

ORDINANCE NO. S-11-09

AN ORDINANCE GRANTING A FRANCHISE BY THE CITY OF COFFEYVILLE, COUNTY OF MONTGOMERY, KANSAS TO ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO FURNISH, SELL AND DISTRIBUTE GAS TO THE CITY AND TO ALL PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL AND DISTRIBUTE GAS TO THE CITY AND TO ALL PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE CITY AND IN THE TERRITORY ADJACENT THERETO AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AS MAY BE NECESSARY, AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF COFFEYVILLE, MONTGOMERY COUNTY, KANSAS:

ARTICLE I
Definitions

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

1.1 "Governing Body" refers to and is the governing body of the City of Coffeyville.

1.2 "Company" refers to and is Atmos Energy Corporation and its successors and assigns.

1.3 "Distribution Facilities" refer to and are only those facilities reasonably necessary to provide gas within the City.

1.4 "Facilities" refer to and are all facilities reasonably necessary to provide gas into, within and through the City and include plants, works, systems, lines, equipment, pipes, mains, underground links, gas compressors and meters.

1.5 "Gas" or "Natural Gas" refers to and is such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured or any mixture thereof.

1.6 "Kansas Corporation Commission" and/or "KCC" refer to and is the State Corporation Commission of the State of Kansas or other authority succeeding to the regulatory powers of the KCC.

1.7 "Revenues" refer to and are those amounts of money which the Company receives from its customers within the City for the sale of gas under rates, temporary or permanent, authorized by the KCC and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

1.8 "Streets and Other Public Places" refer to and are streets, alleys, viaducts, bridges, roads, lanes, easements, public ways and other public places in said City.

1.9 "City" refers to and is the City of Coffeyville, Montgomery County, Kansas, and includes the territory as currently is or may in the future be included within the boundaries of the City of Coffeyville.

1.10 "Volumetric Rate" shall mean that sum measured in cents per CCF as determined by the City by ordinance or such amount as may be hereafter adjusted according to the provisions of this Section. The Volumetric Rate Calculation Form incorporated herein as Attachment A shall be used for the recalculation of the Volumetric Rate. The recalculation shall be effective each January 1 and shall be based on Settlement Prices for the twelve (12) month period beginning in July of the second preceding year and ending in June of the preceding year. For the fifteenth (15th) day of each month during said twelve (12) month period, the Settlement Prices for the next twelve (12) months will be summed and divided by twelve (12) to determine an average Settlement Price. The average Settlement Prices for each of the twelve (12) months shall then be summed and divided by twelve (12) and multiplied by 5.0% to obtain the Volumetric Rate to be effective January 1 of the next succeeding year. The Volumetric Rate shall be calculated by the City in accordance with the

procedures in Attachment A and filed with the City Clerk by July 31 of each year after written notice to the Company.

ARTICLE II
Grant of Franchise

2.1 Grant of Franchise. The City hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Ordinance, the right to furnish, sell and distribute gas to the City and to all persons, businesses and industries within the City, the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to provide gas to the City and to all persons, businesses and industries within the City and in the territory adjacent thereto; and the right to make reasonable use of all streets and other public places as may be necessary to carry out the terms of the Ordinance.

2.2 Term of Franchise. The term of this franchise shall be for a period of five (5) years from the date of its final passage and approval; provided, this franchise and all rights and privileges herein provided shall be extended for three (3) successive periods of five (5) years unless the City by notice given to the Company and by Ordinance duly enacted and approved at least ninety (90) days before the end of each such term of five (5) years, shall declare such termination effective.

ARTICLE III
Franchise Fee

3.1 Compensation to the City. In consideration of and as compensation for the Franchise hereby granted to the Company by the City, the Company agrees to pay (within 30 days after the end of the month for which the natural gas was distributed) compensation as follows:

- A. A sum equal to five percent (5%) of the Gross Revenues received from the distribution of natural gas.

B. A sum equal to the Volumetric Rate multiplied by the number of CCF of Transport Gas.

In the event the accounting rendered to the City by the Company is found to be incorrect, then payment shall be made on the corrected amount, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or later found to be incorrect. The Company agrees that all of its books, records, and documents and all of its contracts and agreements as may be reasonably necessary for an effective compliance review of this Ordinance shall at all reasonable times be opened to the inspection and examination of the officers of the City and its duly authorized agents, auditor, and employees for the purpose of verifying said accounting, or for any other lawful purpose. Notwithstanding the obligations herein, the Company shall have the right to request the reasonable protection of proprietary information and to provide redacted documents or require the City or its agents to enter into such agreements pertaining to confidentiality as may reasonably protect the proprietary information of the Company but which do not unreasonably frustrate the purpose of this subsection.

For each and every month, or any part thereof, that the compensation provided for by this Franchise remains unpaid after the same becomes due and payable to the City, there shall be added to such payment, as a late charge, a sum equivalent to the statutory rate for interest on the unpaid amount. Such late charge shall be applicable to sums that are delinquent as well as any sums due the City as a result of an audit of the Company's records.

3.2 Franchise Fee Payment in Lieu of Other Fees. The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property assessments, sales, and excise taxes or charges made for privileges, which are not connected with the natural gas business, will be imposed on the Company and are not covered by the payments herein. From and after the date hereof, however, the permit fees required of the Company by any ordinance presently in effect or hereafter adopted for a permit to excavate in or adjacent to any street, alley, or other public place shall be deemed a part of the compensation paid in Section 2 and shall not be separately assessed

or collected by the City; in no event, however, shall this provision be interpreted to waive the requirement of notice to the City and the procedural requirements of such ordinance.

ARTICLE IV
Conduct of Business

4.1 Conduct of Business. The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the state of Kansas.

4.2 Tariffs on File. The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the KCC. Said tariffs shall be available for inspection by the public.

4.3 Compliance with KCC Regulations. The Company shall comply with all rules and regulations adopted by the KCC.

4.4 Compliance with Company Tariffs. The Company shall furnish gas within the City to the City and to all persons, businesses and industries within the City at the rates and under the terms and conditions set forth in its tariffs on file with the KCC.

4.5 Applicability of Company Tariffs. The City and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the KCC are controlling over any inconsistent provision in this franchise dealing with the same subject matter.

ARTICLE V
Construction, Installation & Operation of Company Facilities

5.1 Location of Facilities. Company facilities shall not interfere with the City's water mains, sewer mains or other municipal use of streets and other public places. Company facilities

shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition. The Governing Body acknowledges that as of the date of this Ordinance, the Company and its facilities are in compliance with the provisions of this Section 5.1.

5.2 Excavation and Construction. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner that minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable state and federal codes. All public and private property whose use conforms to restrictions in easements disturbed by Company construction or excavation activities shall be restored as soon as practicable by the Company at its expense to substantially its former condition. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The City reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time after notice from the City.

5.3 Relocation of Company Facilities. If at any time the City requests the Company to relocate any distribution gas main or service connection installed or maintained in streets or other public places in order to permit the City to change street grades, pavements, sewers, water mains or other City works, such relocation shall be made by the Company at its expense. The Company is not obligated hereunder to relocate any facilities at its expense that were installed in private easements obtained by the Company, the underlying fee of which was, at some point subsequent to installation, transferred to the City. Following relocation, the Company, at its expense, shall restore all property to substantially its former condition.

5.4 Service to New Areas. If during the term of this franchise the boundaries of the City are expanded, the Company may, subject to the terms of Company's applicable tariff provisions for main extensions, extend service to the newly incorporated areas. Service to annexed areas shall be in accordance with the terms of this franchise agreement. The City will promptly notify Company in writing of any geographic areas annexed by the City during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Company by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Company may reasonably require in ascertaining whether there exist any customers of Company receiving natural gas service in said annexed area. To the extent there are such Company customers therein, then the gross revenues of Company derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Company's billing cycle immediately following Company's receipt of the Annexation Notice. The failure by the City to advise Company in writing through proper Annexation Notice of any geographic areas which are annexed by the City shall relieve Company from any obligation to remit any franchise fees to City based upon gross revenues derived by Company from the sale and distribution of natural gas to customers within the annexed area until City delivers an Annexation Notice to Company in accordance with the terms hereof.

5.5 Restoration of Service. In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

5.6 Supply and Quality of Service. The Company shall make available an adequate supply of gas to provide service in the City. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient gas service to the City.

5.7 Safety Regulations by the City. The City reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the

health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein. The Company agrees to comply with all such regulations, in the construction, maintenance and operation of its facilities and in the provision of gas within the City.

5.8 Inspection, Audit and Quality Control. The City shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the City and its residents. The City also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Ordinance at all reasonable times at Company's principal offices where said records are kept and maintained. The Company agrees to cooperate with the City in conducting the inspection and/or audit and to correct any discrepancies affecting the City's interest in a prompt and efficient manner.

ARTICLE VI
Assignment; Saving Clause

6.1 Assignment. Nothing in this Ordinance shall prevent the Company from assigning its rights under this franchise.

6.2 Saving Clause. If any portion of this franchise Ordinance is declared illegal or void by a court of competent jurisdiction, the remainder of the Ordinance shall survive and not be affected thereby.

ARTICLE VII
Force Majeure

7.1 Company shall not be required to perform any covenant or obligation in this Ordinance, or to be liable in damages to City, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of God, force majeure or by the other party. An "act of God" or "force majeure" is defined for purposes of this Ordinance as strikes, lockouts, sitdowns, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy,

wars, terrorism, insurrections, and/or any other cause not reasonably within the control of Company or which by the exercise of due diligence Company is unable wholly or in part, to prevent or overcome.

Read, passed and ordered published by the Governing Body of the City of Coffeyville, Kansas at a regular meeting, on the second (2nd) reading, on the 12th day of July, 2011.

ATTEST:

Cindy Price, City Clerk

THE CITY OF COFFEYVILLE, KANSAS

Pam Jones, Mayor

