

STATE OF MINNESOTA
TOWN OF ROCKFORD

ORDINANCE NO. 90-1

AN ORDINANCE OF THE TOWN OF ROCKFORD, WRIGHT COUNTY, MINNESOTA, GRANTING TO WESTERN GAS UTILITIES, INC., A MINNESOTA CORPORATION, ITS LESSEES, SUCCESSORS, AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO OPERATE A GAS SYSTEM WITHIN THE TOWN OF ROCKFORD AND TO SUPPLY GAS TO THE INHABITANTS THEREOF; AND TO OTHERWISE REGULATE SUCH BUSINESS OPERATIONS.

THE TOWN BOARD OF THE TOWN OF ROCKFORD DOES ORDAIN:

SECTION 1. The Town grants to Western Gas Utilities, Inc., a Minnesota corporation, its lessees, successors and assigns, hereinafter referred to as the Grantee, the non-exclusive right and authority for a period of twenty-five years, but subject hereto, to erect, construct, operate and maintain a gas plant and gas system and any and all necessary mains, pipes, services, and other appliances, thereunto appertaining, in, upon, over, across and along the streets, alleys, bridges and public places within the present and future town limits of the Town of Rockford for the manufacture and transmission and distribution and sale of gas, whether artificial, natural, mixed or otherwise, for heating, domestic, industrial and all other uses and purposes, in and beyond the Town and the Grantee hereby agrees to operate said system and to supply gas for the period of time covered by this franchise.

SECTION 2. The Grantee, its lessees, successors or assigns, shall make such reasonable extensions of the mains from time to time as may be necessary, thereto; provided however, that the Grantee, its lessees, successors or assigns, shall not be required to make any extensions of its mains for

the purpose of serving any new consumer or consumers where the estimated revenue, to be derived from serving such new consumer or consumers, is insufficient to produce an adequate return on investment.

SECTION 3. The Grantee agrees for and in behalf of itself, its lessees, successors and assigns, that all authority and right in this franchise contained shall at all times be subject to all right, power and authority now or hereafter possessed by the Town of Rockford or any other regulatory tribunal having jurisdiction thereover to regulate, fix and control just, reasonable, and compensatory gas rates, and to regulate, control and direct the manner in which the Grantee, its lessees, successors, and assigns, shall use the streets, alleys, bridges and public places in the Town of Rockford, and the Grantee further specifically agrees for and in behalf of itself, its lessees, successors and assigns, that although it shall have the right from time to time for such gas services, that such rates shall at all times be competitive and shall be just and reasonable.

SECTION 4. When the Grantee, its lessees, successors or assigns, shall do work of construction, maintenance or repair of its system in any street, alley, highway, bridge or other public place in the Town of Rockford or any pavement, curbing or gutter therein shall be excavated in the course of such work, the Grantee, its lessees, successors and assigns shall promptly and at its or their own expense make all repairs and restorations made necessary thereby; so that, such street,

alley, highway, bridge or any other public place, shall, as far as practicable, be restored to as good a condition as it was before the said work was done.

SECTION 5. The right and authority herein granted shall be nonexclusive and shall be subject to all regulatory powers which the Town of Rockford possesses and shall continue for the period of twenty-five years (except as herein otherwise stated) from and after the date of this franchise goes into effect under Section 13 hereof. On ninety (90) days prior written notice to the Grantee, its lessees, successors or assigns, of its intention so to do, the Town of Rockford after not less than three years from the effect date hereof, may cancel and terminate this franchise, unless before such cancellation and termination of the Grantee to its lessees, successors, or assigns shall have begun construction within the Town of Rockford provided, however, that there shall be added to such three year period any time reasonably lost due to litigation instituted by others; or due to action of the Town of Rockford, its officials or governing body, or of any other governmental body of authority, or due to strikes.

SECTION 6. The Town Board of the Town of Rockford at the end of any period of five years from the effective date of the ordinance when authorized to do so by a two-thirds majority of the votes cast upon the question, may acquire and thereafter operate said gas plant and gas system, and all mains, pipes, services and other appliances thereunto appertaining which shall have been constructed, installed, operated, or maintained

by the said Grantee, its lessees, successors or assigns, upon paying to said Grantee, its lessees, successors or assigns the value of said property, to be ascertained in the manner provided by law for acquiring property under the right of eminent domain, upon petition of its governing body. Such vote shall be taken at a special election called for that purpose, and held within three months next preceding the expiration of said five-year period. The consideration for such works or property shall first be applied to the payment of any encumbrance thereon and the remainder, if any, shall be paid to Grantee, its lessees, successors or assigns.

SECTION 7. No sale, assignment or lease of this franchise shall be effective until the Town Board of the Town of Rockford shall have approved the same and until the vendee, assignee or lessee shall have filed in the office of the Town Clerk an assignment or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereof.

SECTION 8. Relocation.

Subd. 1. Whenever it shall be necessary for the Town to grade, regrade, or change the line of any public way, or construct or reconstruct any Town utility system therein and shall with the proper exercise of its police power, and with due regard to reasonable working conditions, the Town may order Grantee to relocate permanently its lines, services, and other property located in said public way and Grantee shall relocate its facilities at its own expense. Town shall give Grantee reasonable notice of plans to grade, regrade, or change the

line of any public way or to construct or reconstruct any town utility system herein. However, after Grantee has so relocated, if a subsequent relocation or relocations shall be ordered within ten (10) years from and after first relocation, Town shall reimburse Grantee for such relocation expense which Grantee may incur on a time and material basis; provided, if subsequent relocations are required because of the extension of Town utilities to previously unserved areas, Grantee shall be required to relocate at its own expense at any time.

Subd. 2. Nothing contained in this franchise shall require Grantee to relocate, remove, replace, or reconnect at its own expense its facilities where such relocation, removal, replacement or reconnection is for convenience and not of necessity in the construction or reconstruction of a Town utility system or extension thereof.

Subd. 3. Any relocation, removal, or rearrangement of any of Grantee's facilities made necessary because of the extension into or through Town of a federally aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46 as supplemented or amended; and further, it is expressly understood that the right herein granted to Grantee is a valuable property right and Town shall not order Grantee to remove or relocate its facilities without compensation when a public way is vacated, improved, or re-aligned because of a renewal or redevelopment plan which is financially subsidized in whole or in part by the federal government or any agency

thereof, unless the reasonable costs of such relocation and the loss and expenses resulting therefrom are first paid to Grantee.

SECTION 9. Indemnification.

Grantee shall indemnify, keep, and hold the Town free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, or operation of Grantee's facilities located in, on, over, under, or across the public ways and public grounds of the Town, unless such injury or damage results from or arises out of the negligence of the Town, its employees, or agents. In the event a suit shall be brought against the Town under circumstances where the above agreement to indemnify applies, Grantee, at its sole cost and expense, shall defend the Town in such suit if written notice thereof is promptly given to Grantee within a period wherein Company is not prejudiced by lack of such notice. If Grantee is required to indemnify and defend, it will thereafter have complete control of such litigation, but Grantee may not settle such litigation without the consent of the Town, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Town; and Grantee, in defending any action on behalf of the Town shall be entitled to assert in any action every defense or immunity that the Town could assert in its own behalf.

SECTION 10. Vacation of Public Ways.

The Town shall give Grantee at least two weeks' prior written notice of a proposed vacation of a public way. Except where required solely for a Town improvement project, the vacation of any public way, after the installation of its facilities, shall not operate to deprive Grantee of its rights to operate and maintain such facilities.

SECTION 11. The violation by the Grantee, its vendee, assignee, lessee or successor of the provisions of this franchise, or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this franchise and all rights hereunder by resolution of the Town Board of Town of Rockford after reasonable written notice to Grantee, and continuation of such violation, failure or default.

SECTION 12. All other ordinances or portions or ordinances inconsistent herewith are hereby repealed.

SECTION 13. This ordinance shall be in full force and effect from and after its passage and publication as required by law, and upon the written acceptance hereof by Western Gas Utilities, Inc., a Minnesota corporation, and thereafter shall be binding on Western Gas Utilities, Inc., its successors and assigns. Western Gas Utilities, Inc., shall within sixty (60) days after the passage of this ordinance, file with the Town Clerk of the Town of Rockford, its acceptance in writing signed by its proper officers and attested by its corporate seal. The Grantee may terminate this ordinance at any time after such

acceptance but only prior to commencement of construction of the facilities, by filing a written surrender thereof with the Town Clerk of said Town of Rockford.

SECTION 14. Severability.

Every section, provision, or part of this ordinance is declared separate from ever other section, provision or part; and if any section, provision or part shall be held invalid, it shall not affect any other section, provision or part. Where a provision of any other Town ordinance conflicts with the provisions of this ordinance, the provisions of this ordinance shall prevail.

SECTION 15. Publication Expense.

The expense of any publication of this franchise ordinance required by law shall be paid by Company.

Passed and approved by the Town Board of the Town of Rockford this 28th day of August, 1990.

Attest:

Chairman, Town Board
Duane H. Rolstad

Town Clerk James O. Taylor

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Town Clerk

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