

ORDINANCE NO. 163

FRANCHISE ORDINANCE FOR RELIANT ENERGY MINNEGASCO

CITY OF ARLINGTON, SIBLEY COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO RELIANT ENERGY MINNEGASCO, A NATURAL GAS UTILITY, A DIVISION OF RELIANT RESOURCES CORPORATION, A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN FACILITIES AND EQUIPMENT FOR THE TRANSPORTATION, DISTRIBUTION, MANUFACTURE AND SALE OF GAS ENERGY FOR PUBLIC AND PRIVATE USE AND TO USE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES; AND PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF IN THE CITY OF ARLINGTON.

THE CITY COUNCIL OF ARLINGTON ORDAINS:

SECTION 1. DEFINITIONS. For purposes of the Ordinance, the following capitalized terms shall have the following meanings:

1.1. **City.** The City of Arlington, County of Sibley, State of Minnesota.

1.2. **City Utility System.** Facilities used for providing public utility service owned or operated by the City or agency thereof, including sewer, water service, and electric delivery service but excluding facilities for providing heating.

1.3 **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including and agency of the federal government that preempts all or part of the authority to regulate gas retail rates now vested in the Commission.

1.4 **Company.** Reliant Energy Minnegasco, a Division of Reliant Energy Resources Corporation, its successors and assigns including successors to assignees of those portions of the Company that constitute any part of parts of the Gas Facilities subject to this franchise.

1.5 **Effective Date.** The date on which the ordinance becomes effective under Section 2.2.

1.6 **Gas.** Natural gas, manufactured gas, mixture of natural gas and manufactured gas or other forms of gas energy.

1.7 **Gas Facilities.** Gas transmission and distribution pipes, mains, lines, ducts, fixtures, and all necessary facilities, equipment and appurtenances owned, operated or otherwise used by the Company for the purpose of providing gas energy for public use.

1.8 **Non-Betterment Cost.** Costs incurred by the Company from relocation, removal or rearrangement of Gas Facilities that do not result in an improvement to the Facilities.

1.9 **Notice.** A writing served by a party or parties on another party or parties. Notice to Company must be mailed to:

Reliant Energy Minnegasco
V.P., Marketing & Customer Services
800 LaSalle Avenue
Minneapolis, MN 55402

Notice to City must be mailed to:

City of Arlington
204 Shamrock Drive
Arlington, MN 55307

1.10 **Public Way.** Any street, alley or other public right-of-way within the City.

1.11 **Public Ground.** Land owned or otherwise controlled by the City for parks, open space or similar public purpose.

SECTION 2. FRANCHISE.

2.1 **Grant of Franchise.** The City grants the Company, for a period of twenty (20) years from the Effective Date, the right to import, manufacture, transport, distribute and sell Gas for public and private use within and through the limits of the City. This right includes the provision of Gas that is (i) manufactured by the Company or its affiliates and delivered by the Company, (ii) purchased and delivered by the Company or (iii) purchased from another source by the retail customer and delivered by the Company. For these purposes, the Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Way and Public Ground subject to the provisions of this ordinance. The Company may do all things reasonably necessary or customary to accomplish these purposes, subject requirements and to further provisions of this ordinance.

2.2 **Effective Date.** This franchise is effective from and after its acceptance by the Company. Written acceptance or rejection of the franchise by the company must be filed with the City Clerk within ninety (90) days after publication of this ordinance.

2.3 **Non exclusive Franchise.** This ordinance does not grant an exclusive franchise.

2.4 **Publication Expense.** The expense of publication of this ordinance must be paid by the Company.

2.5 **Default.** Dispute Resolution. If the City or Company asserts that the other party is

in default in the performance of any obligation hereunder, the complaining party must notify the other party in writing of the default and the desired remedy. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within thirty (30) days after service of the notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of the mediator. If a mediator is not used or if the parties are unable to resolve the first meeting with the mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity.

2.6 Continuation of Franchise. If this franchise expires and the City and the Company are unable to agree on the terms of a new franchise, the existing franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of their intention to allow the franchise agreement expire.

SECTION 3. CONDITIONS OF USE

3.1 Location of Facilities. Gas Facilities must be located, constructed, installed and maintained so as not to interfere with the existing City Utility System or the safety and convenience of ordinary travel along and over Public Ways. Gas Facilities may be located on Public Grounds as determined by the City. The Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities is subject to other ordinances and regulation of the City, with the requirements of such being no more restrictive than those applicable to other energy suppliers requiring the use of the Public Way.

3.2 Field Location. Upon request by the City, the Company must provide field locations for any of its Gas Facilities within the period of time required by Minnesota State Statute 216D.

3.3 Permit Required. The Company may not open or disturb the surface of any Public Way or Public Ground without first having obtained a permit from the City, for which the City may impose a reasonable fee. The permit conditions imposed on the Company may not be more burdensome than those imposed on other utilities for similar facilities or work. The Company may, however open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) the Company gives notice to the City before, if possible, commencing the repair, the Company must apply for any required permits and pay the required fees.

3.4 Restoration. After completing work requiring the opening of a Public Way or Public Ground, the Company must restore the same, including paving and its foundation, to the condition formerly existing and maintaining the paved surfaces in good condition for two years thereafter. The work must be completed as promptly as weather permits. If the Company does not promptly perform and complete the work, remove all dirt, rubbish,

equipment and material, and restore the Public Way or Public Ground, the City may, after demand to the Company to cure and the passage of a reasonable period of time not less than five calendar days following the demand, make the restoration at the expense of the Company. The Company must pay to the City the cost of such work done for or performed by the City, including administrative expense and overhead, plus ten percent of cost and administrative expense. This remedy is in addition to any other remedies available to the City for noncompliance with this Section. Given the remedy outlined in this Section 3.4 available to the City for noncompliance by the Company, the City hereby waives any requirement for the Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required under separate existing or future ordinance of the City.

3.5 Company Protection of Gas Facilities in Public Ways. The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Facilities by persons, property or the elements. The Company and the City will comply with all applicable laws and codes when performing work near the Gas Facilities.

3.6 Notice of Improvements. The City must give the Company reasonable notice of plans for improvements to Public Ways or Public Ground. The notice must contain; (i) the nature and character of the improvements, (ii) the Public Ways or Public Grounds upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Ground is involved, the order in which the work is to proceed. The notice must be given to the Company a sufficient length of time in advance of the actual commencement of the work to permit the Company to make any necessary additions, alterations, or repairs to its Gas Facilities. If streets are at final width and grade and the City has installed underground sewer and water mains and service connections to the property line abutting the streets prior to a permanent paving or resurfacing of such streets, and the Company's main is located under such street, the City may require the Company to install gas service connections prior to such paving or resurfacing, if it is apparent that gas service will be required during the five years following the paving or resurfacing.

SECTION 4. RELOCATIONS.

4.1 Relocation of Gas Facilities in Public Ways. If the City determines by the proper exercise of its police power to vacate a Public Way for a City improvement project, or to grade, regrade or change the alignment of any Public Way, or construct or reconstruct any City Utility System in any Public Way the City may order the Company to relocate its Gas Facilities at the Company's own expense. The City must give the Company sufficient notice of plans to vacate for a City improvement project, or to grade, regrade, or change the alignment of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five (5) years of a prior relocation of the same Gas Facilities, which was made at Company expense, the City will reimburse the Company on a time and material basis for Non-Betterment Costs. If any subsequent

relocation is required because of the extension of a City Utility System to a previously unserved area, the City may require the Company to make the subsequent relocation at the Company's expense. Nothing in this ordinance requires the Company to relocate, remove, replace or reconnect its Facilities at the Company's expense where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement. The City will not require the removal of abandoned natural gas facilities in any case, unless these facilities are in direct conflict with a Public Way grade change or proposed City Utility System or City improvement. The provisions of this Section 4.1 apply only to Gas Facilities constructed in reliance on this franchise and the Company does not waive its rights under an easement or prescriptive right in the Public Way.

4.2 Relocation of Gas Facilities in Public Ground. The City may, by the proper exercise of its police power, require the Company to relocate the Gas Facilities within or remove the Gas Facilities from Public Ground, upon a finding by City that the Gas Facilities have become or will become a substantial impairment of the public use or enjoyment to which the Public Ground is or will be put. The relocation or removal will be at the Company's expense. The provisions of this Section 4.2 apply only to Gas Facilities constructed in reliance on this franchise and the Company does not waive its rights under an easement or prescriptive right in the Public Ground. The city will not require the removal of abandoned natural Gas Facilities in Public Ground in any case, unless these facilities have become or will become a substantial impairment of the public use or enjoyment to which the Public Ground is or will be put.

4.3 Vacation of Public Ways. The City must give the Company at least three-weeks' Notice of the proposed vacation of a Public Way. Except where required for a City street or other improvement project or as otherwise provided in Section 4.1, the Vacation of a Public Way, after the installation of Gas Facilities, does not deprive the Company of its rights to operate and maintain the Gas Facilities until reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to the Company by the City. If the vacation of Public Way does not require the relocation of existing Gas Facilities, the City shall reserve a utility easement to the Company, created by and within the document establishing the vacation, or the City will preserve a right-of-way in the manner permitted by law.

4.4 Projects with Federal Funding. Relocation, removal or rearrangement of any Gas Facilities made necessary because of the extension into or through the City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46.

SECTION 5. DEFENSE AND INDEMNIFICATION.

5.1 Terms. The Company shall indemnify, keep and hold the City, its elected officials,

officers, employees, and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, maintenance, repair, removal, on or across the Public Way and the Public Ground of the City, unless such injury or damage is the result of negligence of the City, its elected officials, employees, officers, or agents. The City shall not be entitled to reimbursement for its costs incurred prior to notification to the Company of claims or actions and a reasonable opportunity for the Company to accept and undertake the defense.

5.2 Litigation. If such a suit is brought against the City under circumstances where the agreement in this Section 5 to indemnify applies, the Company at its sole cost and expense will defend the City in such suit if Notice thereof is promptly given to the Company within a reasonable period. If the Company is required to indemnify and defend, it will thereafter have control of such litigation, but the Company may not settle such litigation without the consent of the City, which consent will not be unreasonably withheld. This section is not as to third parties a waiver of any defense or immunity otherwise available to the City; and the Company, in defending any action on behalf of the City is entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

SECTION 6. SUCCESSORS IN INTERST

6.1 This ordinance and the rights and obligations conferred hereby, is binding on and inures to the benefit of the City and its successors and on the Company and its successors and permitted assigns.

SECTION 7. FRANCHISE FEE

7.1 Separate Ordinance. During the term of the franchise hereby granted, and in lieu of any permit, licensing, or other fees, charges, or costs imposed on the Company for providing gas service or performing work necessary to provide gas service in the City during the term of this franchise, the City may impose on the Company a franchise fee. In addition to the franchise fee, the Company shall be required to pay only such other fees, charges, costs or taxes which are generally required to be paid by other businesses or persons in the city. The franchise fee must be imposed by a separate ordinance adopted by the City Council, which ordinance may not be adopted until at least 60 days after Notice enclosing the adopted ordinance has been served upon the Company by certified mail.

7.2 Condition of fee. The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee or tax of the same or greater equivalent amount on the sale and/or delivery of energy within the City by any other energy supplier, upon whom the City has the authority to require a franchise fee or impose a tax. The company may petition the City to exempt or reduce the franchise fee applicable to customers who bypass or pose an imminent threat of physically bypassing the Company's distribution system for economic reasons, including the existence of the

franchise fee. The City shall not unreasonably withhold such exemption or reduction in franchise fees for such customers.

7.3 Calculation of Fee. The City may impose the franchise fee: (i) as a combination of percentage of gross revenues received from customers in the Residential Customer Class for its utility operations within the City and as a flat meter fee per customer, for customers in non-residential customer classes, or (ii) as a flat meter fee per customer within the City, or (iii) as a fee based on units of gas delivered to any class of retail customers within the corporate limits of the City. The method of imposing the franchise fee: the percent of revenue rate, the flat rate and the per unit rate may differ for each customer class. If prior to the expiration of this ordinance, customers in Minnegasco's Residential Customer Class begin to purchase and/or transport gas from companies other than Minnegasco, the City may only impose the flat fee method (ii) or the units of gas method (iii), as a way of collecting fees. If the percentage of gross revenue method (i) has previously been implemented, it must be changed to method (ii) or method (iii).

7.4 Collection of the Fee. The franchise fee will be payable not less often than quarterly and based on any of the alternative formulas described in Section 7.3 during complete billing months of the period for which payment is to be made. The franchise fee formula may be changed by ordinance from time to time; however, each change must meet the same notice requirements and may not be made more often than annually. The fee may not exceed any amount that the Company may legally charge to its customers, prior to payment to the City, by imposing a surcharge equivalent to such fee in its rates of gas service. The Company may pay the City the fee based upon the surcharge billed, subject to subsequent reductions for uncollectibles or customer refunds. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

SECTION 8. LIMITATION ON APPLICABILITY.

8.1 Limitations on Applicability. This Ordinance constitutes a franchise agreement between the City and the Company. No provision of this franchise inures to the benefit of any third person, including the public at large, so as to constitute any such person as a third-party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

SECTION 9. PREVIOUS FRANCHISES SUPERSEDED.

9.1 **Previous Franchise superseded.** This franchise supersedes and replaces previous franchises granted to the Company or its predecessors.

SECTION 10. AMENDMENTS.

10.1 **Amendments.** This ordinance may be amended at any time by the City. An amendatory ordinance becomes effective upon the filing of the Company's written consent thereto.

SECTION 11. SEVERABILITY.

11.1 **Severability.** If any portion of this franchise is found unenforceable for any reason, the validity of the remaining provisions will not be affected.

/s/ David Czech

Mayor

/s/ Lowell C. Enerson

City Administrator/Clerk/Treasurer

Read: February 22, 2000
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