ORDINANCE NO. 80-05

AN ORDINANCE TO BE ENTITLED:

"AN ORDINANCE RESTATING AND AMENDING THAT CERTAIN ORDINANCE NO. 81 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 MULBERRY, ARKANSAS:

SECTION 1: That the City of Mulberry, 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 of Mulberry (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 ordinance, 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 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 said City and to the residents or inhabitants thereof, and to others. As used in this ordinance 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: The Grantee herein is expressly given the permit (subject to the provision hereinafter contained) to use the streets, avenues, roads, highways, alleys, sidewalks and other public places, as now laid out, or hereafter to be established, for the purpose of laying gas mains, pipe lines, conduits and feeders, and the necessary attachments, fixtures, connections and appurtenances for the purpose of conveying or

conducting natural gas from any point within the said City or to any point beyond the City limits of the said City, or to any other point, through and beyond the City limits of said City, and to operate and maintain a system of pipe lines, pipes, conduits, feeders and the necessary attachments, connections, fixtures and appurtenances for the distribution of natural gas within said City to serve the said City and the residents and inhabitants thereof, and others; provided, however, that where alleys are accessible for laying mains and pipes, the City shall have the right to require that the mains and pipes shall be laid in the alleys instead of the streets, so long as this is economically feasible and does not create an economic hardship. The City may likewise require that meters be placed upon the individual users' property so long as it works no unreasonable economic burden upon Grantee.

SECTION 3: No fees or charges of any kind shall be imposed by Grantor upon the Grantee or upon any successors, or upon any consumer of natural gas for the breaking or opening of any highway, street, road, avenue, alley, or other public places, or for the laying of any main, service pipe or other connections therein, except as would be generally imposed on others performing similar work under similar circumstances and conditions.

Nothing in this frachise shall be construed in such manner as to in any manner abridge the right of the City to pass and enforce the necessary police regulations for the purpose of protecting the citizens of said City and their property and the property of the Grantee.

Grantee shall at all times keep and display the necessary danger signals and proper guards around all excavations and obstructions and shall keep sufficient space in good condition for the travel of vehicles on at least one side of all excavations and obstructions, and shall as soon as practicable restore all openings on the highway, road, street, avenue, alley and other public places to condition equally as good as before said openings or obstructions were made. Anything to the contrary notwithstanding, when in the judgment of Grantee it is necessary for the safety of the citizens, to divert or detour traffic from the area of excavations they have the power to do so upon notice to said City.

SECTION 4: The Grantee shall do no injury to any highway road, street, avenue, alley, lane, bridge, stream or water course, park or public place, except specifically allowed, nor with any public or private sewer or drainage system, or water lines, now or hereafter laid or constructed by the said Town or by any authorized person or corporation, but no sewer or water pipes, electric conduits, telephone or TV cables shall be so laid as to interfere unnecessarily with any gas main or pipes which shall have been laid prior to the time of laying such electric

conduits, telephone and TV cables, sewer or water pipes. The Grantee shall fully indemnify and save harmless the City from any and all claims for damage for which said City shall or might be made or become liable by reason of the granting of this franchise, or any negligence or carelessness on the part of said Grantee, or because of any act or omission of the Grantee in the construction and operation of its system or mains and pipes.

SECTION 5: 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 a 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 6: The Grantee shall furnish promptly to the proper authorities any and all information which may be asked for by them in regard to the size, location or depths of any of the pipes, mains, conduits, or service pipes, in any form whatsoever, and any other information in regard to its occupation of roads, highways, streets, avenues or public grounds of said City, which they may demand. Whenever the word Grantee occurs in this ordinance, it shall mean and it shall be understood to ~~the~~ be the Arkansas Western Gas Company, its successors, lessees or assigns, and whenever the words "authorities" or "proper authorities" occur in this franchise they shall mean and shall be understood to mean the authorized officer or officiers, committee or board representing the City of Mulberry, Arkansas, or Grantor. Grantee shall notify Grantor of major corrections and major improvements to the sytem scheduled within the City and the nature of such work before such work is begun.

SECTION 7: During the life of this franchise the Grantee shall pay to Grantor each month a franchise tax in an amount equal to: Four percent (4%) of the Grantee's revenues before taxes for residential, commercial, and industrial revenues as

paid to the Grantee by residential, commercial, and industrial customers located within the corporate limits of the City of Mulberry. Payments shall be made by the Grantee to the Grantor in monthly installments. Residential, commercial, and industrial 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 of Mulberry 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 7 hereof, to pay the franchise taxes monthly shall immediately terminate.

SECTION 8: 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 9: 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 10: It is hereby determined by the City of Mulberry that this Franchise is necessary in order that the needs of the City may be properly protected. Therefore, an emergency is declared to exist and the Franchise 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 and approval.

ATTEST:

Jerry Dick

PASSED AND APPROVED the 4th day of November, 1980

Donald D. Feller