

ORDINANCE NO: 2002-4 -A

AN ORDINANCE GRANTING TO TXU GAS DISTRIBUTION, A DIVISION OF TXU GAS COMPANY, A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF CUMBY, HOPKINS COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF CUMBY, TEXAS:

SECTION 1. GRANT OF AUTHORITY: The City of Cumby, Texas, hereinafter called "City," hereby grants to TXU Gas Distribution, a division of TXU Gas Company, hereinafter called "Company," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public places, public thoroughfares, and grounds of City, hereinafter referred to as "Public Rights-of-Way," for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment to deliver, transport, and distribute gas in, out of, and through City for persons, firms, and corporations, including all the general public, and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for a term ending June 30, 2022.

SECTION 2. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION OF COMPANY FACILITIES: Company shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment to minimize interference with traffic and shall promptly clean up and restore to approximate original condition all Public Rights-of-Way that it may disturb. When Company makes, or causes to be made, excavations, or places, or causes to be placed, obstructions in any Public Rights-of-Way, Company shall place, erect, and maintain barriers and lights to identify the location of such excavations or obstructions. In determining the location of Company's pipeline within City, Company shall minimize interference with then existing underground structures of City or other utility franchisees. Likewise, in determining the location of the facilities of the City and other utility franchisees within City, City shall minimize interference with then existing facilities of Company and shall require other utility franchisees to minimize interference with existing facilities of Company. In the event of a conflict between the location of the facilities of Company and the location of the facilities of City or other utility

franchisees within Public Rights-of-Way that cannot otherwise be resolved, City or an authorized agent of City shall resolve the conflict and determine the location of the respective facilities. Company shall not be required to obtain street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with Company's operations in Public Rights-of-Way.

When the Company is required by City to remove or relocate its mains, laterals, and other facilities to accommodate construction of streets and alleys by City, and Company is eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Company as a result of such removal or relocation, and such reimbursement is required to be handled through City, Company costs and expenses shall be included in any application by City for reimbursement, if Company submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable notice to Company of the deadline for Company to submit documentation of the costs and expenses of such relocation to City. If the Company is required by City to remove or relocate its mains, laterals, or other facilities for any reason other than the construction of streets and alleys by City, Company shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation. When Company is required to remove or relocate its mains, laterals or other facilities to accommodate construction of streets or alleys by City without reimbursement from City, Company shall have the right to seek a surcharge to recover relocation costs pursuant to Section 104.112 et al, of the Texas Utilities Code.

If City abandons any Public Right-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 3. INDEMNITY & INSURANCE: In the event of injury to any person or damage to any property by reason of Company's construction, operation, maintenance, or replacement of Company's pipeline system within Public Rights-of-Way, Company shall indemnify and keep harmless City from any

and all liability in connection therewith, except to the extent such injury or damage is attributable to City's negligent act or omission. Company's insurance of its obligations and risks undertaken pursuant to this franchise may be in the form of self-insurance to the extent permitted by applicable law, under a Company approved formal plan of self-insurance maintained in accordance with sound accounting and risk-management practices.

SECTION 4. RATES, INSTALLATION CHARGES, DEPOSITS AND OTHER COMPANY CHARGES: Company shall be entitled to require from each and every customer of gas, before gas service is commenced or reinstated, a deposit in an amount calculated pursuant to the Company's Quality of Service Rules as may be in effect during the term of this franchise. Said deposit shall be retained and refunded in accordance with such Quality of Service Rules and shall bear interest, as provided in Tex. Rev. Civ. Stat. Ann. art. 1440a as it may be amended from time to time. Company shall be entitled to apply said deposit, with accrued interest, to any indebtedness owed Company by the customer making the deposit.

In addition to the rates charged for gas supplied, Company may make and enforce reasonable charges, rules and regulations for service rendered in the conduct of its business, including a charge for services rendered in the inauguration of natural gas service. Company may require, before furnishing service, the execution of a contract for such service. Company shall have the right to contract with each customer with reference to the installation of, and payment for, any and all of the gas piping from the connection thereof with the Company's main in the Public Rights-of-Way to and throughout the customer's premises. Company shall own, operate and maintain all service lines, which are defined as the supply lines extending from the Company's main to the customer's meter where gas is measured by Company. The customer shall own, operate, and maintain all yard lines and house piping. Yard lines are defined as the supply lines extending from the point of connection with Company's customer meter to the point of connection with customer's house piping.

SECTION 5. EXTENSIONS FOR RESIDENTIAL CUSTOMERS: Company shall be required to extend distribution mains in any Public Rights-of-Way up to one hundred feet (100') for any one residential customer only if such customer, at a minimum, uses gas for unsupplemented space heating and water heating. Company shall not be required to extend transmission mains in any Public Rights-of-Way within City or to make a tap on any transmission main within City unless Company agrees to such extension by a written agreement between Company and a customer.

SECTION 6. NON-EXCLUSIVE FRANCHISE: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for City and the inhabitants thereof.

SECTION 7. PAYMENTS TO CITY: Company, its successors and assigns, agrees to pay and City agrees to accept, on or before the 1st day of November, 2002, and on or before the same day of each succeeding year during the life of this franchise the last payment being made on the 1st day of November, 2021, a sum of money which shall be equivalent to three percent (3 %) of the gross revenues received by Company from the sale of gas to its residential and commercial customers within the corporate limits of said City (expressly excluding revenues from governmental accounts and revenues from other classes of customers in said City) during the preceding calendar year, which annual payments shall be for the rights and privileges herein granted to Company, including expressly, without limitation, the right to use the Public Rights-of-Way of City. It is expressly agreed that gross revenues exclude (1) taxes imposed by law on customers that the Company is obligated to collect and which the Company passes on, in full, to the applicable tax authority or authorities; (2) any investment income earned by the Company; (3) other revenue of the Company derived from the lawful charges to connect gas within the City; to disconnect gas service within the City; to handle returned checks from customers within the City and such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City, and (4) uncollected accounts.

The initial payment for the rights and privileges herein provided shall be for the period January 1 through December 31, 2002, and each succeeding payment shall be for the calendar year in which the payment is made. And it is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Company or Company's agents, excepting only the usual general or special ad valorem taxes which City is authorized to levy and impose upon real and personal property. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy

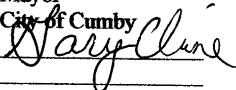
Company's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

Company agrees that on the same date that payments are made, as provided in this Section 8, it will file with the City Secretary a report showing the gross revenues received by the Company from the sale of gas to its residential and commercial customers within City during the calendar year preceding the date of payment. City may, if it sees fit, have the books and records of Company examined by a representative of City to ascertain the correctness of the reports agreed to be filed herein.

SECTION 8. ACCEPTANCE OF FRANCHISE: In order to accept this franchise, Company must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Company, the franchise ordinance shall be rendered null and void.

When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Company shall be automatically canceled and annulled, and shall be of no further force and effect.

SECTION 9. NOTICES. Any notices required or desired to be given from one party to the other party to this ordinance shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY
Mayor
City of Cumby


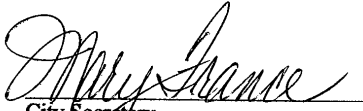
COMPANY
Town Manager
TXU Gas Distribution

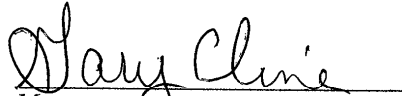
SECTION 10. PARAGRAPH HEADINGS. CONSTRUCTION: The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 11. EFFECTIVE DATE: If Company accepts this ordinance, by the filing of its written acceptance, this ordinance shall become effective on June 8, 2002.

PASSED AND APPROVED on this the 2nd day of April, A.D. 2002.

ATTEST:

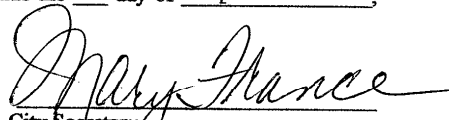

City Secretary


Mayor
City of Cumby, Texas

STATE OF TEXAS §
COUNTY OF HOPKINS §
CITY OF CUMBY §

I, Mary France, City Secretary of the City of Cumby, Hopkins County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Commission of the City of Cumby, Texas, at a regular session, held on the 2nd day of April, 2002, as it appears of record in the Minutes in Book _____, page _____.

WITNESS MY HAND AND SEAL OF SAID CITY, this the 2nd day of April, A. D. 2002.


City Secretary
City of Cumby, Texas