of the provisions of this Ordinance and the agreements and obligations assumed by them as provided in the Declaration of Trust of The Northeast Oklahoma Public Facilities Authority, their successors and assigns, a franchise of the right, privilege and authority to construct, install, maintain and operate in, across and under the particular portions of the streets, alleys and other public grounds and ways within the City of Stilwell which are shown upon the plan designated "City of Stilwell Gas Distribution System," prepared by R.D. May, Consulting Engineer, heretofore filed with the City Clerk (which said plan shall be the specification of the particular portions of the streets, alleys, ways and other public property to which this franchise shall apply, and not otherwise; and the same shall be a public record thereof), a system of pipes, equipment and other physical facilities for the purpose of transmitting, distributing and selling natural gas in performance of the purposes of the aforesaid trust as set forth in the Declaration of Trust thereof: Provided, that the foregoing grant shall be void after a period of one year from the date hereof as to all particular portions of said streets, alleys, ways or other public property upon or within which construction and installation work shall not have been commenced within the said year and thereafter prosecuted with diligence to completion.

SECTION 2. This franchise shall not be leased, assigned or otherwise alienated without the express written consent of the City, and no rule of estoppel shall ever be invoked against the City asserting the invalidity of any attempted transfer in violation of the foregoing: Provided, that the City hereby does expressly consent that the Trustees of The Northeast Oklahoma Public Facilities Authority, to such extent as they lawfully are authorized so to do, may mortgage, pledge and hypothecate the franchise herein granted, in any connection with the trust estate or its revenues or any part thereof, as security for any indebtedness contracted by them for the purpose of constructing, installing, enlarging, maintaining, repairing or replacing all or any part of the natural gas system or systems which shall be a part of the trust estate of said trust, or any refunding thereof.

SECTION 3. It is expressly stipulated: (a) that all costs, expenses,

obligations and liabilities in any manner relating whatsoever to the construction, installation, maintenance, repair, replacement and operation of the aforesaid natural gas system, including the payment of all indebtedness incurred therefor, shall be chargeable solely against the trust estate of said trust, its successors and assigns and that the City of Stilwell or its taxpayers shall in no manner whatsoever be or become obligated or liable for any thereof, and no taxes shall be levied therefor; (b) that all streets, alleys, public grounds or ways that shall have been damaged in any manner by reason of any operations under this franchise shall be replaced, in no lesser degree of condition that they were prior to such damage, at the expense of the franchise grantee; and, (c) that the said system will be constructed, maintained and operated in a reasonable and proper manner to protect the people of the City and their property from danger and inconvenience.

SECTION 4. Notwithstanding anything herein appearing to the contrary, nothing in this Ordinance shall be deemed (a) to surrender any of the lawful police power of the City of Stilwell or of any other governmental authority, (b) to surrender any lawful power of any governmental authority to regulate any charges for public services or any practices of the franchise grantee, or (c) to grant any exclusive franchise.

SECTION 5. The franchise grantees shall pay to the City, annually within ninety (90) days following each anniversary date of commencement of the sale of natural gas within the City, a percentage of the gross receipts arising from the use of this franchise and of the plant used therewith, said percentage to be computed as follows: (a) The grantees shall maintain a schedule of rates and charges for gas sold and services rendered which, after payment of all reasonable ordinary costs and expenses of operation and maintenance of the properties constituting the trust estate of said trust, will provide not less than one and one-half times the annual amounts required to be paid into the Sinking Fund and Sinking Fund Reserve Fund provided in any instrument authorizing and creating any funded indebtedness for the purpose of constructing, installing, enlarging, maintaining, repairing or replacing all or any part of the trust properties, or refunding the same; (b) From the remaining portion of the total of the gross receipts thereby produced, there shall next be paid any amounts periodically required to be paid into any reserve fund created by any such aforesaid instrument for the defraying of extraordinary costs of maintenance and repairs, and in addition thereto all necessary and reasonable costs and expenses of executing and performing the purpose of said trust; (c) Of the remainder of the said gross receipts, there shall be paid to the City, annually as aforesaid, such percentage thereof as shall equal that proportion of the total of said remainder of the said gross receipts that the total investment in the trust estate of said trust located within the corporate limits of the City of Stilwell bears to the total investment in the entire of the trust estate of said trust: Provided, that for accounting purposes, the Trustees of said Authority may designate a portion of its transmission and distribution lines serving two or more municipalities as a separate natural gas system, and the City may contract with other municipalities entitled to distributions of net profits from the sale of natural gas therefrom for pooling all such municipal distributions and equitably apportioning the total between such contracting municipalities.

SECTION 6. IN addition to the payments provided in Section 5, whenever there shall have been fully paid and satisfied all indebtedness incurred by the Trustees of The Northeast Oklahoma Public Facilities Authority for the purposes specified in Section 5, and all contractual obligations of the Trustees with relation to the aforesaid portion of the trust estate shall have been terminated, on the written request of the City, the said Trustees shall convey to the City all that portion of the said trust estate which shall be located within the corporate limits of the City; and also, in addition to the foregoing, (1) if any portion of the said trust estate which shall be located within the corporate limits of the City shall be disposed of by the said

Trustees and the proceeds therefrom shall not be required to replace the same or to apply upon trust indebtedness, said proceeds shall be paid to the City, and (2) if any portion of the said trust estate which shall be located partially within the corporate limits of the City and partially outside thereof shall be disposed of by said Trustees and the proceeds thereof shall not be required to replace the same or to apply upon trust indebtedness, that portion of the said proceeds shall be paid to the City which shall equal the ratio of the investment in said portion of the trust estate located within the corporate limits of the City to the total investment in said portion of the trust estate located inside and outside said corporate limits.

SECTION 7. Upon payment therefor at its fair valuation, which valuation shall be made as hereinafter provided, the City shall have the right to purchase and take over the property and plant of the grantee of this franchise which is located within the corporate limits of the City, in whole or in part. The fair valuation of said property and plant shall be an amount equal to the then outstanding and unpaid amount of contractual monetary obligations for which the said property and plant shall have been mortgaged or the revenues thereof pledged for security; and the City shall be entitled to exercise, on behalf of the said Trustees, all contractual privileges of said Trustees for prior payment of any such indebtedness or obligations. Nothing herein shall be deemed to give or reserve to the City the right to purchase or take over any of the aforesaid property until it shall have paid in cash the full amount of the aforesaid fair valuation, that the Trustees shall be fully absolved of all the contractual monetary obligations then outstanding as aforesaid.

SECTION 8. In the event that the granting of this franchise shall have been approved by a majority of the qualified electors residing within the corporate limits of the City voting at the special election held on February 23, 1971, this franchise shall be and remain in full force and effect for a term of twenty-five (25) years from and after said election date: Provided, (a) that if the property and plant of the grantee, in whole or in part, shall be purchased by the City as hereinbefore provided, this franchise shall be void as to the portions of the streets, alleys, public property and ways wherein said property so acquired by the City shall be located; and (b) if the Trustees of The Northeast Oklahoma Public Facilities Authority shall fail, within a reasonable time after adoption of this Ordinance, to file with the City Clerk their acceptance in writing of the terms and provisions hereof, this franchise shall be null and void.

PASSED AND ADOPTED this 18th day of January, 1971.

Harold Moten, Mayor
The City of Stilwell

(Seal)

ATTEST: D.B. GAINS, City Clerk
The City of Stilwell

STATE OF OKLAHOMA, COUNTY OF ADAIR, SS:

I, the undersigned, the duly qualified and acting City Clerk of the City of Stilwell, Oklahoma, hereby certify that the foregoing constitutes a correct and complete copy of Ordinance No. 74 of said City of Stilwell, as the same appears of record in my office.

WITNESS my hand and the seal of said City this 18th day of January, 1971.

(Seal)

D.B. GAINES, City Clerk
City of Stilwell, Oklahoma

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[Related Ordinances, No. 73 and No. 87]