

ORDINANCE NO. 1110

AN ORDINANCE AMENDING CHAPTER 4.08, EUREKA SPRINGS MUNICIPAL CODE, GRANTING ARKANSAS WESTERN GAS COMPANY OR ITS ASSIGNORS THE RIGHT AND PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A NATURAL GAS SYSTEM AND TO LAY GAS MAINS ALONG THE STREETS, AVENUES, ALLEYS, ROADS AND HIGHWAYS AND OTHER PUBLIC PLACES, FOR THE PURPOSE OF DISTRIBUTING AND SELLING NATURAL GAS AND PROVIDING THE REGULATION FOR THE CONDUCT OF SAID GAS DISTRIBUTION SYSTEM, AND OTHER PURPOSES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS:

Section 1. Section 4.08.01, Eureka Springs Municipal Code, amended.

Section 4.08.01, Eureka Springs Municipal Code, is hereby amended to read, in its entirety, as follows, to-wit:

"4.08.01 Franchise granted to Arkansas Western Gas Company. The City hereby grants to the Arkansas Western Gas Company the exclusive right, privilege and authority within the present and all future expansions of the corporate limits of the City (1) to sell, furnish, transmit and distribute natural gas to all inhabitants and consumers within the said limits; and (2) subject to the terms, conditions and stipulations mentioned in this Chapter, consents and the right, permission and franchise is hereby given to the Arkansas Western Gas Company, a corporation organized and existing pursuant to the laws of the State of Arkansas, Grantee, and to its successors, lessees, and assigns to lay, construct, equip, operate, repair, and maintain a system of gas mains, pipes, conduits, feeders and the appurtenances for the purpose of supplying and distributing natural gas for light, fuel, power, and heat and for any other purpose, to the residents or inhabitants of the said City; and further, the right to lay, construct, operate and maintain a system of gas mains, pipe lines, pipe conduits and feeders and the necessary attachments, connections, fixtures and appurtenances for the purpose of conveying, conducting or distributing natural gas from any point beyond said City limits in order to enable the said Grantee to distribute and sell natural gas to the City and to the residents or inhabitants thereof, and to others. As used in this Chapter, the terms "natural gas" and "gas" shall be defined as including, in addition to natural gas, such alternate, substitute or supplemental fuels as (without necessarily limited to) liquefied natural gas, liquefied petroleum gas, synthetic natural gas and propane-air."

Section 2. Section 4.08.07, Eureka Springs Municipal Code, amended.

Section 4.08.07, Eureka Springs Municipal Code, is hereby amended to read, in its entirety, as follows, to-wit:

"4.08.07 Natural gas service and rates. Natural gas service shall be provided under the terms and conditions herein specified and pursuant to the rules and regulations of the Arkansas Public Service Commission governing utility service, as well as Grantee's rules and regulations governing natural gas service on file with the Arkansas Public Service Commission and as interpreted and enforced by Grantee. All utility services shall conform with these rules and regulations, as well as any other applicable rules and regulations, federal or state laws, including but not limited to the Arkansas Plumbing Code.

The rates which are to be charged by Grantee for natural gas service hereunder shall be those which are now lawfully approved or prescribed, and as said rates may, from time to time, be lawfully approved or prescribed by the Arkansas Public Service Commission or any successor regulatory authority having jurisdiction thereof.

The Grantee shall have the right to make and enforce as part of the conditions under which it will supply natural gas for heat, power, light, fuel or other purposes as herein provided, all needful rules and regulations not inconsistent with law and the provisions of this franchise."

Section 3. Section 4.08.10, Eureka Springs Municipal Code, amended.

Section 4.08.10, Eureka Springs Municipal Code, is hereby amended to read, in its entirety, as follows, to-wit:

"4.08.10 Franchise tax. During the life of this franchise the Grantee shall pay to Grantor each year a franchise tax in an amount equal to four percent (4%) of the Grantee's revenues before taxes for residential and commercial revenues as paid to the Grantee by residential and commercial customers located within the corporate limits of the City, or \$13,000, whichever is greater. Payments shall be made by the Grantee to the Grantor in quarterly installments and Grantee shall have thirty (30) days after the end of each calendar quarter within which to make such payment. Residential and commercial gas revenues are those revenues so classified pursuant to Grantee's uniform classification standards. Grantor shall have the right to examine and verify, from the records of the Grantee, any data relating to the gross revenues of Grantee from customers on which said franchise tax is due. In the event of a controversy between the Grantor and Grantee as to the amount of gross revenues received by Grantee in the City upon which said tax is due, such controversy shall be referred to the Arkansas Public Service Commission, or such successor regulatory agency which may have jurisdiction over the Grantee, for final determination, and the decision of said Commission shall be binding upon both parties hereto.

"It is expressly agreed and understood by the Grantor and Grantee that the aforesaid payment shall constitute and be considered as complete payment and discharge by the Grantee, its successors and assigns, of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees, improvement districts, special millage taxes, and the general ad valorem taxes) which are now or might in the future be imposed by the Grantor under authority conferred upon the Grantor by law. In the event such other tax or taxes are imposed by Grantor, the obligation of the Grantee set forth in Section 4.08.10 hereof, to pay the franchise taxes annually shall immediately terminate."

Section 4. Section 4.08.11, Eureka Springs Municipal Code, amended.

Section 4.08.11, Eureka Springs Municipal Code, is hereby amended to read, in its entirety, as follows, to-wit:

"4.08.11 Continuation of franchise. This franchise shall take effect and continue and remain in force perpetually as provided in Section 44 of Acts of 1935, No. 324, Acts of the State of Arkansas, as same may be amended from time to time, and upon the written acceptance by the Grantee of the terms and conditions of this franchise."

Section 5. Retention of certain provisions.

Sections 4.08.02, 4.08.03, 4.08.04, 4.08.05, 4.08.06, 4.08.08 and 4.08.09, Eureka Springs Municipal Code, are hereby declared to be unchanged by this Ordinance and are hereby declared to be retained in their present numerical sequence and to be in full force and effect.

Section 6. Repeal.

Section 4.08.12, Eureka Springs Municipal Code, is hereby repealed.

Section 7. Severability.

If any section, paragraph, subdivision, clause, phrase or provision of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional.

Section 8. Emergency.

It is hereby found by the City Council of the City of Eureka Springs, Arkansas, that this Ordinance is essential to the proper protection of the residents and property owners of the City. Therefore, an emergency is declared to exist and the Ordinance being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from the date of its passage, approval and publication according to law.

PASSED AND ORDANED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS,

ARKANSAS, WITH SECTION 8 BEING PASSED SEPARATELY, ON THIS 19th DAY OF December, 1980.

APPROVED:

*Marcile Davis*

Marcile Davis, Mayor

ATTEST:

*John J. (Jack) Muzio, Jr.*  
*By Judith T. Muzio - Deputy Clerk/Treasurer*  
John J. (Jack) Muzio, Jr., Clerk/Treasurer

(SEAL OF THE CITY)

The Arkansas Western Gas Company, a corporation, grantee, hereby accepts the above franchise subject to the terms and conditions therein this 7 day of Jan, 1981.

ARKANSAS WESTERN GAS COMPANY

BY:

*Paul H. Schurman*

President

ATTEST:

*William H. Patton*

Secretary

(SEAL OF THE CORPORATION)