

ORDINANCE NO. 282

AN ORDINANCE GRANTING A NONEXCLUSIVE RIGHT AND FRANCHISE TO NORTHWEST NATURAL GAS COMPANY, AN OREGON CORPORATION, TO CONSTRUCT, MAINTAIN AND OPERATE IN, ON AND UNDER RIGHTS-OF-WAY OF THE CITY OF COOS BAY, COOS COUNTY, OREGON, PIPELINES AND OTHER APPURTENANCES FOR THE PURPOSE OF SUPPLYING NATURAL GAS, PROPANE OR OTHER SIMILAR ENERGY RESOURCES, AND SERVICES INCIDENT THERETO, AND SETTING FORTH TERMS AND CONDITIONS THERETO.

The City of Coos Bay Ordains as follows:

Section 1. Grant of Franchise.

(a) The City of Coos Bay, Coos County, Oregon (the City) hereby grants to Northwest Natural Gas Company, an Oregon corporation (the Franchisee), the right and franchise for the period of twenty (20) years from the effective date of this ordinance, to construct, maintain, and operate in, on and under current and future rights-of-way of the City, pipelines and other necessary or desirable appurtenances ("the facilities") for the purpose of supplying propane to the two propane distribution systems located in the Schoneman/Morrison Street area and the Cottonwood/Juniper Avenue areas of Coos Bay, subject to terms and conditions hereinafter specified.

(b) The right and franchise hereby granted shall not be exclusive. The City expressly reserves the right, at any time during the term of this franchise, to grant rights or franchises for such purposes to other persons or corporations, including the City or any political subdivision thereof, to use the rights-of-way for such purposes in the event that the City shall hereafter decide to engage in the business as a municipal utility. If, during the term hereof, the City shall decide to engage in such business and shall elect to acquire by condemnation or otherwise the property used by Franchisee in furnishing service hereunder, no value or damage of any kind shall be claimed by or allowed to Franchisee in respect to the unexpired term of the franchise hereby granted.

(c) Nothing in this franchise shall be construed to prevent the City from requiring another franchise or an amendment to this franchise should Franchisee expand its operations within the franchised territory.

Section 2. Quality of Service. The service to be furnished hereunder by Franchisee shall be continuous and shall be adequate for the requirements of the customers of the Franchisee, subject to accidents, interferences or interruptions beyond the reasonable control of Franchisee, and shall be furnished under such reasonable rules and regulations as Franchisee may make from time to time for the proper conduct of its business. Such service and all rates and charges therefore and all rules and regulations pertaining thereto or to the making of necessary and proper extension of service shall be subject at all times to any rules, regulations and orders lawfully prescribed by the Oregon Public Utility Commission or by other authorities having jurisdiction thereof.

Section 3. Regulation of Franchisee's Activity. The locations and methods of installation and

maintenance of the facilities shall be subject at all times to reasonable regulation by the governing body of the City; and all such facilities shall be constructed and maintained in such a way as to interfere as little as practicable with vehicular traffic or otherwise. All such facilities shall be installed and at all times maintained by Franchisee in accordance with recognized industry standards. If removal or relocation of facilities is caused by an identifiable development of property in the area, or is made for the convenience of a customer, this agreement shall not preclude the Franchisee from charging the expense of removal or relocation to the developer or customer.

Section 4. Work Within Rights-of-Way.

(a) Upon approval from the City, it shall be lawful for the Franchisee to make all needful and necessary excavations in any City rights-of-way for the purpose of constructing or maintaining pipelines or other appurtenances. Any such work shall be done in compliance with rules, regulations, ordinances and orders which have been heretofore or which may hereafter during the term of this franchise be required by the City.

(b) Whenever the Franchisee disturbs any rights-of-way, the Franchisee shall restore the same to good order and condition as soon as practicable without unnecessary delay; failing to do so, the City of Coos Bay shall have the right to fix a reasonable time within which such repairs and restoration shall be made by the Franchisee, and upon failure of such repairs and restoration being made, the City may cause such repairs to be made at the expense of the Franchisee.

Section 5. Indemnity. Franchisee shall protect and save the City, its officers, employees and agents, harmless against and from any and all damage claims, and any and all loss, liability, cost or expense, occasioned by any negligent act or omission of Franchisee in the construction, maintenance, operation or repair of Franchisee's facilities or any use thereof.

Section 6. Franchise Fee.

(a) Franchisee shall pay to the City a franchise fee equal to five percent (5%) of Franchisee's gross revenue collected by the Franchisee from its customers for gas consumed in the two propane distribution systems subject to his franchise. Gross revenue shall be computed by deducting from the total billings of the Franchisee the total net write-off of uncollectable amounts, revenues paid directly by the United States of America or any of its agencies and sales of gas at wholesale by the Franchisee to any public utility or public agency where the public utility or public agency purchasing such gas is not the ultimate consumer. Any franchise fee paid by Franchisee shall be in addition to any business license or other fees charged or assessed by the City.

(b) The franchise fee shall be paid twice yearly, within forty-five (45) days after the end of each calendar half-year period. Within forty-five (45) days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of the last calendar half-year for which compensation has been paid.

(c) Franchisee shall keep complete records of its operations under this franchise in accordance with general accounting practices and in a form acceptable to the auditors of the City. Franchisee agrees to allow the City access to such records, once yearly, to conduct an audit to ensure compliance with the terms of this franchise.

(d) No acceptance of any payment shall be construed as an accord that the franchisee fee paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

(e) If Franchisee fails to pay the entire amount due the City, through error or otherwise, the difference due the City shall be paid within fifteen days (15) days from discovery of the error or determination. Any overpayment to the City, through error or otherwise, shall be offset against the next payment.

Section 7. Assignment and Transfers of Franchise. The franchise hereby granted shall not be assigned or otherwise transferred without the consent of the City, evidenced by an ordinance duly passed and approved; provided, however, that the consent of the City shall not be required for a transfer of the franchise by operation of law or an assignment or transfer in connection with a merger or sale of substantially all of the assets and operations of the Franchisee. Any consent hereunder shall not be unreasonably withheld, so long as assignee or transferee agrees to the terms of this franchise and has the financial and operational capabilities to operate the facilities.

Section 8. Termination of the Franchise.

(a) This franchise may be terminated by the City prior to its expiration in the event that a violation or a failure to comply with the material terms of this franchise continues for thirty (30) days after the City has mailed or delivered a written notice to the Franchisee describing the violation. For purposes of this provision, a violation shall not include any condition which is not the result of the actions of the Franchisee, or one arising out of Franchisee's excusable neglect, so long as Franchisee uses its best efforts to correct any such condition.

(b) If, after receiving written notice of a violation from the City, Franchisee determines it is unable to correct the violation within the thirty (30) day period due to the unavailability of labor or materials or other service or item, or the occurrence of any situation beyond its ability to control, Franchisee shall notify the City in writing, document the reason or reasons therefor, and request a reasonable period of time beyond the thirty (30) day period to correct the violation. The City shall not unreasonably deny any such request for an extension by Franchisee.

(c) The City may terminate this franchise in the event Franchisee becomes insolvent or upon listing of an order for relief in favor of Franchisee in bankruptcy.

Section 9. Effective Date. This ordinance shall take effect sixty (60) days after its enactment by the Council, but shall become null and void unless within thirty (30) days after such enactment Franchisee shall file with the City Recorder Franchisee's written acceptance of the terms, conditions and obligations to be complied with or performed by it hereunder.

Passed by the Council and approved by the Mayor October 5, 1999.