

CITY OF MESQUITE

ORDINANCE NO. 2822

AN ORDINANCE GRANTING TO LONE STAR GAS COMPANY, A DIVISION OF ENSERCH CORPORATION, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO FURNISH AND SUPPLY NATURAL GAS TO THE GENERAL PUBLIC IN THE CITY OF MESQUITE, DALLAS 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 MESQUITE, TEXAS:

SECTION 1

That the City of Mesquite, 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 in the City and any and all tracts, territories and areas hereafter amended to, or acquired by and placed within the corporate boundaries of said City for the purpose of laying, maintaining, constructing, operating, and replacing therein and thereon pipelines and all other appurtenant equipment needed and necessary or proper to transport, distribute, supply and sell natural gas in, out of, and through said City for heating, lighting, power and for any other purpose for which gas may now or hereafter be used by persons, firms and corporations, including all the general public, within the corporate boundaries of said municipality. Such consent shall be for a term of fifteen (15) years from and after the effective date of this ordinance, and shall obligate the Company to conduct said business in accordance with all City laws, rules and regulations unless preempted by State and/or Federal law.

SECTION 2

(a) Work done in connection with construction, reconstruction, maintenance, or repair of the gas utility system shall be in compliance with all laws, rules, and regulations of the City, the State of Texas and the United States in existence at the time the work is performed.

(b) 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 at Company expense shall promptly clean up and restore to its approximate previous condition and

to the reasonable satisfaction of the City 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.

(c) 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 in accordance with any City, State or United States requirements in existence at the time the work is performed.

(d) Whenever by reason of changes in the streets, alleys, or other public places, the City deems it necessary to remove, alter, change adapt, or conform the facilities of the Company, in the public right of way, the Company shall make the alterations or changes as soon as practicable when ordered in writing by the City, without claim for reimbursement or damages against the City. If these requirements impose a financial hardship on the Company, the Company shall have the right to present alternative proposals for the City's consideration. The City shall not require Company to remove its facilities entirely from a street, alley or other public place unless suitable alternatives are available for relocation at reasonable cost.

(e) 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, the City shall coordinate with the Company so that the City and Company reimbursement requests can be filed simultaneously.

SECTION 3

(a) Company shall defend, indemnify and save whole and harmless the City and all of its officers, agents, and employees from any and all claims for injury or damage to persons or property occasioned by, or arising out of the construction, maintenance, existence, operation, or repair of the gas transmission or distribution system, or by the *conduct of Company's business in the City*, when the injury is caused, or alleged to have been caused, wholly or in part, by any act omission, negligence, or misconduct of Company or any of its officers, agents, employees or contractors or by any person for whose act, omission, negligence, or misconduct Company is legally responsible.

(b) The City reserves the right to lay, maintain, repair and replace, and permit to be laid, sewer, water, and other pipe lines, cables, and conduits, and to do and permit to be done any underground or aboveground work that may be necessary or proper in, across, along, over, or under a street, alley or public place occupied by the Company. The City also reserves the right to change any curb, sidewalk, or grade of a street. In doing or permitting the above work to be done, the City shall not be liable to the Company for any resulting damage, unless such damage is caused by the negligence of the City, its

agents, representatives, or contractors, but nothing shall relieve another person or corporation from responsibility for damages to the facilities of the Company.

SECTION 4

(a) The service furnished hereunder to any person, firm or corporation within the corporate boundaries of the City shall be adequate and efficient in all respects, considering all the circumstances. Company covenants that it will furnish service without undue interruption or fluctuations and that said service, instrumentalities, and facilities are safe and meet all federal, state and local laws and/or regulations in effect at the time the service is furnished.

(b) The City or its designated representative has the authority to observe any inspections or tests deemed necessary for the safe and consistent conduct of the business of the Company within the City of Mesquite.

SECTION 5

(a) The City reserves to itself the right and power at all times to exercise, in the interest of the public, full regulation and control to assure the rendering of efficient public service at reasonable rates and the maintenance of Company's property in good repair throughout the term of this franchise, and City may regulate by ordinance the rates charged for gas sales and services within the city limits of Mesquite as provided by law.

(b) 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 thereof. 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.

(c) Company shall not be required at its own expense 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.

(d) 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 owned Company by the customer making the deposit.

(e) Whenever services are rendered, or materials and equipment transferred, temporarily or permanently, between the Mesquite Distribution and Transmission System and affiliate divisions of parent Company, appropriate charges must be made.

SECTION 6

This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights and privileges to any other person, firm or corporation. Provided, however, City shall not grant more favorable conditions, including franchise fee, to any other gas utility franchise than are herein granted to Company.

SECTION 7

(a) Company, its successors and assigns, agrees to pay and City agrees to accept on or before the 10th day of the month after the end of the month following the calendar quarter ending September 30 and December 31 during the year 1992 and on or before the 10th day of the month after the end of the month following the calendar quarter ending March 31, June 30, September 30, and December 31 of each succeeding year during the life of this franchise, up to and including the payment for the calendar quarter ending June 30, 2007, a sum of money which shall be equivalent to four percent (4%) of the gross receipts received by the Company from the sale of gas, regardless of its ultimate end use including CNG uses, to its consumers within the corporate limits of the City, including but not limited to residential, commercial, industrial, schools and governmental uses. Company, its successors and assigns, also agrees to pay and City agrees to accept on or before the 10th day of the month after the end of the month following the calendar quarter ending September 30, 1992, a sum of money which shall be equivalent to four percent (4%) of any fees received by Company for the transportation within Company lines to customers in the corporate limits of the City from the effective date of this franchise ordinance until September 30, 1992, plus four percent (4%) of the actual cost of gas purchased by customer and transported by Company to an industrial customer for use within the corporate limits of the City from the effective date of this franchise ordinance until September 30, 1992. Thereafter, Company, its successors and assigns, agrees to pay and City agrees to accept on or before the 10th day of the month after the end of the month following the calendar quarter ending December 31 during the year 1992 and on or before the 10th day of the month after the end of the month following the calendar quarter ending March 31, June 30, September 30, and December 31 of each succeeding year during the life of this franchise, up to and including the payment for the calendar quarter ending June 30, 2007, a sum of money which shall be equivalent to four percent (4%) of any fees received by Company for the transportation within Company lines to customers in the corporate limits of the City, plus four percent (4%) of the actual cost of gas purchased by a customer and transported by Company to

an industrial customer for use within the corporate limits of the City. Each transportation customer of the Company shall disclose to the Company the purchase price of said gas. Should the transportation customer fail or refuse to disclose or furnish such purchase price to Company, Company shall establish same by utilizing 110% of the Houston Ship Channel index of prices for large packages of gas published each month in Inside FERC's Gas Market Report (or a successor publication or another publication agreed upon by the City and Company) for the period of time the transportation service is performed. Company shall use all due diligence in collecting from transportation customers any and all fees required by this franchise agreement, but shall not be responsible for paying same to the City if the Company's customer refuses to pay. Provided, however, that if the Company's transportation customer refuses to pay the fee imposed on the purchase price of the gas transported, and remains delinquent in payment of such fee for a period greater than thirty days, Company shall be responsible for the uncollected fee on any gas thereafter transported through the rights of way of the City to Company's transportation customer, but in no event shall the customer be relieved of its obligation to reimburse the Company for any fees paid to the City. For all customer classes other than transportation customers, Company shall collect charges and franchise fees from customers in accordance with Company's Quality of Service rules, as amended from time to time.

The payments for the rights and privileges herein provided shall be for the calendar year in which the payments are made. It is also expressly agreed that the aforesaid quarterly payments shall be in lieu of any and all other and additional municipal 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 any municipal 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 municipal taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges.

(b) In order to determine the gross receipts received by Company from the areas of operation identified in 7(a) above, Company agrees that on the same date that payments are made, as provided 7(a) above, it will file with the City Secretary a sworn report showing the gross receipts received by specific area of operation as defined in 7(a) above during the calendar quarter preceding the date of payment including a list of the volumes sold under transportation contracts by contract customer. 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 8

(a) Company shall use the system of accounts and the forms of books, accounts, records, and memoranda accepted by the Railroad Commission of Texas and/or the Federal Energy Regulatory Commission or their respective successor agencies. Company shall maintain financial and operating reports in a manner that will allow the City to determine jurisdictional investment, cost of service, and operating expenses related to providing gas utility service to customers within the Mesquite Distribution System.

(b) Company also agrees to provide the City with access to its annual Mesquite Distribution System income statement certified by a Company officer and shall make available for inspection by the City all reports filed with the Railroad Commission of Texas or its successor. Upon request, Company shall make such special studies and furnish such other reports as the City may reasonably require at the City's expense.

SECTION 9

(a) In the event the Company assigns all or any part of this franchise to any other division of the Company, to any affiliate, subsidiary or parent of the Company, or to any unrelated third party, the written disclosure to the City of the nature, scope, extent and expected consequences of such proposed assignment and such proposed assignment shall be subject to the consent and approval of the City.

(b) Company may not sell the entire assets of the distribution and transmission system located within the City limits without the express consent of the City Council of Mesquite.

SECTION 10

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 11

Should any word, clause, phrase, sentence, paragraph or section of this franchise be held invalid by any court of competent jurisdiction, such ruling or judgment shall not affect the validity of any other part, but the same shall remain in full force and effect, the provisions hereof being severable.

SECTION 12

The failure of the Company to comply with the terms of this franchise after due notice and hearing and the providing of an adequate time for Company to comply with said terms shall entitle the City to compel compliance by suit in any courts or competent jurisdiction and if, upon final judgment, not subject to further appeal, being entered in favor of the

City, Company still fails to comply with the terms of the franchise and said final judgment, the City may compel compliance under penalty of forfeiture hereof, with the City having an option to purchase Company's property located in the City at a reasonable fair value should such forfeiture occur. In the event the City purchases Company's property under penalty of forfeiture and the City and Company cannot agree upon the reasonable fair value of the property, then the reasonable fair value of the Company's property shall be established by a majority vote of three appraisers with one appraiser selected by Company, one appraiser selected by City, and one appraiser selected by the other two appraisers. If the two appraisers are unable to agree upon the third appraiser, then the third appraiser shall be selected by order of a court of competent jurisdiction. The Company further agrees that if for any reason the Company fails to pay the gross receipts charge as provided in this franchise within thirty (30) days following written notice from the City that Company has failed to make said payment, such failure shall be sufficient to permit City to forfeit the franchise without court action.

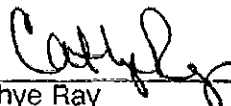
SECTION 13

In order to accept this franchise, Company must file its written acceptance of this franchise within sixty (60) days after its final passage and approval by said City. If this franchise ordinance is not accepted by Company within sixty (60) days, the franchise ordinance shall be rendered null and void.

DULY PASSED AND APPROVED on first reading by the City Council of the City of Mesquite, Texas, on the 15th day of June, 1992.

DULY PASSED AND APPROVED on second reading by the City Council of the City of Mesquite, Texas, on the 6th day of July, 1992.


DULY PASSED AND APPROVED on third and final reading by the City Council of the City of Mesquite, Texas, on the 20th day of July, 1992.




Cathye Ray
Mayor

ATTEST:

APPROVED:



Lynn Prugel
City Secretary



B.F. Smith
City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

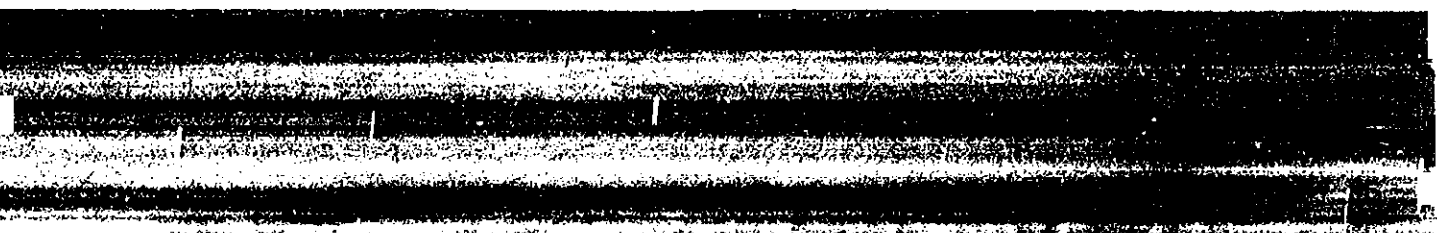
WHEREAS, there was finally passed and approved on July 20, 1992, Ordinance No. 2822 granting to Lone Star Gas Company, a Division of ENSERCH CORPORATION, a corporation, its successors and assigns, a franchise to furnish and supply gas to the general public in the City of Mesquite, Dallas County, Texas, for the transporting, delivery, sale and distribution of gas in, out of and through said municipality for all purposes, which is recorded in the Minutes of the City Council of said City; and

WHEREAS, Section 13 of said ordinance provides as follows:

"SECTION 13: In order to accept this franchise, Company must file its written acceptance of this franchise within sixty (60) days after its final passage and approval by said City. If this franchise ordinance is not accepted by Company within sixty (60) days, the franchise ordinance shall be rendered null and void."

AND, WHEREAS, it is the desire of Lone Star Gas Company, a Division of ENSERCH CORPORATION, the holder of the rights, privileges and grants under the aforesaid franchise ordinance, to comply with the above-quoted provisions of Section 13 thereof.

NOW, THEREFORE, premises considered, Lone Star Gas Company, a Division of ENSERCH CORPORATION, acting by and through its duly authorized officers, and within the time prescribed by Section 13 quoted above, does hereby agree to and accept the franchise granted to it by the above-described ordinance, in accordance with its terms, provisions, conditions and requirements and subject to the stipulations and agreements therein contained.



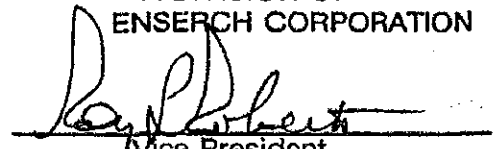
WITNESS THE EXECUTION HEREOF, on this the 28 day of

July, 1992.

ATTEST:

LONE STAR GAS COMPANY
A DIVISION OF
ENSERCH CORPORATION

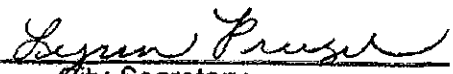

Assistant Secretary


Vice President

STATE OF TEXAS §
COUNTY OF DALLAS §
CITY OF MESQUITE §

I, Lynn Prugel City Secretary of the City of Mesquite, Texas,
do hereby certify that the above and foregoing is a true and correct copy of a formal
acceptance of a franchise ordinance finally passed and approved by said City on July 20,
1992, and of record in the Minutes of the City; and I do further certify that said
acceptance has been duly presented to the City Council and filed in connection with and
as a part of said franchise ordinance.

OF WHICH, witness my official signature and the seal of said City on this the
31st day of July, 1992.


City Secretary
City of Mesquite, Texas

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