

ORDINANCE NO. 357

AN ORDINANCE GRANTING TO THE TRUSTEES OF THE NORTHEAST OKLAHOMA PUBLIC FACILITIES AUTHORITY, THEIR SUCCESSORS AND ASSIGNS, FOR A TERM OF FIFTEEN YEARS FROM AND AFTER FEBRUARY 23, 2011, A NON-EXCLUSIVE FRANCHISE TO INSTALL, CONSTRUCT, MAINTAIN AND OPERATE A SYSTEM OF PIPES, EQUIPMENT AND OTHER PHYSICAL FACILITIES IN, UPON, ACROSS AND UNDER ALL 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 THEREFORE TO BE DEFRAYED SOLELY FROM THE TRUST ESTATE, FOR WHICH THE CITY AND ITS TAXPAERS 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 NORTHEASTERN OKLAHOMA PUBLIC FACILITIES AUTHORITY AS AMENDED AND BY THE CONTRACT OF THE TRUSTEES THEREOF WITH THE CITY OF STILWELL; EXPRESSLY RESERVING ALL MUNICIPAL AND GOVERNMENT POLICE POWERS; MAKING PROVISIONS RELATING TO LEASING, ASSIGNING AND ALIENATION OF FRANCHISE; PROVIDING FOR 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 THEREFORE; AND PRESCRIBING METHOD OF ACCEPTANCE.

BE IT ORDAINED, by the City Council 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 all of the streets, alleys and other public grounds and ways within the City of Stilwell, 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

connection with the trust estate or its revenues or any part thereof, as security for any funded 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 therefore, 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 therefore; (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 than they were prior to such damage, at the expense of the franchise grantee; (c) and 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; (d) that a full financial audit of the grantee will be delivered to the office of the City Clerk-Treasurer within six (6) months of the end of each fiscal year of the grantee; (e) said financial audit contain separate financial statements related to the operation of the system located within the City of Stilwell. Said audit should detail accounting of gross sales of natural gas, expenses, and fair market value of the natural gas system located within the corporate limits of the City of Stilwell and any portion outside the corporate limits that extend from the system located within the City of Stilwell.


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 government 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, monthly, within thirty (30) days following each month 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) five (5 %) of gross monthly receipts for all sales of natural gas within the corporate limits of the City of Stilwell. (b) five (5 %) of gross monthly receipts for all sales of natural gas outside the corporate limits that extends or passes through any portion of the system situated within the corporate limits of the City of Stilwell. The Trustees also shall contract with the City of Stilwell that: (1) if any portion of the Trust Estate which shall be located within said City shall be disposed of by the Trustees, and the proceeds there from shall not be required to replace the same or to apply upon trust indebtedness, said proceeds shall be paid to said City; (2) if any portion of the Trust Estate which shall be located partially within said City and partially outside of said City shall be disposed of by the Trustees, and the proceeds there from shall not be required to replace the same or to apply upon trust indebtedness, that proportion of said proceeds shall be paid to said City which shall be equal to the ratio of the investment therein located in said City to the investment therein located outside said City; and (3) when an indebtedness incurred by the Trustees for trust purposes shall have been fully paid and satisfied and all contractual obligations of the Trustees with relation to operation of that portion of the Trust Estate shall have terminated, the Trustees shall convey to said City, at the request of the City, all that portion of the Trust Estate which shall be located within the corporate limits of said City.

SECTION 6. Upon payment therefore 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 in this ordinance 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, in order that the Trustees shall be fully absolved of all of the contractual monetary obligations then outstanding as aforesaid.

SECTION 7. 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 general election held on April 5, 2011, this franchise shall supersede in all respects the franchise to said Trustees approved by said elector the election held on May 12, 1998, and this franchise shall be and remain in full force and effect for a term of fifteen (15) years from and after February 22, 2011: provided, (a) that if the property and plant of the grantee, in whole or in part, shall be purchased by the City as herein before provided, this franchise shall be void as to the portions of the streets, alleys, public property and ways wherein said property of the City shall be located; and (b) if the Trustees of the Northeastern 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 3rd day of January, 2011.


James Collins, Mayor

Attest: 
Sheldon L. Miggetto, City Clerk/Treasurer



STATE OF OKLAHOMA

SS:

COUNTY OF ADAIR

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. 357 of said City of Stilwell, as the same appears of record in my office.

Witness my hand and the seal of said city this 3rd day of January, 2011.

/S/Shelldon L. Miggetto
City Clerk/Treasurer, City of Stilwell, Oklahoma

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