

ORDINANCE NO. 512

AN ORDINANCE GRANTING A FRANCHISE BY THE TOWN OF HOLLY, COUNTY OF PROWERS, COLORADO, TO ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO FURNISH, SELL AND DISTRIBUTE GAS TO THE TOWN AND TO ALL PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE TOWN AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID TOWN ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL AND DISTRIBUTE GAS TO THE TOWN AND TO ALL PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE TOWN AND IN THE TERRITORY ADJACENT THERETO AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AS MAY BE NECESSARY, AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE BOARD OF THE TOWN OF HOLLY, PROWERS COUNTY, COLORADO:

ARTICLE I

Definitions

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

1.1 "Council" or "City Council" refers to and is the legislative body of the Town of Holly.

1.2 "Company" refers to and is Atmos Energy Corporation, a Texas and Virginia corporation, and its successors and assigns.

1.3 "Distribution Facilities" refer to and are only those facilities reasonably necessary to provide gas within the Town.

1.4 "Facilities" refer to and are all facilities reasonably necessary to provide gas into, within and through the Town and include plants, works, systems, lines, equipment, pipes, mains, underground links, gas compressors and meters.

1.5 "Gas" or "Natural Gas" refers to and is such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured, or any mixture thereof.

1.6 "PUC" refers to and is The Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory Powers of The Public Utilities Commission of the State of Colorado.

1.7 "Revenues" refer to and are those amounts of money which the Company receives from its customers within the Town for the sale of gas under rates, temporary or permanent, authorized by the PUC and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

1.8 "Streets and Other Public Places" refer to and are streets, alleys, viaducts, bridges, roads, lanes, easements, public ways and other public places in said Town.

1.9 "Town" refers to and is the Town of Holly, Prowers County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the Town of Holly.

ARTICLE II

Grant of Franchise

2.1 Grant of Franchise. The Town hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Ordinance, the right to furnish, transport, sell and distribute gas to the Town and to all persons, businesses and industries within the Town, the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to provide gas to the Town and to all persons, businesses and industries within the Town and in the territory adjacent thereto; and the right to make reasonable use of all streets and other public places as may be necessary to carry out the terms of the Ordinance.

2.2 Terms of Franchise. The term of this franchise shall be for twenty years beginning June 01, 2016, and expiring May 31, 2036.

ARTICLE III

Franchise Fee

3.1 Franchise Fee. In consideration for the grant of this franchise, the Company shall collect and remit to the Town a sum equal to five percent (5%) of the revenues derived annually from the sale of gas within the Town, excluding the amount received from the Town itself for gas service furnished it. Franchise Fee payments shall be made in quarterly installments not more than thirty days following the close of the month for which payment is to be made. Quarters shall end on March 31, June 30, September 30, and December 31. Payments at the beginning and end of the franchise shall be prorated.

3.2 Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax, assessment or excise upon the pipes, mains, meters or other personal property of the Company or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its real property or any other tax not related to the franchise or the physical operation thereof.

3.3 Change of Franchise Fee: Once during each calendar year of the franchise, the Town Board, upon giving 30 days' notice to the Company, may review and change the franchise fee that the Town may be entitled to receive as a part of the franchise; provided, however, that the Council may only change the franchise fee amount such as to cause the Town to receive a franchise fee under this franchise equivalent to the franchise fee that the Company may pay to any other city or town in any other franchise under which the Company renders gas service in Colorado.

ARTICLE IV

Conduct of Business

4.1 Conduct of Business. The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State of Colorado.

4.2 Tariffs on File. The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the PUC. Said tariffs shall be available for inspection by the public.

4.3 Compliance with PUC Regulations. The Company shall comply with all rules and regulations adopted by the PUC.

4.4 Compliance with Company Tariffs. The Company shall furnish gas within the Town to the Town and to all persons, businesses and industries within the Town at the rates and under the terms and conditions set forth in its tariffs on file with the PUC.

4.5 Applicability of Company Tariffs. The Town and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the PUC are controlling over any inconsistent provision in this franchise dealing with the same subject matter.

ARTICLE V

Construction, Installation & Operation of Company Facilities

5.1 Location of Facilities. Company facilities shall not unreasonably interfere with the Town's water mains, sewer mains or other municipal use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition.

5.2 Excavation and Construction. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner that minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable state and federal codes. All public and private property whose use conforms to restrictions in easements disturbed by Company construction or excavation activities shall be restored as soon as practicable by the Company at its expense to substantially its former condition. The Company shall comply with the Town's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The Town reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time after notice from the Town.

5.3 Relocation of Company Facilities. If at any time the Town requests the Company to relocate any distribution gas main or service connection installed or maintained in streets or other public places in order to permit the Town to change street grades, pavements, sewers, water mains or other Town works, such relocation shall be made by the Company at its expense. The Company is not obligated hereunder to relocate any facilities at its expense, which were installed in private easements obtained by the Company, the underlying fee of which was, at some point subsequent to installation, transferred to the Town. Following relocation, the Company, at its expense, shall restore all property to substantially its former condition.

5.4 Service to New Areas. If during the term of this franchise the boundaries of the Town are expanded, the Town will promptly notify Atmos in writing of any geographic areas annexed by the Town during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Atmos by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Atmos may reasonably require in order to ascertain whether there exist any customers of Atmos receiving natural gas service in said annexed area. To the extent there are such Atmos customers therein, then the gross revenues of Atmos derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Atmos' billing cycle immediately following Atmos' receipt of the Annexation Notice. The failure by the Town to advise Atmos in writing through proper Annexation Notice of any geographic areas which are annexed by the Town shall relieve Atmos from any obligation to remit any franchise fees to Town based upon gross revenues derived by Atmos from the sale and distribution of natural gas to customers within the annexed area until

Town delivers an Annexation Notice to Atmos in accordance with the terms hereof.

5.5 Restoration of Service. In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

5.6 Supply and Quality of Service. The Company shall make available an adequate supply of gas to provide service in the Town. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient gas service to the Town.

5.7 Safety Regulations by the Town. The Town reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein. The Company agrees to comply with all such regulations, in the construction, maintenance and operation of its facilities and in the provision of gas within the Town.

5.8 Inspection, Audit and Quality Control. The Town shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the Town and its residents. The Town also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Ordinance at all reasonable times. The Company agrees to cooperate with the Town in conducting the inspection and/or audit and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner.

ARTICLE VI
Assignment; Saving Clause

6.1 Assignment. Nothing in this Ordinance shall prevent the Company from assigning its rights under this franchise.

6.2 Saving Clause. If a court of competent jurisdiction declares any portion of this franchise to be illegal or void, the remainder of the Ordinance shall survive and not be affected thereby.

ARTICLE VII
Force Majeure

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Company is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Company is so prevented shall not be counted against Company for any reason. The term "force majeure," as used herein, shall mean any cause not reasonably within Company control and includes, but is not limited to, acts of God, strikes, lockouts, wars, terrorism, riots, orders, or decrees of any lawfully constituted federal, state or local body; contagions or contaminations hazardous to human life or health; fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe; inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits; temporary failures of gas supply; or necessary repair, maintenance or replacement of facilities used in the performance of the obligations contained in this Ordinance.

INTRODUCED, READ AND ORDERED PUBLISHED THE 13 DAY OF April, 2016.
PASSED, ADOPTED AND APPROVED THIS 4 DAY OF May, 2016.

THE TOWN OF HOLLY, COLORADO

By: Anthony Garcia
Anthony Garcia, Mayor

ATTEST:

Megan Jara
Megan Jara, Town Clerk/Treasurer

DATE OF FINAL PUBLICATION: May 4, 2016.

ACCEPTED AND AGREED TO:
ATMOS ENERGY CORPORATION

By: Gary W. Gregory
Gary W. Gregory
President (Colorado-Kansas Division)

TOWN OF HOLLY
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