

Utilities

ORDINANCE NO. 2008-02

AN ORDINANCE AMENDING THE EXISTING GAS FRANCHISE BETWEEN THE CITY AND ATMOS ENERGY CORPORATION TO PROVIDE FOR A DIFFERENT CONSIDERATION; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR ACCEPTANCE BY ATMOS ENERGY CORPORATION; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, Atmos Energy Corporation ("Company") is engaged in the business of furnishing and supplying gas to the general public in the City, including the transportation, delivery, sale, and distribution of gas in, out of, and through the City for all purposes, and is using the public streets, alleys, grounds and rights-of-ways within the City for that purpose under the terms of a franchise ordinance duly passed by the governing body of the City and duly accepted by Company or its predecessor in interest; and

WHEREAS, the City and Company desire to amend said franchise ordinance to provide for a different consideration;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEPORT, TEXAS: that

SECTION 1: The consideration payable by Company for the rights and privileges granted to Company by the franchise ordinance duly passed by the governing body of this City and accepted by Company or its predecessor in interest is hereby changed to be five percent (5%) of the Gross Revenues, as defined in the franchise ordinance.

SECTION 2: Franchise payments shall be made on the dates prescribed in the existing franchise and shall be for the rights and privileges of the respective period during which the payment is made.

SECTION 3: This ordinance shall take effect on May 1, 2008 provided that City sent a written notice of election to increase franchise rates postmarked on or before June 1, 2008 to the Company. Otherwise, this ordinance shall take effect on the first day of the month following the date of final passage and approval. Company shall, within thirty (30) days from the receipt of this ordinance, file its written acceptance of this ordinance with the Office of the City Secretary in substantially the following form:

To the Honorable Mayor and City Council:

Atmos Energy Corporation, acting by and through the undersigned authorized officer, hereby accepts in all respects, on this the 5th day of June, 2008, Ordinance No. 2008-02 amending the current gas franchise between the City and Atmos Energy Corporation.

Atmos Energy Corporation

By [Signature]


Vice President, Mid-Tex Division

SECTION 4: In all respects, except as specifically and expressly amended by this ordinance, the existing franchise ordinance heretofore duly passed by the governing body of the City shall remain in full force and effect.

SECTION 5: The City shall provide a copy of this Ordinance to Mr. David Park, VP of Rates and Regulatory Affairs, Atmos Energy Corp., 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, no later than ten (10) business days after its final passage and approval.

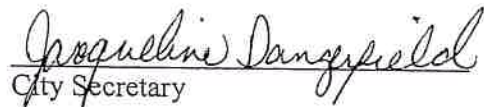
SECTION 6 It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DEPORT, TEXAS,
this the 15 day of MA&, 2008, at which meeting a quorum was present and voting.



Mayor

ATTEST:



City Secretary

APPROVED AS TO FORM:

City Attorney



City of Deport, Texas
P.O. Box 354A
Deport, Texas 75435-0401

January 20, 2006

Re: Agreement on Damage to Distribution Facilities

The City of Deport, Texas (City/Town) and Atmos Energy Corporation, Mid-Tex Division (Mid-Tex) both operate facilities within the public rights-of-way of City/Town. On occasion, our respective employees damage those facilities during excavation activity. In order to avoid future misunderstandings concerning the responsibility for the cost of repairing facilities damaged during excavation activities, City/Town and Mid-Tex are entering into this agreement concerning property damage claims.

If Mid-Tex employees damage the facilities owned by City/Town within the public rights-of-way of City/Town, City/Town will invoice Mid-Tex for the cost of repairs and Mid-Tex will pay such invoice. Mid-Tex agrees to notify the appropriate official of City/Town as soon as reasonably possible after the occurrence of such damage.

If City/Town employees damage the distribution facilities owned by Mid-Tex within the public rights-of-way of City/Town, Mid-Tex will invoice City/Town for the cost of repairs and City/Town will pay such invoice. City/Town agrees to notify the appropriate personnel of Mid-Tex as soon as reasonably possible after the occurrence of such damage.

This agreement will remain in full force and effect until one party gives written notice to the other party of termination at least 30 days prior to the proposed termination date. Any such termination will not affect either party's obligation to pay for any damage that occurs prior to the termination date.

If this agreement is acceptable to City/Town, please have both copies of this letter executed by the appropriate City/Town official and return one fully executed copy to me.

Sincerely,

ATMOS ENERGY CORPORATION,
MID-TEX DIVISION

By: 
Larry Farthing
Manager of Public Affairs

AGREED TO AND ACCEPTED
THIS 9 DAY OF February, 2006

The City of Deport, Texas

By: Mike Francies Title: Mayor

Printed Name: Mike Francies



Deport
Gas Franchise

**FRANCHISE
AMENDMENTS**

ORDINANCE NO. 002-2002

AN ORDINANCE AMENDING THE EXISTING GAS FRANCHISE BETWEEN THE CITY AND TXU GAS COMPANY, TO PROVIDE FOR A DIFFERENT CONSIDERATION AND TO AUTHORIZE THE LEASE OF FACILITIES WITHIN THE CITY'S RIGHTS-OF-WAY; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR ACCEPTANCE BY TXU GAS COMPANY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, TXU Gas Company (hereinafter called "TXU Gas") is, through its TXU Gas Distribution division, engaged in the business of furnishing and supplying gas to the general public in the City, including the transportation, delivery, sale, and distribution of gas in, out of, and through the City for all purposes, and is using the public streets, alleys, grounds and rights-of-ways within the City for that purpose under the terms of a franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by TXU Gas; and

WHEREAS, the City and TXU Gas desire to amend said franchise ordinance to provide for a different consideration and to authorize the lease of facilities within the City's rights-of-way;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF Deport, TEXAS: that

SECTION 1: The existing gas franchise ordinance between the City and TXU Gas Company is amended as follows:

- A. Effective January 1, 2002, the consideration payable by TXU Gas for the rights and privileges granted to TXU Gas by the franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by TXU Gas is hereby changed to be four percent (4%) of the Gross Revenues, as defined in Section 1.B. below, received by TXU Gas.
- B. "Gross Revenues" shall mean all revenue derived or received, directly or indirectly, by the Company from or in connection with the operation of the System within the corporate limits of the City and including, without limitation:
 - (1) all revenues received by the Company from the sale of gas to all classes of customers within the City;
 - (2) all revenues received by the Company from the transportation of gas through the pipeline system of Company within the City to customers located within the City;

- (3) the value of gas transported by Company for Transport Customers through the System of Company within the City ("Third Party Sales"), with the value of such gas to be reported by each Transport Customer to the Company, provided, however, that should a Transport Customer refuse to furnish Company its gas purchase price, Company shall estimate same by utilizing TXU Gas Distribution's monthly industrial Weighted Average Cost of Gas, as reasonably near the time as the transportation service is performed; and
- (4) "Gross revenues" shall include:
- (a) other revenues derived from the following 'miscellaneous charges':
 - i. charges to connect, disconnect, or reconnect gas within the City;
 - ii. charges to handle returned checks from consumers within the City;
 - iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and
 - iv. contributions in aid of construction" ("CIAC");
 - (b) revenues billed but not ultimately collected or received by the Company; and,
 - (c) gross receipts fees.
- (5) "Gross revenues" shall not include:
- (a) the revenue of any Person including, without limitation, an affiliate, to the extent that such revenue is also included in Gross Revenues of the Company;
 - (b) sales taxes; and
 - (c) any interest income earned by the Company; and
 - (d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's right of way.

C. Calculation and Payment of Franchise Fees Based on CIAC

- (1) The franchise fee amounts based on "Contributions in aid of Construction" ("CIAC") shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year.
- (2) The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year.

D. ~~Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by TXU Gas~~

- (1) ~~If TXU Gas should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by TXU Gas to City pursuant to this Ordinance shall be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.~~
- (2) The provisions of this Subsection D apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, including without limitation the timing of such payments.

E. TXU Gas Franchise Fee Recovery Tariff

- (1) TXU Gas may file with the City a tariff amendment(s) to provide for the recovery of the franchise fees under this amendment.
- (2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of TXU Gas' rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of TXU Gas' franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by TXU Gas and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by TXU Gas.

(3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by TXU Gas.

F. Lease of Facilities Within City's Rights-of-Way. TXU Gas shall have the right to lease, license or otherwise grant to a party other than TXU Gas the use of its facilities within the City's public rights-of-way provided: (i) TXU Gas first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) TXU Gas makes the franchise fee payment due on the revenues from such lease pursuant to Sections I.A. and I.B. of this Ordinance. This authority to Lease Facilities Within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

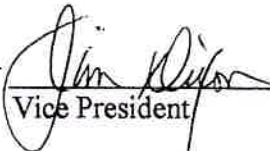
SECTION 2: In all respects, except as specifically and expressly amended by this ordinance, the existing effective franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by TXU Gas shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided therein.

SECTION 3: This ordinance shall take effect upon its final passage and TXU Gas' acceptance. TXU Gas shall, within thirty (30) days from the passage of this ordinance, file its written acceptance of this ordinance with the Office of the City Secretary in substantially the following form:

To the Honorable Mayor and City Council:

TXU Gas Distribution, a division of TXU Gas Company, acting by and through the undersigned authorized officer, hereby accepts in all respects, on this the 28th day of August, 2002, Ordinance No. 002-2002 amending the current gas franchise between the City and TXU Gas and the same shall constitute and be a binding contractual obligation of TXU Gas and the City.

TXU Gas Distribution
A division of TXU Gas Company

By  _____
Vice President

SECTION 4. It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
Deport, TEXAS, this the 12 day of August, 2002, at which meeting
a quorum was present and voting.

Gilbert Arizaga
Mayor

ATTEST:

Sharon Francis
City Secretary

APPROVED AS TO FORM:

Tom Laughlin
City Attorney

**ORIGINAL
FRANCHISE**

ORDINANCE NO: 002-1991

AN ORDINANCE GRANTING TO LONE STAR GAS COMPANY, A DIVISION OF ENSERCH CORPORATION, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE **CITY OF DEPORT, LAMAR COUNTY, TEXAS**, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE STREETS, ALLEYS, AND PUBLIC WAYS; AND PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEPORT, TEXAS:

SECTION 1: That the **City of Deport, Texas**, hereinafter called "**City**", hereby grants to Lone Star Gas Company, a Division of ENSERCH CORPORATION, hereinafter called "**Company**," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public places, public thoroughfares, and grounds of City for the purpose of laying, maintaining, constructing, operating, and replacing therein and thereon pipelines and all other appurtenant equipment needed and necessary to deliver gas in, out of, and through said City and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, said consent being granted for a term of **twenty-five (25) years** from and after the date of the final passage and approval of this ordinance.

SECTION 2: Company shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment so as to interfere as little as possible with traffic and shall promptly clean up and restore to approximate original condition all thoroughfares and other surfaces which it may disturb. The location of all mains, pipes, laterals, and other appurtenant equipment shall be fixed under the supervision of the City or an authorized agent appointed by said City.

When the Company is required to relocate its mains, laterals, and other facilities to accommodate construction, and the relocation is the result of construction or improvement to the Federal-Aid System (or any successor thereto), and Company is eligible for reimbursement for its costs and expenses incurred as a result of such construction and improvement from the Federal Government, the County Government, or the State of Texas, as permitted by law pursuant to any reimbursement program, and City requests reimbursement for costs and expenses incurred as a result of such construction or improvement, Company costs and expenses shall be included within any such application for reimbursement, provided that Company submits the appropriate

documentation to City prior to such application. City shall make a reasonable effort to provide sufficient notice to the Company to allow the submittal of appropriate cost information to the City.

SECTION 3: When Company shall make or cause to be made excavations or shall place obstructions in any street, alley, or other public place, the public shall be protected by barriers and lights placed, erected, and maintained by Company; and in the event of injury to any person or damage to any property by reason of Company's construction, operation, or maintenance of the gas distribution plant or system of Company, Company shall indemnify and keep harmless City from any and all liability in connection therewith.

SECTION 4: In addition to the rates charged for gas supplied, Company may make and enforce reasonable charges, rules and regulations for service rendered in the conduct of its business including a charge for services rendered in the inauguration of natural gas service, and may require, before furnishing service, the execution of a contract therefor. Company shall have the right to contract with each customer with reference to the installation of, and payment for, any and all of the gas piping from the connection thereof with the Company's main in the streets or alleys to and throughout the customer's premises. Company shall own, operate and maintain all service lines, which are defined as the supply lines extending from the Company's main to the customer's meter where gas is measured by Company. The customer shall own, operate, and maintain all yard lines and house piping. Yard lines are defined as the underground supply lines extending from the point of connection with Company's customer meter to the point of connection with customer's house piping.

SECTION 5: Company shall not be required to extend mains on any street more than **one hundred feet (100')** for any one customer of gas; provided that no extension of mains is required if the customer will not use gas for space heating and water heating, or the equivalent load, at a minimum.

SECTION 6: Company shall be entitled to require from each and every customer of gas, before gas service is commenced, a deposit in an amount calculated pursuant to the Company's Quality of Service Rules as may be in effect during the term of this franchise. Said deposit shall be retained and refunded in accordance with such Quality of Service Rules and shall bear interest, as provided in Tex. Rev. Civ. Stat. Ann. art. 1440a (Vernon Supp. 1991) as it may be amended from time to time. Company shall be entitled to apply said deposit, with accrued interest, to any indebtedness owed Company by the customer making the deposit.

SECTION 7: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of furnishing gas for light, heat, and power to and for City and

the inhabitants thereof. Provided, however, City shall not grant more favorable conditions, including franchise fee, to any other gas utility franchisee than are herein granted to Company.

SECTION 8: Company, its successors and assigns, agrees to pay and City agrees to accept, on or before the **1st day of December, 1991**, and on or before the same day of each succeeding year during the life of this franchise, the last payment being made on the **1st day of December, 2015**, a sum of money which shall be equivalent to **three percent (3%)** of the gross receipts received by Company from the sale of gas to its residential and commercial customers within the corporate limits of said City (expressly excluding receipts derived from sales to all other classes of customers in said City) during the preceding calendar year, which annual payment shall be for the rights and privileges herein granted to Company, including expressly, without limitation, the right to use the streets, alleys, and public ways of said City. The initial payment for the rights and privileges herein provided shall be for the period January 1 through December 31, 1991, and each succeeding payment shall be for the period January 1 through December 31 of the respective year in which the payment is made. And it is also expressly agreed that the aforesaid annual payment shall be in lieu of any and all other and additional occupation taxes, easement, and franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), in lieu of municipal license and inspection fees, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character which City may now impose or hereafter levy and collect, excepting only the usual general or special ad valorem taxes which City is authorized to levy and impose upon real and personal property. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges.

In order to determine the gross receipts received by Company from the sale of gas to residential and commercial customers within the corporate limits of City, Company agrees that on the same date that payments are made, as provided in the preceding paragraph of this Section 8, it will file with the City Clerk a sworn report showing the gross receipts received from the sale of gas to its residential and commercial customers within said corporate limits during the calendar year preceding the date of payment. City may, if it sees fit, have the books and records of Company examined by a representative of said City to ascertain the correctness of the sworn reports agreed to be filed herein.

SECTION 9: When this franchise ordinance shall have become effective, all previous ordinances of said City granting franchises for gas distribution purposes which were held by Company shall be automatically cancelled and annulled, and shall be of no further force and effect.

SECTION 10: Company shall file its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by said City.

PASSED AND APPROVED on this the 8th day of JULY,
A.D. 1991.

ATTEST:

Sharon Francis
City Secretary

Charles Jester
Mayor
City of Deport, Texas

STATE OF TEXAS §
COUNTY OF LAMAR §
CITY OF DEPORT §

I, SHARON FRANCIS, City Secretary of the **City of Deport, Lamar County, Texas**, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the **City of Deport, Texas**, at a REGULAR session, held on the 8th day of JULY, 1991, as it appears of record in the Minutes in Book 1991, page _____.

WITNESS MY HAND AND SEAL OF SAID CITY, this the 8th day of JULY, A. D. 1991.

Sharon Francis
City Secretary
City of Deport, Texas

**EXTRACT FROM THE MINUTES OF
THE CITY COUNCIL OF THE CITY OF DEPORT, TEXAS**

The City Council of the **City of Deport, Lamar County, Texas**, convened in REGULAR session on the 8th day of JULY, 1991, at 7:00 PM., with the following persons present:

Mayor: CHARLES FOSTER

Council Members: NANCY GRESHAM

DUANE GLOVER

JOHN L. ROACH

ERIC PEARSON

GILBERT ARRIAGA

Absent: _____

A quorum being present, came on to be read and considered **Ordinance No. 002 - 1991** granting to Lone Star Gas Company, a Division of ENSERCH CORPORATION, a Texas corporation, a franchise to furnish and supply natural gas to the general public in the **City of Deport, Texas**, for the transporting, delivery, sale and distribution of gas in, out of, and through said municipality for all purposes. On motion made by DUANE GLOVER and seconded by GILBERT ARRIAGA which carried unanimously, the City Council voted the passage of the Ordinance and to record same at length in these minutes.

STATE OF TEXAS §
COUNTY OF LAMAR §
CITY OF DEPORT §

I, SHARON FRANCIS, City Secretary of the **City of Deport, Texas**, do hereby certify that the above and foregoing is a true and correct copy of the proceedings of the City Council of the **City of Deport, Texas**, at a REGULAR session, held on the 8th day of JULY, 1991, in connection with the passage and adoption of **Ordinance No.** 002-1991 granting a franchise to Lone Star Gas Company and that the same is of record in Book 1991, page _____ of the Minutes of the City Council.

WITNESS MY HAND AND SEAL OF SAID CITY, this the 8th day of July, A.D. 1991.

Sharon Francis
City Secretary
City of Deport, Texas