

ORDINANCE NO. 2019-07

AN ORDINANCE OF THE CITY OF GASSVILLE, ARKANSAS, AMENDING AND RESTATING ORDINANCE NO. 148, WHICH GRANTED TO BLACK HILLS ENERGY ARKANSAS, INC. (F/K/A ARKANSAS WESTERN GAS COMPANY) ITS SUCCESSORS AND ASSIGNS THE RIGHT AND PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A NATURAL GAS SYSTEM AND TO LAY MAINS ALONG THE STREETS, AVENUES, ALLEYS, ROADS AND HIGHWAYS AND OTHER PUBLIC PLACES, FOR THE PURPOSE OF DISTRIBUTING AND SELLING NATURAL GAS, IN ORDER TO REINSTATE THE FRANCHISE TAX TO BE COLLECTED BY BLACK HILLS ENERGY ARKANSAS, INC. FROM ITS CUSTOMERS LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OF GASSVILLE AND REMITTED TO THE CITY OF GASSVILLE.

WHEREAS, pursuant to Ordinance No. 148 of 1980, Black Hills Energy Arkansas, Inc, f/k/a Arkansas Western Gas Company, ("Grantee") was granted the right, privilege, and franchise to construct, maintain, and operate a natural gas system within the corporate limits of the City of Gassville ("Grantor") (the "Franchise Agreement"); and

WHEREAS, pursuant to Section 8 of the Franchise Agreement and the terms of Arkansas Code Annotated, Section 14-200-103, the duration of the Franchise Agreement is perpetual; and

WHEREAS, City of Gassville Ordinance No. 162 of 1982 amended and restated Section 7 of the Franchise Agreement and thereby set the franchise tax at 4%; and

WHEREAS, City of Gassville Ordinance No. 90-4 of 1990 subsequently repealed the Section 7 that was restated in Ordinance No. 162 in its entirety, resulting in the Franchise Agreement being without a Section 7 and resulting in no franchise tax being implemented under the Franchise Agreement from the time of the passage of Ordinance No. 90-4 onward; and

WHEREAS, Grantor now wishes for Grantee to begin charging its customers within the corporate limits of the City of Gassville a franchise tax in the amount of 4.25%;

BE IT THEREFORE ORDAINED by the City Council of the City of Gassville that:

1. Ordinance No. 148 of 1980 is hereby amended to include a new Section 7, which reads as follows:

"Beginning in <sup>2020</sup>, Grantee shall, in consideration of the grant of the exclusive franchise hereunder, pay to the City a sum equal to four and one-quarter percent (4.25%) of its gross revenue during the preceding calendar year from the sale of natural gas service to customers located within the corporate limits of the City. Said sum shall be payable by Grantee on or before the 31<sup>st</sup> day of January each year, beginning <sup>in 2020</sup>. Grantee shall, upon reasonable request of the City, make available to duly authorized representatives of the City the necessary records to determine the accuracy of the payments made hereunder.

In the event of a controversy between Grantee and the City as to the amount of gross revenues received by Grantee from the sale of natural gas service to customers

located within the corporate limits of the City, such controversy shall be referred to the Arkansas Public Service Commission, or any successor regulatory authority having jurisdiction over Grantee, for final determination; and the decision of the Arkansas Public Service Commission or successor regulatory authority shall be binding upon both Grantee and the City."

2. All other provisions of the Franchise Agreement shall remain as originally written.

PASSED AND APPROVED THIS 17<sup>th</sup> DAY OF December, 2020.

Jeff Braim

Jeff Braim, Mayor



ATTEST:

Jeff Lewis

Jeff Lewis, Recorder / Treasurer

BLACK HILLS ENERGY ARKANSAS, INC., an Arkansas corporation, and Grantee under the Franchise Agreement found in City of Gassville Ordinance No. 148 of 1980, hereby accepts the terms and conditions of the above Ordinance, this 6<sup>th</sup> day of January, 2020.

By:

Wes Ashton

Wes Ashton , Vice President-Operations