


City Attorney

ORDINANCE NO. 91-3

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF JAMAICA BEACH, TEXAS GRANTING TO SOUTHERN UNION GAS COMPANY, A DIVISION OF SOUTHERN UNION COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, GRANTEE HEREIN FRANCHISE RIGHTS AND PRIVILEGES TO CONSTRUCT, OPERATE AND MAINTAIN IN JAMAICA BEACH, TEXAS, AS NOW OR HEREAFTER CONSTITUTED, WORKS, SYSTEMS AND FACILITIES FOR THE TRANSPORTATION, HANDLING, SALE AND DISTRIBUTION OF GAS IN, OUT OF AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; AND THEREFORE TO USE THE STREETS, AVENUES, EASEMENTS, RIGHTS OF WAY, ALLEYS, HIGHWAYS, SIDEWALKS, BRIDGES AND OTHER STRUCTURES AND MUNICIPAL PLACES AND GROUNDS OF SAID MUNICIPALITY FOR A PERIOD OF (48) YEARS; AND PRESCRIBING IN CONNECTION THEREWITH CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS HEREIN MENTIONED; AND PROVIDING FOR THE PAYMENT TO SAID MUNICIPALITY OF A PERCENTAGE OF CERTAIN REVENUES OF GRANTEE FROM ITS OPERATIONS THEREIN; PROVIDING FOR INDEMNITY BY THE COMPANY OF THE CITY, PROVIDING MISCELLANEOUS PROVISIONS RELATIVE TO THE GRANT OF THIS FRANCHISE; PROVIDING AN OPEN MEETINGS CLAUSE; DECLARING FINDINGS OF FACT; PROVIDING FOR THE ACCEPTANCE HEREOF BY GRANTEE; AND PROVIDING FOR AN EFFECTIVE DATE.

The City of Jamaica Beach, under the terms of this Ordinance, grants to Southern Union Gas Company a franchise to use its public thoroughfares, public easements and other public ways.

Southern Union Gas Company will be engaged in the transporting, handling, sale and distribution of gas within the City and will erect and maintain certain facilities in the public streets, public sidewalks, public bikeways, public alleys, public highways, public easements and other public ways, of the City of Jamaica Beach, Texas, excluding all the reserves and the city park, pursuant to the consent given by the City for the term of years and under the conditions specified in the ordinance granting such consent.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JAMAICA BEACH, TEXAS:

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. Consent of Authority -That the City of Jamaica Beach, Texas, sometimes hereinafter called the "City", hereby grants to and vests in Southern Union Gas Company, a Division of Southern Union Company, a Corporation authorized to transact and transacting business within this State, hereinafter called the "Company", a franchise and the rights, authority, license, power and privilege to maintain, construct, equip, extend, alter, and otherwise establish and operate in the City as now or hereafter constituted, system, works, plants, pipes and all related facilities necessary or appropriate to sell, distribute, convey or otherwise conduct, serve, supply and furnish to the inhabitants of said City and others, and to the City, whenever it may desire to contract therefore, for gas for light, fuel, power, heat and any and all other useful purposes, and the Company is hereby granted passage and right of way in, under, along and across, and the right to occupy and use in any lawful way during the life of this franchise all ways, places, and grounds of the City, including but not limited to streets, avenues, easements, rights of way, alleys, highways, sidewalks, bridges and other structures and municipal places and grounds of said City, both above and beneath the surface of the same, as the same may now or hereafter exist for every and any such service, use, effect, and lawful purpose herein mentioned, during the period and term hereof with the exception of the reserves and the City park. All rights granted hereby shall be subject to the terms, conditions, and stipulations set forth in this Ordinance. This franchise and right to use and occupy said public thoroughfares, public easements and other public ways of the City shall not be exclusive and the City reserves the right to grant a similar

use or franchise to any person or any corporation at any time during the term of this ordinance.

SECTION 3. Location of Facilities -The Company is hereby authorized, licensed and empowered to do any and all things necessary or appropriate to be done in exercising these franchise rights and privileges, provided such exercise does not conflict with water pipes, bulk-heads, sewers or other authorized pre-existing installations, and that all work done in said ways, places and grounds by the Company shall be done with reasonable diligence and without unnecessary inconvenience to the public or individuals, and the Company shall within the shortest practicable time, restore all places excavated by it to their original condition as nearly as practicable. The location and route of all new Company facilities shall be subject to the reasonable and proper regulation, control and direction of the City Administrator or any city officials to whom such duties have been delegated. All facilities of the Company shall be located so that they do not interfere with the flow of water in any gutter or drain or with any other city facilities. All above ground equipment will be provided with shut off valves, if in the event it is necessary to discontinue service in an emergency or during the normal course of business.

SECTION 4. Company's Rules -The Company may make from time to time and enforce reasonable rules and regulations for the conduct of its business and may require, as a condition to the commencement or continuation of its service, the execution of a contract therefore by the consumer of such gas.

SECTION 5. Streets to be Restored in Good Condition -

(A) The Company's undertakings in the City shall be subject to its ability, by use of due diligence and normal business methods, to obtain and place in service the necessary materials and facilities. Moreover, the Company shall be excused from failure or delay in performing such obligations if and to the extent occasioned by act of God, fire, explosion, flood, act of a public enemy, contagion or contamination hazardous to human life or health, legal restraints, labor difficulties, material shortages, interruption or deficiency of gas supply not attributable to default of the Company or, without

limitations any other cause or combination of causes not reasonably within the Company's ability to anticipate or control, but only for so long as such cause(s) shall be operative and the adverse effects thereof not overcome. Provided, however, the Company shall comply with all reasonable rules and regulations of the City relative to street excavations. No city street will be cut, however, without written consent from the city, except in an emergency. Where permits are required, the Company shall not be required to pay any fee to obtain any such permit. Any and all public thoroughfares, public easements and other public ways and, without limitation by the foregoing enumeration, other public property disturbed by the Company in building, constructing, renewing, maintaining or removing its facilities shall be restored, using the City's standards, within a reasonable time after completion of the work, to as good condition as before the commencement of the work, to the reasonable satisfaction of the City Administrator, or of any other city official to whom such duties have been delegated. For one year after such restoration, the Company shall be responsible for all maintenance incurred as a result of any defect, impairment or substandard condition in the public thoroughfares, easements or ways caused by construction, maintenance or restoration work of the Company, including the cost thereof. No public thoroughfare easement or way shall be necessary to execute the work. The Company's operations hereunder shall be in compliance with, and subject to, provisions of law and of rules, regulations and orders, of duly constituted authorities having jurisdiction, promulgated from time to time, and the Company shall not be obligated to challenge the validity of applicability thereof.

(B) The Company and City shall mutually cooperate and coordinate

all construction projects, especially those involving excavation, to effect economies of scale and in such a manner that damage to the parties facilities is avoided. Except in the case of an emergency, Company and City shall notify one another at least fourteen (14) days in advance of any construction, reconstruction or maintenance to give the parties the opportunity to review site plans and specifications for construction. The Company and City each agree to make a

reasonable inquiry of the other regarding location of the other's facilities prior to initiating any excavation work.

SECTION 6. Aboveground Facilities -In order to insure environmental protection, all major aboveground additional installations of the Company shall be first approved by the City Council or its designated agency. If the City fails to take action within two weeks after the Company has requested City approval, the proposed aboveground additional installation shall be deemed approved. The City herein reserves the right to require the Company, at no expense to the City, to install or locate, as reasonably necessary, its above ground facilities as far as possible from vehicular travel lanes for traffic safety reasons.

SECTION 7. Gas Shortage Preferences - In any case of shortage of gas supply due to any cause, where the Company by reason thereof is unable to furnish gas for all purposes, preference shall be given to residential consumers in their use of gas for domestic purposes during the period of any such shortage. Gas service may be contracted and/or provided to other customers or for other purposes on an interruptible basis.

SECTION 8. Assignment - The Company shall have the right and privilege of transferring this franchise and all rights and privileges granted herein, and whenever the word "Company" appears herein, it shall be construed as including its successors and assigns; provided that any subsequent holder of this franchise shall take the same subject to the obligations of the Company hereunder and to the rights and prerogatives of the City.

SECTION 9. Consideration to the City -

(A) The Company, for and in consideration of the granting of this franchise and as rentals and compensation for the occupation of and use or easement over, upon and beneath the streets, avenues, easements, rights of way, highways, alleys, sidewalks, bridges, and public grounds and places in said City, for all the Company's equipment and facilities from time to time, shall pay to the City during all the time this provision shall remain in force and effect, a total aggregate sum equal to four percent (4%) of the Company's gross receipts, consisting of the total amount collected for gas sold

and/or fees collected for the transportation of gas for others within the City under the Company's rates in effect at the time.

(B) Such franchise fee payment shall be made as follows:

Beginning on the effective date of the initiation of gas service, the Company shall pay the City an amount equal to four percent (4%) of its annual Gross Revenues, as defined herein. Payments shall be made quarterly. The first four (4) payments hereunder shall be January 30, April 30, July 30, and October 30, 1992.

(C) At the time of making each payment, the Company shall submit a report showing the gross receipts and the four percent (4%) payment, which said report shall be signed by a responsible officer of the Company. For the purpose of determining such revenue, the books of the Company shall at all times be subject to inspection by duly authorized City representatives. Said payments shall be in lieu of any and all other rentals or compensation or franchise, license, privilege, instrument, occupation, excise or revenue taxes or fees and all other exactions or charges (except general ad valorem property taxes and special assessments for local improvements) upon the business, revenue, franchise, gas lines, installations and systems, conduits, pipes, fixtures and other facilities of the Company and all other property of the Company and its activities, or any part thereof, in said City during the term of this franchise; provided that anything to the contrary herein notwithstanding, said payments based on gross receipts shall continue only so long as the City does not charge, levy or collect any other rentals or compensation or franchise, license privilege, instrument, occupation, inspection, excise or revenue taxes or fees or other exactions or charges as aforesaid.

SECTION 10. Cost of Service Adjustment - The Company will be allowed to implement a cost of service adjustment clause as set forth in its tariff. The cost of service adjustment clause tariff will provide for an annual adjustment to base expense levels as reported in the Company's annual report to the Railroad Commission of Texas adjusted for certain known and measureable changes as defined in the tariff and allowed by the City. The increase in rates will be limited to the change in the consumer price index for utility (piped) gas. The

base period for measurement will be the most recent completed full rate increase application. The cost of service adjustment clause is intended to allow the Company to adjust its rates more quickly than if a full rate increase application were to be filed pursuant to Sec. 5.08 of Article 14446e, Tex. Rev. Civ. State ("GURA"). The implementation of and the review to be given to the cost of service adjustment will be set forth in the tariff. Nothing in this section nor in the tariff shall diminish the City's authority and power to review the Company's rates, rules of service and operations as provided for in GURA. The City, as the regulatory authority under GURA, retains the right to determine the just and reasonable rates to be charged by the Company. The Company agrees to file a fully developed rate filing in order to provide the City with the opportunity to conduct a full regulatory review of the Company's rates, rules of service, and operations at any time upon proper motion and notice by the City. The Company, at its option, may file at any time a statement of intent for a rate increase pursuant to Sec. 5.0 of GURA.

SECTION 11. Indemnity - The Company, its successors and assigns, as a condition of the City's consent given in this Ordinance, and in consideration thereof, shall protect, Indemnify, and hold the City and its officers, agents, and employees harmless against any and all claims for damages to persons or property arising out of the construction, maintenance and operation of its facilities, and the conduct of its business, or in any way growing out of the rights granted by this franchise, directly or indirectly, when injury is caused, or alleged to have been caused, wholly or in part, by any act, omission, negligence, or misconduct of the Company or any of its contractors, officers agents, or employees, or by any person for whose act, omission, negligence, or misconduct the Company is by law responsible. This provision is not intended to create liability for the benefit of third parties but is solely for the benefit of the company and the City.

SECTION 12. Reservation of Rights by City -

(A) The City reserves the right to lay, and permit to be laid, sewer, gas, water, electric and other pipelines or cables or conduits, and to do and permit to be done any underground and overhead

installation or improvement that may be deemed to be in the public interest, necessary and proper by the City Council in, across, along, over or under any public thoroughfare, public easement or other public way occupied by the Company, and to change any curb, sidewalk, bulk-head, or the grade of any street. When such work is done by the City, its employees or its contractors or subcontractors, the City shall not be liable to the Company unless the City, its employees or agents acting within the scope of their employment, its contractors or subcontractors damage the Company's facilities with prior actual knowledge of the location of the facilities or without having made reasonable inquiry regarding the location of facilities.

In granting permits or other permission to third persons or corporations for work to be done in the public thoroughfares, public easements or other public ways, the City shall not be liable to the Company for any damages to the Company's facilities unless the City, its employees or agents acting within the scope of their employment, its contractors or subcontractors with prior actual knowledge of the location of the facilities, or without having made reasonable inquiry regarding the location of facilities, directs such third person or corporation or any of its employees, servants, agents, contractors or subcontractors, to do the work in a public thoroughfare, public easement or other public way in which the Company's facilities are located in a place, manner, time or way which results in the damage to the Company's facilities; provided, however, nothing contained herein shall relieve any other person or corporation from liability for any damages to facilities of the Company.

(B) The City expressly reserves the right to change the grade, install, relocate, or widen the public thoroughfares, public easements and other public ways, including bulk-heads, within the present limits of the City and within said limits, as same may from time to time be extended, and the company shall relocate, at no expense to the City, its pipes, meters, regulators and other facilities and appurtenances located within the public thoroughfares, public easements or other public ways, if necessary, in order to accommodate the installation, relocation, widening, or changing of the grade of any such public thoroughfare, public easement on other public way including, if

necessary, relocating such pipes, meters, regulators and other facilities or appurtenances to a sufficient distance from the edge of the pavement to permit a reasonable work area for machinery and individuals engaged in installing, relocating, widening, or changing the grade of any public thoroughfare, public easement or other public way. The City also herein reserves the right to require the Company to relocate, at no expense to the City, any facilities erected or maintained pursuant to the consent granted herein, if said relocation is deemed reasonable and necessary by the City Administrator, or other City Official to whom such duties have been delegated, for traffic safety purposes including traffic signals. Whenever by reason of changes in the grade of a thoroughfare or in the location or manner of constructing a City owned and operated water or sewer pipe, or other City owned and operated aboveground or underground water or sewer structure, and it is reasonably deemed necessary by the City to remove, alter, change, adapt, or conform the underground or aboveground facilities of the Company, the Company shall make the alterations as soon as reasonably practicable, taking into consideration the extent of said alterations, following the receipt of a written request from the City to perform said work, and shall perform said work without claim for reimbursement against the City. Company and City agree to work together so as to minimize the total cost, including Company facilities relocation, of the project.

SECTION 13. Acceptance by Company - This franchise shall be accepted by the Company in writing, which acceptance shall be filed with the City within sixty (60) days after the passage of this ordinance, and when so accepted, this ordinance shall be a contract duly executed by and between the City and the Company.

SECTION 14. Non-Exclusive Grant - Nothing herein contained shall be construed as granting any exclusive franchise or right.

SECTION 15. Term - This franchise shall continue in full force and effect for a period of forty eight (48) years from and after the date of its passage.

SECTION 16. - Severability - If any provision, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, void, or invalid, or for any reason


unenforceable, the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the intent of the City in adopting this Ordinance that no portion hereof, or provision hereof, shall be inoperative, or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to this end, all provisions of this Ordinance are declared to be severable.

SECTION 17. Legal Remedies - Neither the City nor the Company waives its right to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this Ordinance, including seeking injunctive relief in a court of competent jurisdiction.

SECTION 18. Effective Date - This Ordinance shall be effective upon passage and approval, and the Company, as part of the consideration for granting this franchise, agrees that it will pay the cash consideration under this franchise beginning with Gross Receipts collected on the effective date of the initiation of gas service, regardless of the actual effective date of this franchise.

SECTION 19. Open Meeting - That it is hereby officially found and determined that the meeting in which this Ordinance was passed, was open to the public as required by law, and that the public notice of the time, place, and purpose of this meeting was given as required by the Open Meetings Act, Art 6252-17, V.A.C.S. (Tex.)

APPROVED AS TO FORM:



CARLTON GETTY
CITY ATTORNEY

I, SHARON TURNLEY, CITY ADMINISTRATOR of the City of Jamaica Beach, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the City Council of the City of Jamaica Beach at its regular meeting held on the 18th day of November 1991, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto
officially under the corporate seal of the City of Jamaica Beach this
20th day of November, 1991.


City Administrator of the city of Jamaica Beach

STATE OF TEXAS §
COUNTY OF GALVESTON §

Pursuant to Section 13 of Ordinance No. 91-3, Southern Union Gas Company, a Division of Southern Union Company, hereby accepts the franchise granted it by the City of Jamaica Beach in Ordinance No. 91-3, effective December 11, 1991.

Southern Union Gas Company
A Division of Southern Union Company

By: 
Gene Curry
Assistant Vice President

Filed this 11 day of December, 1991

City of Jamaica Beach, Texas

By: T. D. White
City Secretary