

BE IT ORDAINED BY THE MAYOR AND THE CITY COMMISSION
OF THE CITY OF HURON, SOUTH DAKOTA

ORDINANCE NO. 2223-5-131

AN ORDINANCE OF THE CITY OF HURON, BEADLE COUNTY, SOUTH DAKOTA GRANTING NORTHWESTERN CORPORATION, A DELAWARE CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY AND ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE, RIGHT AND PRIVILEGE FOR A PERIOD OF TWENTY (20) YEARS TO ERECT, MAINTAIN AND OPERATE A GAS DISTRIBUTION SYSTEM AND ANY AND ALL NECESSARY PIPES, MAINS, SERVICES AND ALL OTHER APPLIANCES THEREUNTO APPERTAINING IN, UPON, OVER, ACROSS AND ALONG THE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF HURON, SOUTH DAKOTA, AS THE SAME NOW ARE OR MAY HEREAFTER BE EXTENDED, FOR THE DISTRIBUTION AND SALE OF GAS, WHETHER ARTIFICIAL, NATURAL OR OTHERWISE, FOR COOKING, HEATING, INDUSTRIAL AND ALL OTHER USES AND PURPOSES IN THE CITY OF HURON, SOUTH DAKOTA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE IS TO OPERATE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE, AND PUBLICATION THEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF HURON, SOUTH DAKOTA:

Section 1.01. Definitions. As used in this Ordinance, the following words or phrases shall have the following meanings:

- A. "Consumer" shall mean any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality, public corporation and any other legal or non-legal entity served by the Franchisee.
- B. "Distribution System" shall mean a system of works, pipes, pipelines, apparatus, machinery, structures, appliances or fixtures, and appurtenances, which in any way relate to or are reasonably necessary for the distribution of natural gas by the Franchisee to Consumers.
- C. "Franchise" shall mean the rights and privileges granted by City to Franchisee under this Ordinance.
- D. "Franchisee" shall mean NorthWestern Corporation, a Delaware corporation, doing business as NorthWestern Energy, its successors and assigns.
- E. "City" shall mean the City of Huron, South Dakota and includes the area within the corporate limits of the City, as the same now exists or as may be extended from time to time.
- F. "Install, operate and maintain" shall mean to acquire, erect, construct, install, extend, repair, remove, relocate, replace, or otherwise operate and maintain.

- G. "Public Ways" shall mean any street, alley, avenue, boulevard, lane, park, parkway, sidewalk, driveway, utility easement, right of way, and any other public ways, places, areas, or grounds within the boundary limits of the City as now constituted or may be added hereafter.
- H. The terms "Franchise Agreement" and "Ordinance" as found herein shall be fully interchangeable in meaning.
- I. The terms "gas" and "natural gas" as found herein shall be fully interchangeable in meaning.
- J. The term "South Dakota Natural Gas Tariff" as found herein means Franchisee's South Dakota Gas Rate Schedule filed with the South Dakota Public Utilities Commission.

Section 1.02. Franchise Granted. Franchisee is hereby granted a non-exclusive franchise, right and privilege for a period of twenty (20) years to install, operate and maintain a gas Distribution System in, upon, over, across, and along the Public Ways, as the same now are or may hereafter be extended for the distribution and sale of gas, whether artificial, natural or otherwise, for cooking, heating, industrial, and all other uses and purposes.

Section 1.03. Franchisee's Agreement to Serve. Franchisee agrees, that for and during the term and period of this Franchise Agreement, it will maintain in the City an adequate, standard and sufficient Distribution System and equipment and maintain and operate the same in a manner to meet the necessities and requirements of the City, its industries and inhabitants. Franchisee, on behalf of itself, its successors and assigns, will be deemed to have accepted the terms and conditions of this franchise by supplying service to any customer within the City limits after the effective date of this ordinance. Notwithstanding the foregoing, Franchisee does not guarantee uninterrupted or undisturbed service of gas, and is not liable for causes beyond its reasonable control.

Section 1.04. Changes to Physical Plant. Extension of Service. Franchisee shall and hereby agrees to make such reasonable extensions of the Distribution System as may be reasonably required to furnish service to parties making application therefor located within the corporate limits of the City.

Franchisee shall not be required to make any such extensions of the Distribution System nor install service lines for the purpose of serving any new customer or customers where the estimated revenue to be derived from such service is not sufficient to provide an adequate return upon the investment (after recognizing any customer contribution-in-aid of construction) required to serve such customer or customers. All extensions of the Distribution System shall be made in compliance with the South Dakota Natural Gas Tariff.

Section 1.05. Non-Duplication of Distribution Facilities. To minimize risk to the citizens of Huron and to avoid unnecessary duplication of natural gas facilities within the City, Franchisee shall not construct distribution facility(ies) to any customer already served

with natural gas, or in, along, under or down any street wherein another gas line already exists, except where service requirement necessitate additional lines.

Section 1.06. Relocation of Utility Facilities. Franchisee shall relocate its facilities or equipment at its own expense whenever the City, in the proper exercise of its police power grades, regrades, changes the line or otherwise improves any Public Way or construct or reconstruct any sewer or water system therein and shall, with due regard to seasonable working conditions, order the Franchisee to relocate permanently its facilities or equipment located in said Public Way. The City shall give Franchisee reasonable notice of plans requiring such relocation.

Section 1.07. Relocation When Street Vacated. City may not order Franchisee to relocate any of its facilities or equipment when a Public Way is vacated unless the reasonable cost of such relocation and the loss and expense resulting from such relocation are first paid to Franchisee. If the facilities are not relocated, the City shall grant the Franchisee a permanent easement prior to the vacation of said public use.

Section 1.08. Restoration of Streets. In doing any work in connection with exercising the privileges herein granted, the Franchisee shall avoid, so far as may be practicable, interfering with the use of any Public Way; where paving or surface of the street is disturbed, the Franchisee shall at its own expense and in a manner reasonably satisfactory to the City Engineer, and in compliance with the City specifications, replace such pavement or surface of the Public Way in as good condition as it was in before such work was commenced.

Section 1.09. Installation of Equipment. Franchisee shall install, maintain and operate the Distribution System to not interfere with or obstruct the use of any water pipes, drains, sewers, or other structures already installed. Further, the Franchisee, agrees to install, operate and maintain all underground piping according to current industry standards, and all applicable codes, rules, regulations, statutes, and orders of local, state and federal agencies having authority in such matters.

Section 1.10. Installation and Ownership of Service Lines. Franchisee shall, at its own expense, furnish and install service pipe of suitable capacity to the Consumer's point of delivery herein defined as the inlet side of the first connection with Consumer's premises, or the outlet side of the meter if located beside, within, or attached to, the premises. Service lines or gas main extensions may be subject to a Contribution in Aid of Construction in accordance with the South Dakota Natural Gas Tariff. Ownership of all service lines shall remain with Franchisee.

Section 1.11. Allocation of Gas Supplies. In the event of a shortage in the supply of natural gas for any reason beyond the control of Franchisee, it will allocate the available gas in a manner to conform to the general interest of the public, as required by applicable laws and regulations.

Section 1.12. Insurance Requirements. Franchisee shall be self-insured and/or maintain commercially reasonable insurance coverage of foreseen and unforeseen risks

including, but not limited to, the following types: Workers' Compensation; Automotive Liability; Comprehensive General Liability including contractual liability, explosion, collapse and underground, personal injury, products and completed operations, owner and contractors protective; and umbrella liability. Upon request, Franchisee shall deliver to City proof of insurance coverage.

Section 1.13. Hold Harmless Clause. Franchisee shall at all times protect, indemnify and save harmless the City from and against all claims and demands and from any and all loss, expense and liability arising out of the construction, installation, maintenance, presence of the Distribution System, and all of the operations included in the Franchise Agreement as operated by Franchisee herein, except such as arises as a result of the intentional conduct or the negligence of the City, its officers, employees, or agents.

Section 1.14. Municipal Authority. Franchisee agrees that all authority and rights in this Ordinance contained, shall at all times be subject to all rights, power and authority now or hereafter possessed by said City, to regulate and control and direct or otherwise by ordinance or resolution legislate concerning the exercise of the franchise herein granted and concerning the manner in which the Franchisee shall use the Public Way.

Section 1.15. Interpretation of Law. This Franchise Agreement shall be deemed to have to have made and shall be construed and interpreted in accordance with the laws of the State of South Dakota.

Section 1.16. Captions. Captions and other headings contained in this Franchise Agreement are for reference and identification purposes only and in no way alter, modify, amend, limit or restrict the contractual obligation of the parties hereto.

Section 1.17. Compliance with Laws. Franchisee agrees to conduct its business under the terms of this Ordinance 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.

Section 1.18. Validity of Franchise. If any section, subsection, sentence, clause, phrase or portion of this Franchise Agreement shall for any reason be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

All ordinance or parts of ordinances in conflict herewith are hereby repealed.

This ordinance shall be in full force and effect from and after its final passage, approval and publication in pamphlet form as provided by law.

Moved by Doug Kludt, seconded by Rich Bragg to approve the 2nd Reading of Ordinance No. 2223-5-131 this 26th day of April, 2021. FOR: Bryan Smith, Doug Kludt, Rich Bragg, Mark Robish, and Gary Harrington. CARRIED.

ATTEST:

Paullyn Carey, City Finance Director

Gary Harrington, Mayor

First reading: April 19, 2021

Second reading: April 26, 2021

Published: May 5, 2021