



City of Grand Island

Tuesday, March 24, 2009

Council Session

Item F6

**#9213 - Consideration of Natural Gas Franchise with
NorthWestern Corporation**

Staff Contact: Dale Shotkoski

Council Agenda Memo

From: Jeff Pederson, City Administrator

Meeting: March 24, 2009

Subject: Consideration of Natural Gas Franchise with NorthWestern Corporation

Item #'s: F-6

Presenter(s): Jeff Pederson, City Administrator

Background

The Natural Gas Franchise allows NorthWestern Corporation the non-exclusive right to construct, maintain and operate a system of mains and pipes within the City of Grand Island for the transportation and distribution of natural gas.

Discussion

Presented to Council is the Natural Gas Franchise. City Administration negotiated with NorthWestern representatives to modify the following changes:

- Section 1, Grant of Franchise will be effective for 20 Years
- Section 7, Grantee shall notify the City Administrator of emergency repairs
- Section 9, Grantee agrees to conform to its tariffs filed with the Nebraska Public Service Commission as it relates to service line extensions
- Section 15, 90 days required to review any proposed assignment by the City Of Grand Island
- Section 18, Grantee shall maintain a local office within the corporate limits of the City during the term of the franchise
- Section 21, All notices from the City will be sent to Corporate Affairs
- Section 22, Ordinance shall be construed in accordance with the laws of the State of Nebraska

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve

2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that Council approve Ordinance 9213 approval of the Natural Gas Franchise.

Sample Motion

Make a motion to approve Ordinance 9213 approval of the Natural Gas Franchise.

ORDINANCE NO. 9213

AN ORDINANCE OF THE CITY OF GRAND ISLAND, NEBRASKA, GRANTING TO NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY, THE NON-EXCLUSIVE RIGHT AND PRIVILEGE TO CONSTRUCT, MAINTAIN AND OPERATE A SYSTEM OF MAINS, PIPES, SERVICES AND OTHER APPLIANCES IN, UPON, OVER, ACROSS AND ALONG THE STREETS, AVENUES, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF GRAND ISLAND, NEBRASKA, FOR THE TRANSMISSION, TRANSPORTATION, DISTRIBUTION, AND SALE OF NATURAL GAS FOR DOMESTIC, COMMERCIAL, INDUSTRIAL AND OTHER USES IN THE CITY; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH THE COMPANY IS TO OPERATE; TO REPEAL ORDINANCE NO. 6873 (AS AMENDED) AND ALL OTHER ORDINANCES AND RESOLUTIONS OR PARTS THEREOF IN CONFLICT HEREWITH; AND TO PROVIDE FOR PUBLICATION IN PAMPHLET FORM BY THE AUTHORITY OF THE CITY COUNCIL AND EFFECTIVE DATE OF THE ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA.

Section 1. Grant of Franchise. In consideration of the benefits to be derived from the installation and operation of a natural gas distribution system in the City of Grand Island, Nebraska (hereinafter sometimes designated as “City”) by City and its inhabitants, there is hereby granted to NorthWestern Corporation, doing business as NorthWestern Energy, (hereinafter sometimes designated as “Grantee” or “Company”), the non-exclusive right, permission and authority to lay, install, maintain and operate a natural gas transmission and distribution system (hereinafter sometimes designated as “gas system within the limits of City, as the same now exists or may be hereafter extended, for a period of twenty (20) years from and after the effective date of this Ordinance and for such extended term as City may grant pursuant to the provisions of Section 4 hereof; and for this purpose there is hereby further granted to Grantee the right, permission and authority during said period to lay, install, maintain, and operate in, upon, over, across and along all of the streets, avenues, alleys, bridges and public places of City all mains, services, pipes, conduits, and/or appliances (Grantee’s “Infrastructure”) necessary for transmitting, transporting, distributing, and supplying natural gas for heating, industrial power, and other purposes for which natural gas may be used, and for the purpose of transmitting, transporting and conveying such gas into, through or beyond the immediate limits of City to other cities, villages, and customers.

The right and privilege to use and occupy such streets, alleys, public ways, and places for the purposes herein set forth, shall not be exclusive, and the City of Grand Island reserves the right to grant a similar use of such streets, alleys, public ways, and places, to any person or corporation at any time during the Grant of Authority. The laying or installation of additional pipe within the City for transmission of natural gas beyond City limits shall require a permit for that purpose.

Approved as to Form	<input type="checkbox"/>	_____
March 20, 2009	<input type="checkbox"/>	City Attorney

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Section 2. Obligation to Provide Natural Gas Service. Grantee shall furnish a natural gas system, natural gas supply and infrastructure which is safe, adequate, efficient, reliable, and low-cost. Grantee shall maintain and operate the same in a manner to meet the necessities and requirements of City (including City-owned electric generating plants within the City's corporate limits), its inhabitants and industries, and in a manner consistent with the State Natural Gas Regulation Act (the "Act") and with the rules and regulations of the Nebraska Public Service Commission (the "Commission").

Section 3. Limitation on Obligation. Grantee shall provide to City and its inhabitants requesting natural gas service reliable natural gas service.

Section 4. City Right to Extend Terms of Franchise. City may extend the term of this franchise by an additional five (5) years beyond the term hereof upon the same terms and conditions as herein set forth, upon giving Grantee sixty (60) days notice of its intent to exercise such right of extension. City may, but need not, conduct a public hearing in conjunction with such an extension. If requested by City to do so, Grantee shall promptly furnish to City such information as City may reasonably request in connection with City's deliberations as to whether to exercise such right of extension.

Section 5. Installation of Infrastructure. All infrastructure which shall be laid or installed under this grant shall be located in public right-of-way and shall be located and laid so as not to obstruct or interfere with any existing or planned water pipes, drains, sewers, paving, or other structures, and all such infrastructure shall be laid in place subject to the approval of City or subject to the approval of such representative as City may from time to time provide, and, in compliance with City policies, regulations and manuals. Grantee shall in doing any work in connection with infrastructure, avoid, so far as may be practical, interfering with the use of any street, alley, or other highway, and where paving or surface of the street is disturbed, Grantee shall, as its own expense and in a manner satisfactory to the duly authorized representative of City, replace and compact soils and reconstruct such paving or surface of the street or alley in as good condition as before said work was commenced in accordance with specifications of City, and Grantee shall ensure that the paving or surface of the street or alley is maintained free from any defects caused by Grantee or its employees or agents for a period of two (2) years from the time the work was completed.

Section 6. Use of Streets, Alleys and Other Public Right-of-Way. Grantee's Infrastructure to be placed in any public right-of-way or other public property shall be located, constructed, installed, maintained, renovated or replaced in accordance with applicable rules and regulations of City. Grantee shall acquire necessary permits, if any, required by City and City may inspect the manner of such work and requires such remedies as may be necessary to assure compliance. The replacement and restoration of the public right-of-way or other public property shall be completed as promptly as practical. Should Grantee not promptly and satisfactorily perform and complete the necessary work to restore the public right-of-way or other public property, the City shall notify Grantee of such restoration steps needed to be taken, and if Grantee fails to take such steps within the prescribed period of time given in the notice, the City shall have the right to do so at the expense of Grantee. If City, after proper notice and Grantee's failure to cure, exercises its right to restore the public right-of-way or other public property,

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Grantee shall reimburse City for the reasonable cost incurred for the work performed by City or its agents.

1. **Use.** All Infrastructure laid or placed by Company on public property shall, be so located in the streets, alleys or other public places in the City as not to obstruct or interfere with any water pipes, sewers, drains or other structures already installed under existing City policies. Company shall, when practical, avoid interfering with the use of any street, alley or other highway where the paving or surface of the street would be disturbed.
2. **Restoration.** In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced, and shall maintain the restoration free from any defects caused by Grantee or its employees or agents for a period of two (2) years from the time the work was completed.

If City elects to alter or change the grade of or otherwise improve any street, alley, public way, public property or public right-of-way, or construct, repair, or reconstruct any sewer, water, or other City owned system therein or thereon for a public purpose, Grantee, upon reasonable notice by City, shall remove, relay, and relocate its Infrastructure at the cost and expense of the Grantee. However, in the event of City's vacation or transfer of any public right-of-way or other public property in which Grantee's Infrastructure is placed to any third-party, such vacation or transfer shall be conditioned upon and subject to Grantee's right to use and occupy such with its Infrastructure, and the Grantee shall be entitled to a permanent easement to maintain such use and occupancy in perpetuity. In the event the City orders Grantee to relocate its Infrastructure for any nonpublic purpose where a vacation or transfer of public right-of-way will not occur, Grantee shall be entitled reimbursement from the City for the reasonable cost of a relocation of Grantee's Infrastructure.

Section 7. Emergency Repairs. It is understood that the work provided by Grantee as authorized in this Franchise involves the health, safety and welfare of the City and that certain emergency circumstances make the prior acquisition of a permit not feasible. In such instances, Grantee may take such immediate unilateral actions as it determines are necessary to protect the public health, safety and welfare; however, Grantee shall notify the City Administrator or City Communication Center of such emergency action as soon as practical.

Section 8. Standard Equipment. Grantee, in the construction, operation and maintenance of the natural gas system in the City, shall use only Infrastructure that meet applicable federal, state, and local construction and safety codes. Grantee shall also use all necessary safety devices to protect City and its residents from injury as required by federal, state and local laws and regulations. The Infrastructure materials used may be subject to City inspection at the option of the City.

Section 9. Construction and Extension of Mains. Subject to the Regulation of the Nebraska Public Service Commission, Grantee shall make such reasonable extensions of its

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mains and shall install services to parties located within City who have requested and received from Grantee approved applications therefore; provided, however, that no obligation shall extend to, or be binding upon Grantee, through no fault of its own, if it is unable to obtain delivery of an adequate supply of natural gas at or near the corporate limits of City to warrant the construction or extension of its mains and Grantee shall notify the City of its inability to furnish any requested service within five (5) business days of its decision; provided, further, that when the amount of natural gas supplied to Grantee at or near the City limits is insufficient to meet the additional firm requirements of connected or new customers, Grantee shall have the right to prescribe reasonable rules and regulations for allocating the available supply of natural gas for such additional firm requirements to domestic, commercial and industrial consumers, in that order of priority. Grantee agrees to conform to its tariffs filed with the Nebraska Public Service Commission as it relates to service line extensions.

Section 10. Grantee Holds City Harmless. It is expressly understood and agreed by and between Grantee and the City of Grand Island that Grantee shall save City harmless, indemnify, and become responsible for any and all claims, demands, losses, judgments, decrees, costs or expenses whatsoever, including reasonable attorneys' fees, which the City may legally suffer and/or incur, or which may be legally obtained against the City, to the extent said claims, demands, losses, judgments, decrees, costs or expenses accrue or result from the use and/or occupation of any street, alley, avenue or other public place in the City by Grantee pursuant to the terms of this Franchise, or which legally result or accrue from the exercise by Grantee of the privileges granted by this Franchise to Grantee; provided, however, that Grantee need not save harmless the City from claims, demands, losses, expenses and liabilities arising solely out of the negligence of City, its employees or agents.

Section 11. Acceptance of Franchise. Within thirty (30) days after the passage of this Ordinance: (a) Grantee shall prepare and file a written acceptance of this Ordinance with the City Clerk; and (b) the City shall furnish a certified copy of the Ordinance to the Grantee and the Grantee shall file the certified copy of the Ordinance with the Nebraska Public Service Commission. Failure of Grantee to so accept this Ordinance within said period of time shall be deemed a rejection thereof by Grantee and the rights and privileges herein granted shall after the expiration of said period of thirty (30) days, if not so accepted, absolutely cease and terminate, unless said period of time shall be extended by further Ordinance duly passed for that purpose.

Section 12. Inspection of Records. For the purpose of affording City the opportunity to enforce and collect any and all fees, taxes or other assessments imposed by City, Grantee shall provide all reasonable requested data and information necessary to ascertain or verify correctness and accuracy of all such fees and taxes paid. Grantee shall further permit City to inspect and audit during regular business hours, the relevant books and records kept by Grantee in the ordinary course of business.

Section 13. Municipal Regulations.

1. **Municipal Rules.** The right is hereby reserved to City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as may be necessary in the exercise of the police power, or any other

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statutory authority, provided such regulations, by ordinance or otherwise shall not be in conflict with the laws of the State of Nebraska.

Grantee shall, at all times during the life of the Grant of Authority, be subject to the lawful exercise of the police power by City and all reasonable regulations which may now or hereafter be prescribed in ordinance or resolution with respect to the use of public streets, alleys, avenues, or other public places in the City.

2. Inspection. City shall have the right to inspect all construction and installation work performed subject to the provisions of the ordinance as it shall find necessary to insure compliance with governing ordinances.

Section 14. Rates Made Public. Upon request of City, Grantee shall make available to the public in the office of the City Clerk of the City a current copy of the tariffs, including rates and terms and conditions of service, as filed with the Nebraska Public Service Commission. In addition, Grantee shall maintain a current copy of the tariffs, including rates and terms and conditions of service, as filed with the Nebraska Public Service Commission, in its office in the City.

Section 15. Transferability. This Franchise and the rights created hereby are specific to Grantee and may not be assigned, transferred or any interest herein otherwise disposed of without the prior written consent of the City Council of the City, with the City to have ninety (90) days to review any proposed assignment, except in cases involving a reorganization or change of control (as defined by the Act) approved by the Nebraska Public Service Commission.

Section 16. Breach/Revocation/Termination. If Grantee or City fails to fulfill any of their respective obligations under this Franchise, the City or the Grantee, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without the action necessary to formally amend the Franchise.

If the Grantee fails to perform any of the terms of this Franchise, the rights under this Franchise may be revoked by the City after giving written notice specifying the provision(s) claimed to be in default and allowing ninety (90) days for the Grantee to fully comply with the terms of this Franchise, and after a finding supporting such breach following a public hearing before the City Council.

Section 17. Occupation Tax. Grantee shall be required and, by acceptance of this Franchise, does agree to pay an occupation tax to the City as specified by Article I, "Natural Gas Companies", Sections 23-1 through 23-9 of the Grand Island City Code, as may be amended from time to time, so long as imposition of such tax is allowed under state law, or in the event of the replacement of such occupation tax with another form of franchise tax, to pay such franchise tax to the City, upon adoption of the City of an appropriate ordinance to impose such tax.

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Section 18. Grantees' Duties. Grantee shall maintain a local office within the corporate limits of the City during the term of this Franchise. Grantee agrees to respond to any emergencies within one (1) hour of notification for the protection of the public safety. All employees of the Grantee in working with the public and citizens of Grand Island outside of Grantee's facilities shall have on their person either a uniform issued by Grantee that clearly indicates that they are an employee of the Grantee or a clearly recognizable identification badge issued by the Grantee showing the name of the employee and their identification reflecting that they are an employee of the Grantee.

Section 19. Invalidity. If any term of this Franchise or its application to any circumstances is held invalid, or the ability to collect an occupation tax is repealed, the City shall have the option of either:

1. declaring the Franchise to continue in force as modified by deletion of the invalid provisions; or
2. terminating the Franchise.

City shall exercise such option by written notice to Grantee given within sixty (60) days of finality of the court proceedings, including any appeal thereof, in which the determination of invalidity was made.

Section 20. No Waiver. Failure of either the City or the Grantee to seek compliance by the other to any of the terms of this Franchise shall not be considered a waiver of that term and the non-complying party shall not be excused from complying with the term.

Section 21. Notices. All notices from Grantee to the City pursuant to or concerning this Franchise shall be delivered to the City Clerk, 100 East First Street, P.O. Box 1968, Grand Island, NE 68802-1968. All notices from the City to Grantee pursuant to or concerning this Franchise shall be delivered to the Operations Manager at Grantee's local office in the City, 515 W. Third Street, Grand Island, NE 68801, with a copy delivered to: Corporate Counsel/Regulatory Affairs, 3010 West 69th Street, Sioux Falls, SD 57108.

Section 22. Compliance with Laws. Grantee agrees to conduct its business under the terms of this Franchise in such a manner that it does not violate any federal, state or local laws or regulations applicable to the conduct of its operations under the terms of this Franchise agreement ordinance. This Ordinance shall be construed in accordance with the laws of the State of Nebraska.

Section 23. Repealer. To repeal Ordinance No. 6873 and all other ordinances and resolutions or part of ordinances and resolutions in conflict herewith are also hereby repealed.

Section 24. Effective Date. This Ordinance shall constitute a binding contract between the City of Grand Island, Nebraska and NorthWestern Corporation, doing business as NorthWestern Energy, as approved by the City, and shall be in full force and take effect (after acceptance by Grantee in accordance with the provisions of Section 11 above) upon passage,

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approval, publication and filing with the Nebraska Public Service Commission, in accordance with Nebraska law, unless it is determined by the Commission to be contrary to the provision of the Act. This Ordinance shall be published in pamphlet form by the authority of the Mayor and Council.

PASSED AND APPROVED THIS 24th DAY OF MARCH, 2009.

Margaret Hornady, Mayor

ATTEST:

RaNae Edwards, City Clerk