

ORDINANCE NO. 1761

CITY OF LEXINGTON, NEBRASKA

Effective September 28, 1984

CITY OF LEXINGTON, NEBRASKA
ORDINANCE NO. 1761

AN ORDINANCE GRANTING TO K N ENERGY, INC., A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, MAINTAIN AND OPERATE A GAS TRANSMISSION AND DISTRIBUTION SYSTEM, INCLUDING MAINS, PIPES, CONDUITS, SERVICES AND OTHER STRUCTURES, IN, UNDER, UPON, OVER, ACROSS AND ALONG THE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES WITHIN THE PRESENT AND FUTURE CORPORATE LIMITS OF THE CITY OF LEXINGTON FOR THE FURNISHING, TRANSMISSION, DISTRIBUTION AND SALE OF GAS WHETHER ARTIFICIAL, NATURAL, MIXED OR OTHERWISE FOR LIGHTING, HEATING, DOMESTIC, INDUSTRIAL AND OTHER USES IN SAID CITY AND ELSEWHERE, LIMITING THE TERM OF SAID GRANT, PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID COMPANY MAY OPERATE, AND REPEALING ORDINANCE NO. 1404.

BE IT ORDAINED BY THE MAYOR AND COUNCIL
OF THE CITY OF LEXINGTON, NEBRASKA

SECTION 1. That in consideration of the benefits to be derived by the City of Lexington, Nebraska, hereinafter referred to as municipality, and its inhabitants from the construction and operation of a gas transmission and distribution system in said municipality there be and hereby are granted to K N Energy, Inc., a corporation, its successors and assigns, hereinafter collectively referred to as "Grantee," the right, permission and authority to construct, maintain and operate a gas transmission and distribution system within the limits of said municipality, as the same now exists or may hereafter be extended for a period of twenty-five (25) years from and after January 1, 1984 and for said purpose there are hereby further granted to Grantee the right, permission and authority during said period to lay, install, construct, maintain and operate in, under, upon, over, across and along all of the streets, alleys, bridges and public places within the present and future corporate limits of said municipality all mains, pipes, services, conduits and structures necessary or convenient for the furnishing, transmission, distribution and sale of gas whether artificial, natural, mixed or otherwise for lighting, heating, domestic, industrial and other uses, and for transmitting such gas into, through or beyond the limits of said municipality to other cities, villages and customers.

SECTION 2. That all mains, services, and pipes laid or installed under this grant shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers or other structures already installed, and all such mains, services and pipes shall be installed subject to approval of the City Manager, his agent, or other authorized representatives of said municipality.

Grantee, in doing any work in connection with said mains, pipes and services shall avoid, so far as practicable, interfering with the use of any street, alley or public place, and where the paving or surface of any street, alley or public place is disturbed, Grantee at its own expense and in a manner satisfactory to the authorized representatives of said municipality shall replace such paving or surface in as good condition as before such work was commenced.

In event that at any time hereafter said municipality shall lawfully elect to change or alter the grade of any street, alley or public place, or to construct new or additional water or sewer lines, Grantee, upon being directed by resolution of the Mayor and Council of said municipality so to do, shall where the same becomes necessary by reason of said change of grade or construction of water or sewer lines, move or relay its mains or service pipes; provided, Grantee shall be compensated by municipality for costs incurred by Grantee in moving or relaying its lines or facilities or raising or lowering the same where required by either the construction of new or additional or the replacement of existing water or sewer lines.

SECTION 3. Grantee shall have the right to make all such reasonable rules and regulations in the conduct of its business as it may deem necessary or expedient, including meter deposits in such amounts as may be required to assure payment of bills. Grantee shall make such reasonable extensions of its mains from time to time and shall install service to the curb line where mains are located in a street, and to property line where mains are located in an alley, as may be required to furnish service within said municipality to parties making application therefor; but Grantee shall not be required to make any extension for the purpose of serving any consumer or consumers if Grantee is, for any reason, unable to obtain an adequate supply of gas to warrant the construction of said extension or will require the installation of more than one hundred feet of mains for each consumer to be served, nor where the estimated revenue to be derived from serving such new consumer or consumers is not sufficient to show an adequate return upon the total additional investment required to serve such consumer or consumers.

Whenever the delivery or supply capability of Grantee's system, due to any cause whatsoever not limited to force majeure, is such that Grantee is unable to deliver to consumers served by Grantee the quantity of gas which the consumers require, Grantee shall have the right to prescribe reasonable rules and regulations for allocating the available quantities of gas among such consumers.

SECTION 4. Grantee shall maintain on file with municipality a current schedule of rates as changed from time to time and as approved by the Council for residential and commercial gas service. In the event said schedule of rates becomes insufficient or excessive it shall be revised to rates which are fair and reasonable. Any provision hereof to the contrary notwithstanding, Grantee shall never be required to provide gas service hereunder at rates which are insufficient to provide Grantee with a fair and reasonable return.

SECTION 5. Grantee shall furnish and install for its customers, and at its cost keep in repair reliable meters. Grantee shall, at any time, when requested in writing by the customer, upon the deposit of \$20.00 by the customer, test the accuracy of the meter used by the customer, and if the meter is found to be more than three (3) percent high, Grantee will refund to the customer the \$20.00 deposited and adjust the customer's bill proportionately for the period elapsed since the last previous test, if any, unless the period of inaccuracy can be otherwise determined, but in no case shall such adjustment be made for a period exceeding sixty (60) days immediately preceding such test. In event such meter is found to be not more than three (3) percent high, or to be slow, the \$20.00 deposited shall be retained by Grantee to defray the expense of such test. Whenever at the request of the customer any gas meter is tested by Grantee or any regulatory body having jurisdiction, the meter shall be considered as correct if found to have an average error of not more than three (3) percent, and no adjustment of charges will be made unless the error therein is greater than (3) percent.

SECTION 6. Grantee in the construction of said gas system within the limits of said municipality shall use tested and approved pipes, material and equipment.

SECTION 7. Grantee at all times will keep a map in the office of Grantee or of the Clerk of said municipality, showing the size and location of its mains laid in said distribution system in said municipality. This map will be replaced at the end of each calendar year with a revised map showing new construction for the past calendar year.

SECTION 8. In case the available supply of gas shall at any time fail or become insufficient to supply the needs of the public of said municipality, or should Grantee for any reason be unable to furnish the service herein contemplated, or upon the termination of this franchise for any reason whatsoever, Grantee shall have the right to remove any

and all of its pipe and other equipment or property from said municipality, but in such event Grantee shall restore the streets, alleys and other public places to as good condition as before such removal, and will hold said municipality harmless from damage and expense incident to such removal.

SECTION 9. Grantee shall be required, and by the acceptance hereof agrees, to save harmless said municipality from and against all lawful claims and demands, and from all loss and expense necessarily incurred as a result thereof, arising out of the negligence of Grantee in the construction, removal, replacement, inspection or repair of any mains, pipes, services or appliances of Grantee, or in the use and operation thereof during the term of this Ordinance.

SECTION 10. In consideration of the rights and privileges herein granted, the Grantee shall pay to the City Treasurer an annual payment for each year of the duration of this franchise, an amount equal to two (2) percent of the gross receipts derived by the Grantee from sales of gas delivered to residential (commonly known as domestic) gas users within the City of Lexington as set forth in Grantee's annual report to the Federal Energy Regulatory Commission. Payment shall be made on or before March 1st of each year for the preceding year and shall be accompanied by a statement showing the total amount of the gross receipts upon the basis of which the computation for such payment was made.

Such payment shall be in lieu of any and all other fees, charges, licenses, taxes or assessments which the municipality may impose for the rights and privileges herein granted or for the privilege of doing business within the municipality and, in the event any such fee, charge, license, tax or assessment shall be imposed by the municipality, the payment to be made in accordance with the provisions of this section shall be refunded in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the Grantee. Ad Valorem property taxes imposed generally upon all real and personal property within the municipality shall not be deemed to affect the obligation of the Grantee under this section.

SECTION 11. This Ordinance and the respective rights and obligations of the parties hereunder are subject to all present and future valid governmental legislation or regulation, whether federal or state, of duly constituted authorities which have jurisdiction over this Ordinance, one or both of the parties, or any transaction hereunder.

SECTION 12. This Ordinance and the rights, authority and franchise herein and hereby granted shall terminate and be of no further force and effect

- (a) unless within six (6) months after final passage of this Ordinance Grantee shall file with the Clerk of said municipality a written acceptance hereof; also

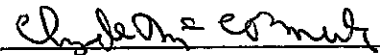
(b) if and when, after such acceptance Grantee shall file with the Clerk of said municipality a surrender hereof in writing.

SECTION 13. Ordinance No. 1404 passed under date of October 28, 1975 accepted by Grantee on October 31, 1975, is hereby repealed and of no further force or effect from and after December 31, 1983.

SECTION 14. Wherever the term "Grantee" is used herein it shall be held to mean and include said K N Energy, Inc., its successors and assigns.

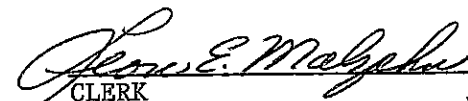
SECTION 15. This Ordinance shall be in full force and effect from and after its final passage and publication as required by law and upon acceptance by Grantee shall be held to constitute a binding contract between said municipality and Grantee, subject to its terms and conditions.

Passed this 28th day of August, 19 84.



Mayor
City of Lexington, Nebraska

ATTEST:



CLERK



(seal)