

ORDINANCE NO. 229

AN ORDINANCE GRANTING TO CITY GAS COMPANY, A FLORIDA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE IN THE TOWN OF WEST MIAMI.

BE IT ENACTED BY THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF WEST MIAMI, FLORIDA:

Section I. There is hereby granted to City Gas Company, a Florida corporation (herein called the "Grantee"), its successors and assigns, the non-exclusive right, privilege and franchise, to construct, maintain and operate in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places of West Miami, Florida (herein called the "Grantor"), and its successors, in accordance with established practice with respect to such construction and maintenance, for the period of thirty years from the date hereof, facilities for the sale, and distribution of gas, including conduits, mains, pipes, laterals and fixtures for the purpose of supplying gas to the Grantor and its successors, and the inhabitants thereof, and persons and corporations beyond the limits thereof.

The above grant is made in consideration of the grantee constructing, maintaining and continuously operating the above facilities for the sale and distribution of gas to residents of West Miami, as well as for the benefits and conveniences to said inhabitants as a result thereof.

Section II. Grantor reserves the right at and after the expiration of this grant to purchase the property of the Grantee used under this grant, as provided by the Laws of Florida, in effect at the time of the Grantee's acceptance hereof, and any amendments to such laws, and as a condition precedent to the taking effect of this grant, Grantee gives and grants to the Grantor the right to purchase so reserved. The Grantee shall accept this franchise within thirty days after this Ordinance takes effect by filing with the Clerk of the Town a written

acceptance of the franchise.

Section III. (a) That the facilities shall be so located or relocated and so erected as to interfere as little as possible with Traffic over said streets, alleys, bridges and public places, and with reasonable egress from and ingress to abutting property. The location or relocation of all facilities shall be made under the supervision and with the approval of the Town Engineer or such representatives as the governing body of Grantor may designate for the purpose, but not so as unreasonably to interfere with the proper operation of Grantee's facilities and service. That when any portion of a street is excavated by Grantee in the location or relocation of any of its facilities, the portion of the street so excavated shall within a reasonable time and as early as practicable after such excavation, be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation.

(b) The mains, service pipes, and gas system constructed under this grant shall be constructed, maintained and operated in accordance with established practice in respect to such construction, operation, and maintenance. Before the commencement of the construction of the mains, service pipes and gas system, the grantees shall make application to the Engineer of the Town of West Miami, to designate the lines and grades to which, and places where the said gas mains or pipes shall be laid, and thereafter when additional mains or pipes are laid, a like application and designation shall be made as to such additional mains and pipes. All such gas mains and service pipes to be installed shall conform accurately to the lines, grades, and places so designated by the Town Engineer. No excavation of any street or other public place shall be made unless grantees shall beforehand notify the Town Engineer and obtain his approval, unless such excavation should be necessary because of an emergency requiring immediate action. All expense of the Town Engineer necessarily and reasonably incurred in pursuance

of the provision of this section shall be paid by the grantees. All construction made under the provisions of this ordinance shall be of first class material and all gas mains, service pipes, and generating plant, and/or storage tanks, shall have an adequate capacity to supply the full requirements of gas, for service to the Town of West Miami and its inhabitants, of the proper pressure and quality required by this ordinance.

(c) The grantees shall promptly make such reasonable extensions of mains and service pipes as may be ordered by the Town Council of the Town of West Miami. Such extensions shall be made at the cost and expense of the grantees provided there is an average of one additional consumer to each 200 feet of mains included in such extension. Where there is less than one consumer to each 200 feet of proposed extended mains, the grantees will not be required to make such extension until the applicant for service along such extension shall have deposited with the grantees a sum of money sufficient to cover the cost of any length of the extension in excess of the length in feet of 200 times the number of additional consumers served thereby, the sum to be deposited by the applicant for such extension to be subject to the approval of the Town Engineer of said town, as to cost. In such cases the grantees shall refund to the applicant the cost of 200 feet of main as each additional consumer is served until the entire amount deposited shall have been refunded. The gas mains and equipment, and all appurtenances included in such extension shall be and remain the property of the grantees. As a temporary expedient in the event gas mains cannot be laid as aforesaid, and with the consents of the user thereof and the grantee, the grantee may install in lieu of mains and pipe lines such fixtures and appurtenances as will serve the householder, business, factory, or otherwise with the gas from tanks placed upon the individual premises and generally known as "bottled gas" assemblies, but such service may at any time be changed by the grantee upon the laying of mains as set forth in this franchise.

(d) In the event the Grantee shall fail to fill excavations and repair streets within a reasonable time, the Town, after written notice to the Grantee, may take steps reasonably necessary to fill such excavations and make required repairs, and the Grantee shall forthwith reimburse the Town for such costs; and upon failure to reimburse the Town within ten (10) days after written notice thereof, the costs thereof shall become a lien against all of the facilities of the Grantee located within the limits of the Town.

Section IV. That Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of Grantee, to indemnify Grantor and hold it harmless against any and all liability, loss, cost, damage or expense, which may accrue to Grantor by the reason of the neglect, default, or misconduct of Grantee in the construction, operation or maintenance of its facilities hereunder.

Section V. That all rates and rules and regulations established by Grantee from time to time shall at all times be reasonable and Grantee's rates for gas shall at all times be subject to such regulation as may be provided by law.

Section VI. That within thirty days after the first anniversary date of this grant and within thirty days after each succeeding anniversary date of this grant, the Grantee, its successors and assigns, shall pay to the Grantor and its successors an amount which added to the amount of all taxes, licenses, and other impositions levied or imposed by the Grantor upon the Grantee's property, business, or operations, and those of Grantee's subsidiaries for the preceding tax year, will equal six per cent (6%) of Grantee's gross revenues from the sale of gas to residential and commercial customers within the corporate limits of the Grantor for the twelve fiscal months preceding the applicable anniversary date.

Section VII. That failure on the part of Grantee to comply in any substantial respect with any of the provisions of this ordinance, shall be grounds for a forfeiture of this grant, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by Grantee until a court of competent jurisdiction (with right of appeal in either party) shall have found that Grantee has failed to comply in a substantial respect with any of the provisions this franchise, and the Grantee shall have six (6) months after the final determination of the question, to make good the default before a forfeiture shall result with the right in Grantor at its discretion to grant such additional time to Grantee for compliance as necessities in the case require.

Section VIII. All gas furnished hereunder shall be of standard quality and uniformity and shall be of such quality as meets the minimum requirements under applicable State and Federal regulations. In addition, said gas shall be furnished at the point of consumption at the usual and customary standard pressure. It shall be the responsibility of the Town Engineer, or such other official as the Town Council might designate, to determine whether or not said standards of quality, uniformity and pressure are complied with. Suitable instruments and equipment to conduct the necessary tests shall be furnished at the expense of the grantees. In the event the quality of the gas produced shall, in any calendar month, for an aggregate period of 72 hours, fall below said applicable minimum State and Federal standards, the charges for that month for gas consumed shall be reduced directly in the proportion that the average number of British Thermal Units produced shall fall below such standard, during any such aggregate period of 72 hours; provided, however, that the grantees be immediately notified that the gas has so fallen below said standard so as to allow grantees to correct said condition without delay.

Section IX. This franchise and all work that may be done hereunder shall be subject to such valid, reasonable regulations,

rules, laws, and ordinances as may be in force or which may hereafter be enacted or adopted for the regulation and use of the streets and highways of the Town of West Miami, and for the general welfare and safety of its citizens and the protection and safeguarding of their lives and property.

Section X. The grantees shall at all times keep an accurate map showing the location of all gas mains and service pipes laid and maintained by the grantees under the provisions of this ordinance, and the map shall be accessible for public inspection at all times during reasonable hours. On the first day of January and the first day of June, during each and every year of the term of this franchise, the grantees shall furnish the Town Engineer of the Town of West Miami a copy of the map of said gas mains and service pipes last made by the grantees.

Section XI. (a) The grantees shall, at their own cost and expense, construct and maintain service to consumer's property line, and, for the measurement of gas consumed, furnish, install and maintain gas meters which shall be of standard make, tested and sealed, and subject at all times to reasonable inspection by the Town of West Miami through such officers or agents as may be designated by the Town. A competent gas engineer may be employed by the Town, and his duties, as well as the inspection of gas meters herein provided, may be defined by ordinance, and the inspection by such gas engineer may be made, once a day or more often, as may be necessary or proper to ascertain the accuracy and efficiency of the gas meters and whether the heat-unit quality of the gas furnished conforms to the standards provided by this ordinance, and it shall be and become the duty of grantees to replace any meter in the event of its over registration of two percentum (2%) or more. Provided, however, the gas meters shall be and remain the property of the grantees, and provided the grantees shall have the right by reasonable rules and regulations to govern the furnishing and maintenance of such gas meters.

(b) The grantee agrees that during the term of this franchise and any extensions thereof it will, subject

to approval of the Federal and Florida Public Utilities Commissions, and where not inconsistent with the rules and regulations of said commissions, furnish to the ultimate consumers service lines from mains without costs to the consumers and will without costs to the consumer convert appliances of the consumer from artificial to natural gas. In the event the aforesaid commissions require charges for customer service lines or conversions, the grantee agrees to charge the actual cost of installation or conversions or the amount required by said commissions, whichever is lower.

Section XII. In the event of any conflict between the terms of this ordinance and rules and regulations of the Federal and Florida Public Utilities Commissions now or hereafter in effect, the rules and regulations of such commissions shall prevail; except that where such rules and regulations provide standards less stringent than provided for herein the standards provided herein shall continue in force and effect where permitted by said commissions.

Section XIII. While this franchise is non-exclusive, the grantor specifically agrees that it shall not, during the terms of this grant, or any extension thereof, engage in the business of distributing and selling gas in competition with the grantee, its successors or assigns.

Section XIV. This ordinance shall take effect immediately upon its passage.

Section XV. That all ordinances and parts of ordinances in conflict herewith be and the same are hereby repealed.

PASSED AND ADOPTED THIS 2nd day of September, 1959.

ATTEST:

Mildred Davis
Town Clerk

APPROVED:

Edmund Cooper - 7 -
Mayor

Matthew M. Slepian
President of the Town Council