

ORDINANCE NO. 7155

AN ORDINANCE GRANTING TO KANSAS PUBLIC SERVICE, A DIVISION OF UTILICORP UNITED INC., A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON EXCLUSIVE NATURAL GAS FRANCHISE AND THE RIGHT AND PRIVILEGE TO CONSTRUCT, USE AND MAINTAIN NATURAL GAS SERVICE LINES IN THE PUBLIC RIGHT-OF-WAY WITHIN THE PRESENT OR FUTURE CORPORATE LIMITS OF THE CITY OF LAWRENCE, KANSAS FOR THE PURPOSE OF SUPPLYING NATURAL GAS SERVICES TO THE CITY OF LAWRENCE, KANSAS AND ITS INHABITANTS PURSUANT TO K.S.A. 12-2001 ET SEQ.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:

Section 1. Definitions. For purposes of this Ordinance, the following words and phrases shall have the meanings given herein:

- a) "The Company" shall mean Kansas Public Service, a division of UtiliCorp United Inc., its successors and assigns.
- b) "City" shall mean the City of Lawrence, Kansas.
- c) "Facilities" shall mean all mains, services, pipes, conduits and appliances and improvements thereto, either under or above ground, necessary or convenient for the transmission, transportation, distribution, or sale of natural gas within the city to the inhabitants thereof for any use, including domestic, commercial, and industrial purposes.
- d) "Gas Service" shall mean the supplying, selling, transmitting, transporting, or distributing of natural gas within the city through the use of Company facilities.
- e) "MCF" shall mean a measurement of natural gas equal to one thousand cubic feet; a cubic foot is the quantity of natural gas occupying one cubic foot of space at a pressure of 14.73 PSIA and a temperature of 60 degrees Fahrenheit. It is assumed for purpose of this ordinance that one MCF equals 1,000,000 British Thermal Units (BTUs).
- f) "Public improvement" shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitations, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvement and public projects, which are supported by public funds.
- g) "Public project" shall mean any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance or repair of public

facilities or public improvements, or any other purpose of a public nature, which is supported by public funds.

h) "Right-of-way" shall mean present and future streets, alleys, avenues, bridges, public rights-of-way, and public utility easements, including public utility easements and right-of-way dedicated in plats to the City.

l) "Volumetric Rate" shall mean that sum measured in cents per MCF as established in this ordinance.

Section 2. Grant of Franchise. a) Pursuant to K.S.A. 12-2001 et seq. there is hereby granted to the Company the right, privilege, franchise, permission and authority to construct, maintain, extend and operate its facilities, in through and along the rights-of-way for the purpose of supplying natural gas or processed gas for all purposes to the City and its inhabitants and consumers in the vicinity thereof, and for the distribution of natural gas from or through said City for the full term of this franchise; subject, however, to the terms and conditions herein set forth. The City further grants the Company the right, privilege, franchise, permission and authority to lay, install, maintain, and operate over, across and along all of the rights-of-way of the City all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of the City and in carrying on such business.

b) Nothing in this franchise ordinance, and the grant hereof, shall be interpreted as granting to the Company the authority to provide non-gas regulated utility services, including electric, telephone, and cable services, without a separate grant of a franchise from the City.

Section 3. Governing Rules and Regulations. This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by the laws of the State of Kansas. The rates to be charged by the Company for service within the present or future corporate limits of the City and the rules and regulations regarding the character, quality and standards of service to be furnished by the Company shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by the Company. Provided however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes the Company from recovering from its customers any cost associated with services provided hereunder, then the City and the Company shall renegotiate the terms of this Ordinance. In determining the rights and duties of the Company, the terms of this franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the City.

Section 4. Use of Right-of-Way. In the use of the right-of-way under this Ordinance, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and is subject to all applicable laws, orders, rules and regulations adopted by the governmental bodies now or hereafter having jurisdiction. In addition, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, beautification, tree care, and other requirements on the use of the right-of-way and shall comply with the following:

a) The Company's use of right-of-way shall in all matters be subordinate to the City's use of the right-of-way for any public purposes. The Company shall coordinate the placement of its facilities in a manner which minimizes adverse impact on public improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement.

b) Upon receipt and acceptance of a valid application for service, the Company shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of City. No obligation shall extend to, or be binding upon, the Company to extend its facilities if the Company is, for any reason, unable to obtain and deliver an adequate energy supply.

c) All earth, materials, sidewalks, paving, crossings, utilities, public improvements or improvements of any kind injured, damaged or removed by the Company in its activities under this Ordinance shall be fully repaired or replaced within a reasonable time by the Company at its sole expense and to the reasonable satisfaction of the City and the Company.

d) The Company shall keep and maintain accurate records and as-built drawings depicting the accurate location of all facilities constructed, reconstructed, or relocated in the right-of-way after the date hereof and provide the above information to the City upon request. Where such information is available electronically, upon request from the City, Company agrees to provide such information in an electronic format. City agrees to use information obtained pursuant to this subsection only to locate utility facilities in connection with municipal projects and further agrees not to disclose such information to anyone other than City employees requiring such information to locate utility facilities in connection with municipal projects, except as required by law. Company and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of the Company and agree that pursuant to K.S.A. 45-221 (12), (18), as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event that City is required by law to disclose such information, City shall provide the Company seven (7) days advance notice of its intended disclosure of such information and shall take

such action as may be reasonably required to cooperate with the Company to safeguard such information.

The Company agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of the Company, or of the City at the written request of the Company, in seeking to safeguard the confidentiality of information provided by the Company to the City under this section.

In the event such information is required by force of law to be publicly disclosed, the Company shall have no further obligation under this section to provide the City with such information

e) Except in cases of an emergency, a minimum of fourteen (14) days prior to construction, reconstruction or relocation of any facilities in the right-of-way, the Company shall submit to the City Engineer, or her or his designee, for approval, plans and specifications of the proposed installation. Such approval shall not be unreasonably withheld, delayed or conditioned. City review shall only concern matters related to the interests of the City as set forth in this Ordinance.

f) The Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the nature and locations of its facilities located within right-of-way when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of the Company, without expense to the City, its employees, agents, or authorized contractors. The Company shall designate an agent to provide the City with timely information when required by this subsection.

g) As reasonably necessary, the Company shall remove and relocate or adjust any facilities located in the right-of-way for a public project within a reasonable time. Such relocation or adjustment shall be performed by the Company at its sole expense, without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City not inconsistent with this Ordinance pertaining to such. The City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause the Company unreasonable additional expense in exercising its authority under this section.

h) It shall be the sole responsibility of the Company to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage. If the Company fails to accurately or timely locate facilities when requested, the Company has no claim for costs or damages against the City and its authorized contractors or any other party authorized to be in the right-of-way, except to the extent such harm or damage is caused by such party's negligent or intentional conduct. City and its authorized contractors agree to take reasonable precautionary measures, including, but not limited to, calling for utility locations and observing marker posts, when working near Company facilities.

i) Except in the event of an emergency, the Company shall notify the City not less than ten (10) days in advance of any construction, reconstruction, repair or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. Except in the event of an emergency, no such closure shall take place without such notice and prior authorization from the City.

In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work within the right-of-way, the Company shall erect and maintain signs and other devices as required by City ordinances, regulations and rules.

j) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the facilities in the right-of-way shall be in accordance with applicable present and future federal, state and City law and regulations.

Section 5. Street Tree Ordinance. The Company shall comply with the provisions of the Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas) and amendments thereto, in the care, pruning, trimming, and removing of trees located in or on the City right-of-way.

Section 6. Location of Underground Equipment and Facilities. The Company equipment shall be placed underground as required by City ordinances, including Chapter 5, Article 4A of the Code of the City of Lawrence, and amendments thereto. Where underground construction is made, the equipment and any necessary trenching shall be installed and maintained or provided by the Company in accordance with the ordinances of the City without expense to the City.

Section 7. Franchise Fee. a) In consideration for the grant of this franchise, the Company agrees to collect from its customers, but not from the City, located within the corporate limits of the City, and pay to the City an amount equal to the following fee schedule, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered, and the City agrees to accept as adequate compensation and consideration for the franchise hereby granted a franchise fee as defined herein.

From January 1, 2000 through June 30, 2000 an amount equal to five percent (5%) of gross receipts derived from the sale or distribution of natural gas, including customer service charges; and

effective July 1, 2000, an amount equal to the following fee schedule which is applicable to volumes of natural gas which the Company sells, distributes or transports to a customer's receipt point:

Customer Class	Description	Volumetric Fee
Residential Class (RS)	Any individually metered, single-family dwelling where service is primarily for residential use	\$0.30 /Mcf
Small Commercial (SC)	Any individually metered, non-residential customer with annual consumption less than 500 Mcf	\$0.30 /Mcf
Small Volume (SV)	Any individually metered, non-residential customer with annual consumption greater than 500 Mcf, but less than 5,000 Mcf	\$0.15 /Mcf
Large Volume (LV)	Any individually metered, non-residential customer with annual consumption greater than 5,000 Mcf:	
	➤ 5,000 Mcf/Year	\$0.15 /Mcf
	➤ 50,000 Mcf/Year	\$0.05 /Mcf
	➤ 200,000 Mcf/Year	\$0.03 /Mcf

The volumetric fee for Large Volume (LV) customers will be based on the customer's annual volume usage for the preceding calendar year. LV customer volumes will be reviewed annually, and the corresponding rate applied no later than July 1 of the following year.

At the end of the initial five-year and subsequent terms, the City may, by ordinance, change the volumetric fees up to ten percent (10%).

b) The Company shall list the local fee collected from consumers within the City as a separate item on bills for utility service issued to consumers. If at any time the Kansas Corporation Commission, or other authority having proper jurisdiction, prohibits such recovery, then the City and Company shall renegotiate this ordinance.

c) The franchise fee shall be paid monthly, by electronic transfer to the City, or other method approved by the City and Company. Concurrent with submission of the monthly payment, the Company shall also submit a report which shall detail revenues from specific sources. The Company shall pay the applicable fee to the City within thirty (30) days of the last day of the applicable month for which a fee payment is due and owing. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of the term of this Ordinance. Payments received after the due date shall be subject to a late payment charge of one and one-half percent (1 ½ %) per month. Payments due and owing as the result of an audit of franchise fee payments shall be subject to a late payment charge of one and one-half percent (1 ½ %) per month; provided such late payment charges shall 1) begin to accrue forty-five (45) days after notice is mailed to the Company; and 2) the late payment charge shall only apply to audit generated payments agreed to by the City and the Company.

d) The franchise fee collected and paid by the Company shall be in lieu of, and the Company shall be exempt from, all other licenses, charges, excise or right-of-way permit fees or taxes or impositions (other than the usual general or special ad valorem taxes) which might be imposed by the City for the privilege of operating a natural gas system within the City.

e) The Company agrees to use due diligence in ascertaining the boundaries of the City, including the annexation of property into the City. The City shall provide copies of annexation ordinances to the Company on a timely basis. The Company shall obtain a copy of the annual boundary resolution adopted by the City, and the Company shall compare the City boundaries with existing and planned Company services and customers to ensure appropriate franchise fee collection from customers within the corporate limits of the City.

Section 8. The City shall have access to and the right to examine during normal business hours, those of the Company's books, receipts, files, records and documents that are necessary to verify the correctness of payments due hereunder. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery, such that any under-payment by the Company shall be paid within thirty (30) days of the recalculation and any over-payment by the Company shall be discounted from the next payment(s) due.

Section 9. Sharing of Space. The City encourages the conservation of right-of-way by the sharing of space by all utilities. To the extent required by federal or state law, the Company shall permit any other franchised entity by appropriate contract or agreement negotiated by the parties to use any and all facilities constructed or erected by the Company. All said agreements and installations shall be subject to all existing and future ordinances and regulations of the City. Company agrees that it will not grant any entity rights to occupy the rights-of-way without providing notice to the City.

Section 10. Indemnification and Hold-Harmless. The Company, its successors and assigns, shall at all times save and hold harmless the City of Lawrence, Kansas, from all liability, costs, damages, and expenses of any kind, for the payment of which said City may become liable to any person, firm, or corporation by reason of any claim or damages to the extent caused by the failure of the Company, its employees, agents, or servants to exercise due care and diligence in the construction, installation, maintenance, and operation of gas service facilities within the City or outside the City.

Section 11. Assignment of Franchise. Pursuant to the written permission of the City, which shall not be unreasonably withheld, the Company shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. If the Company should seek approval to assign this

franchise, the Company shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

Section 12. Conditions of Franchise. This contract, franchise, ordinance, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. Each and every provision hereof shall be subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond the Company's control. This franchise shall not be exclusive. It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance provided, however, that this provision shall not obligate a party to settle any labor strike.

Section 13. Notice to Parties. For the purpose of this Agreement, notice to the City will be to: City Manager, P.O. Box 708, 6 East 6th Street, Lawrence, Kansas, 66044. For the purpose of this Agreement, notice to the Company will be to: Vice President, Community Services, UtiliCorp United, Inc., 20 West 9th Street, Kansas City, Missouri, 64105. Notice will be effective upon delivery by hand delivery or by first class mail to the above address until the City or the Company notifies the other, in writing, of a change in address.

Section 14. Length of Franchise Agreement. The rights and privileges granted by this Ordinance shall remain in effect for a period of five (5) years from the effective date thereof and for two consecutive five (5) year terms thereafter unless the City, through its Clerk, shall notify the Company in writing at least one hundred and eighty (180) days before the expiration of the initial and subsequent terms, that the City, for good cause, desires not to renew the franchise, and such notice shall specify the City's reasons.

Section 15. Rights and Duties of Grantee upon Expiration of Ordinance. Upon expiration, termination, or forfeiture of this Ordinance, whether by lapse of time or by agreement between the Company and the City the Company shall have the right to remove from right-of-way and public property all of its facilities used in its business

within reasonable time after such expiration or forfeiture, but in such event, it shall be the duty of the Company immediately upon such removal, to restore the right-of-way from which said facilities are removed to as good condition as the same were before said removal was effected without cost to the City.

Section 16. Termination or Forfeiture of Franchise.

a) In case of failure on the part of the Company, its successors and assigns, to comply with any of the provisions of this ordinance, or if the Company, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, the Company, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City of Lawrence shall carry out the following proceedings.

b) Before the City of Lawrence proceeds to forfeit said franchise, as in this section prescribed, it shall first serve a written notice as provided by the Notice provisions of this ordinance, setting forth in detail the conditions of neglect, default or failure complained of, and the Company shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such ninety (90) day period the City of Lawrence deems that the conditions of such franchise have not been complied with by the Company and that such franchise is subject to cancellation by reason thereof, the City, in order to terminate such franchise shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. If within thirty (30) days after the effective date of said ordinance the Company shall not have instituted an action in the District Court of Douglas County, Kansas to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period.

c) If within such thirty (30) day period the Company does institute an action, as above provided, to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event in case the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall terminate thirty (30) days after such final judgment is rendered and available appeals exhausted.

Section 17. Effectiveness. This ordinance shall become effective and be in force and shall be a binding contract between the Company and the City of Lawrence, Kansas, their successors and assigns, from and after the following: 1) the ordinance has been approved by the Company in writing pursuant to Section 21, 2) the ordinance has been read in full at three regular meetings of the governing body, 3) the ordinance has been published in the official city paper once a week for two consecutive weeks, and 4) the expiration of 60 days from the date of final passage without the submission of a proper

petition asking that the franchise be submitted for adoption to popular vote; all as provided by K.S.A. 12-2001. The Company shall pay for the required publications of this ordinance.

Section 18. Severability. If any provision, section or subsection of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, sections or subsections or applications of this ordinance which can be given effect without the invalid provision, section or subsection or application, and to this end the provisions, sections, and subsections of this ordinance are declared to be severable.


Section 19. Non Waiver. Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

Section 20. Repeal. To the extent of its validity on the date of effectiveness of this ordinance, Ordinance No. 5527 is hereby repealed.

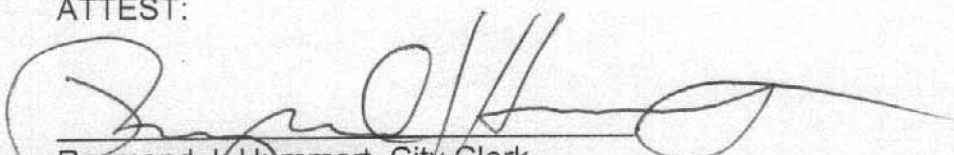
Section 21. Company Acceptance. The Company shall, within sixty (60) days, after the final publication of this ordinance, file with the City Clerk its written acceptance of all the terms, conditions, and provisions of this ordinance, and in case its failure so to do, this Ordinance shall be null and void. The acceptance of this ordinance, shall be in writing, and shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted the ordinance and acceptance shall constitute a contract between the City and the Company subject to the provisions of the laws of the State of Kansas.

Adopted by the Governing Body this 2nd day of November, 1999.

PASSED:


Ervin E. Hodges, Mayor

ATTEST:


Raymond J. Hummert, City Clerk

Approved as to form and legality:

David L. Corliss

David L. Corliss, Director of Legal Services

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said ordinance was passed on the 2 day of Nov, 1997, that the record of the final vote on its passage is found on page _____ of Journal _____, that it was published in the Lawrence Daily Journal-World on the 15 Day of Nov, 1997.
Raymond J. Hummel
City Clerk OB