

ATTORNEYS AT LAW

333 UNION STREET  
SUITE 300  
NASHVILLE, TENNESSEE 37201

TELEPHONE (615) 254-9146  
TELECOPIER (615) 254-7123  
WWW.LUNALAWNASHVILLE.COM

Jennifer L. Brundige  
jbrundige@LunaLawNashville.com

April 8, 2011

**VIA EMAIL AND HAND DELIVERY**

Chairman Mary W. Freeman  
c/o Ms. Sharla Dillon  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

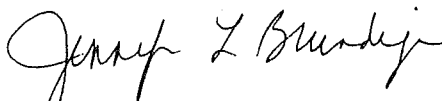
Re: Petition of Chattanooga Gas Company For Approval of Negotiated  
Franchise Agreement With The City of Chattanooga, Tennessee Pursuant  
To Tennessee Code Annotated § 65-4-107

Dear Chairman Freeman:

Chattanooga Gas Company ("Company") is filing the original and four (4) copies of the enclosed Petition for approval of the negotiated franchise agreement between the City of Chattanooga and the Company for consideration and approval by the Tennessee Regulatory Authority pursuant to Tenn. Code Ann. § 65-4-107. The franchise agreement is attached as Exhibit A to the Petition. The Company is also filing (1) the Direct Testimony of Larry Buie, the Region Manager for Chattanooga Gas Company, in support of the Petition, and (2) the revised Tariff Sheet No. 51 which reflects the new franchise rates.

Please do not hesitate to contact me or Archie Hickerson if you have any questions.

Sincerely yours,



Jennifer L. Brundige

Enclosures

cc: Elizabeth Wade, Esq.  
Archie Hickerson

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**April 8, 2011**

|                                |   |                     |
|--------------------------------|---|---------------------|
| IN RE:                         | ) |                     |
| PETITION OF CHATTANOOGA GAS    | ) |                     |
| COMPANY FOR APPROVAL OF        | ) | Docket No. 11-_____ |
| NEGOTIATED FRANCHISE AGREEMENT | ) |                     |
| WITH THE CITY OF CHATTANOOGA   | ) |                     |
| TENNESSEE PURSUANT TO          | ) |                     |
| TENNESSEE CODE ANNOTATED § 65- | ) |                     |
| 4-107                          | ) |                     |

**PETITION OF CHATTANOOGA GAS COMPANY FOR APPROVAL  
OF NEGOTIATED FRANCHISE AGREEMENT WITH THE  
CITY OF CHATTANOOGA, TENNESSEE  
PURSUANT TO TENNESSEE CODE ANNOTATED § 65-4-107**

Chattanooga Gas Company, through counsel and pursuant to Tennessee Code Annotated § 65-4-107, hereby requests approval by the Tennessee Regulatory Authority ("Authority") of a negotiated franchise agreement between Chattanooga Gas Company ("Company") and the City of Chattanooga, Tennessee ("Chattanooga" or the "City"). In support of its Petition, the Company respectfully shows as follows:

1. The Company is incorporated under the laws of the State of Tennessee and is engaged in the business of transporting, distributing and selling natural gas in the Cities of Chattanooga and Cleveland, Tennessee, and portions of Hamilton and Bradley County, Tennessee.

2. The Company's natural gas distribution business is subject to regulation and supervision by the Authority pursuant to Chapter 4 of Title 65 of the Tennessee Code Annotated.

3. The Company has its principal offices in Tennessee at 2207 Olan Mills Drive, Chattanooga, Tennessee 37421.

4. The Company has previously provided service to the customers located within the City pursuant to a franchise agreement that resulted from negotiation between the City and the Company, and was approved by the Tennessee Public Service Commission. Pursuant to its terms, that franchise agreement expired on January 31, 2010.

5. Starting in December 2009, representatives of the Company and the City undertook efforts to negotiate a new agreement. These negotiations ultimately resulted in a franchise agreement acceptable to both the Company and the City. This franchise agreement was then incorporated into City Ordinance 12480 *"An Ordinance Granting Unto Chattanooga Gas Company, A Tennessee Corporation, A Franchise For The Purpose Of Operating A System Of Gas Distribution And Service Within The City Of Chattanooga So As To Furnish Gas Service Within The City To Its Inhabitants For Domestic, Commercial, Industrial And Municipal General Use"* which was presented to the Chattanooga City Council for approval. That Ordinance, a copy of which is attached hereto as Exhibit A and is incorporated herein by reference, was subsequently approved by the Chattanooga City Council on its second reading on March 1, 2011.

6. The negotiations which resulted in the new Chattanooga franchise agreement involved the identification and resolution of a number of issues between the Company and the City. These negotiations were conducted in an arm's length manner and involved issues, including the term of the franchise agreement, resolution of ongoing disputes related to permit and street cut fees, and the franchise fee to be paid to the City, among others.

7. Chattanooga Gas Company submits that the franchise agreement is necessary and proper for the public convenience and properly conserves the public interest on at least the following grounds:

- a. The franchise agreement establishes a ten (10) year term, which secures the provision of natural gas service to citizens, businesses, and governmental institutions within the city limits of Chattanooga.
- b. The franchise agreement ensures the provision of high quality natural gas service by an established provider of such service.
- c. The franchise agreement establishes adequate and proper mechanisms for access to public rights-of-way, new and existing customers, and existing service lines, transmission and distribution facilities, and thereby ensures the protection of the property and citizenry of Chattanooga.
- d. The Company shall pay franchise fees to the City on a quarterly basis in an amount equal to a percentage of the annual gross revenues collected from all customers who are located and provided service by the Company within the city limits of Chattanooga as follows:

| Year             | Percentage of the gross receipts received from sales of any type to the Company's customers within the city limits of Chattanooga |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| 2011, 2012       | 3.15%                                                                                                                             |
| 2013, 2014       | 4.15%                                                                                                                             |
| 2015, and beyond | 5.15%                                                                                                                             |

9. Pursuant to Tenn. Code Ann. § 65-4-107, the franchise agreement between the Company and the City must be approved by the Authority to be valid. Such

approval is proper where, as here, the franchise is necessary and proper for the public convenience and properly conserves the public interest.

10. The Company advises the Authority that, pursuant to Tenn. Code Ann. §65-4-105(e), the Company intends, insofar as practicable, to bill its customers subject to the franchise agreement on a pro rata basis for any "franchise payment or other payment for the use of public streets, alleys or other public places or any license, privilege, occupation or excise tax payment."

11. Since the new franchise fees will not become effective until the TRA approves the franchise agreement, the Company will not begin collecting from its customers and remitting to the City the new franchise fees until after the TRA approves the franchise agreement.

12. In order to provide for the uninterrupted provision of franchised service to customers within the city limits of Chattanooga, and in recognition of the requirement that franchised services by Chattanooga Gas Company within the boundaries of Tennessee municipalities must be approved by this Authority, Chattanooga Gas Company respectfully requests approval of the attached franchise agreement.


The testimony of Larry Buie, Region Manager, Chattanooga Gas Company, in support of the franchise agreement is being filed concurrently with the filing of this Petition.

The Company is also filing revised Tariff Sheet No. 51 to reflect the CGC franchise rate. The Company requests that the Tariff Sheet become effective immediately upon any decision by the Authority to approve the franchise agreement.

WHEREFORE, Chattanooga Gas Company respectfully requests that the Authority approve, pursuant to Tenn. Code Ann. § 65-4-107, the negotiated franchise agreement which is incorporated herein by reference and is attached hereto as Exhibit A.

Respectfully submitted,

LUNA LAW GROUP, PLLC

By:   
J.W. Luna, Esq. (BPR 5780)  
Jennifer L. Brundige, Esq. (BPR 20673)  
333 Union Street, Suite 300  
Nashville, TN 37201  
(615) 254-9146

*Attorneys for Chattanooga Gas Company*




**Chattanooga Council**  
**1000 Lindsay Street**  
**Chattanooga, Tennessee 37402**  
**Telephone (423) 757-5196 / Fax (423) 757-4857**

**CAROL K. O'NEAL**  
Clerk of the Council

**I. SHIRLEY CROWNOVER**  
Assistant Clerk of the Council

## **NOTICE OF CERTIFICATION**

*I, Carol K. O'Neal, Clerk of the City Council of Chattanooga, Tennessee, and as such keeper of the records of the City Council of said City, do hereby certify that the foregoing is a true, compared and correct copy Ordinance No. 12480 passed at the City Council meeting on March 1, 2011.*

  
Carol K. O'Neal  
Clerk of the City Council

*WITNESS my hand and the Seal of the City of Chattanooga, Tennessee on this 9<sup>th</sup> day of March, 2011.*

1ST READING 2-22-11  
2ND READING 3-1-11  
INDEX NO. \_\_\_\_\_

ORDINANCE NO. 12480

AN ORDINANCE GRANTING UNTO CHATTANOOGA GAS COMPANY, A TENNESSEE CORPORATION, A FRANCHISE FOR THE PURPOSE OF OPERATING A SYSTEM OF GAS DISTRIBUTION AND SERVICE WITHIN THE CITY OF CHATTANOOGA SO AS TO FURNISH GAS SERVICE WITHIN THE CITY TO ITS INHABITANTS FOR DOMESTIC, COMMERCIAL, INDUSTRIAL AND MUNICIPAL GENERAL USE.

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THIS GAS FRANCHISE ORDINANCE AND AGREEMENT (the "Franchise Agreement") is entered into by and between the City of Chattanooga, Tennessee ("City"), a municipal corporation, and Chattanooga Gas Company ("Franchisee").

WHEREAS, Franchisee has asked the City to renew its nonexclusive gas franchise including any amendments, resolutions, written agreements or transfer consent ordinances and resolutions related thereto (the "Prior Franchise" dated November 4, 1980, Ordinance No. 7746) to construct, install, maintain and operate a gas system in the City; and

WHEREAS, the construction, installation, maintenance and operation of a gas system involves the occupation of and placement of facilities in the Public Rights-of-Way within the City; and

WHEREAS, the City has reviewed the performance of Franchisee under the Prior Franchise and the quality of service during the Prior Franchise term, has identified the future gas-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Franchisee, and has determined whether Franchisee's plans for constructing, operating and maintaining its gas system are reasonable to meet the

EXHIBIT A



future gas-related community needs and interests, in light of the costs of meeting such needs and interests, in a full public proceeding affording due process to all parties; and

WHEREAS, the City has relied on Franchisee's representations and has considered the information that Franchisee has presented to it; and

WHEREAS, based on Franchisee's representations and information, and in response to its request for renewal, the City Council has determined that the terms and conditions set forth herein, the grant of a new, nonexclusive renewal Franchise to Franchisee, to supersede the Prior Franchise, on the terms and conditions herein and subject to applicable law, is consistent with the public interest; and

WHEREAS, the City and Franchisee have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA,  
TENNESSEE:

Section 1. This Ordinance shall be known as the "Chattanooga Gas Company Franchise Ordinance."

Section 2. For purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) City - City of Chattanooga, Tennessee.
- (b) Company - Chattanooga Gas Company, a Tennessee corporation, the Grantee of rights under this franchise and its lawful successors or assigns.

- (c) Construction - The installation, re-installation, laying, erection, digging, renewal, repair, replacement, extension and removal of the gas system, or any activity that may be necessary to maintain and operate a gas system.
- (d) Council - The City Council of the City of Chattanooga, Tennessee
- (e) Gas System - Any pipe, pipeline, tube, main, duct, conduit, service, fitting, feeder, trap, vent, vault, manhole, meter, gauge, regulator, valve, appliance, attachment, appurtenance, and any other personal property constructed, maintained, or operated by Chattanooga Gas Company as may be necessary to import, transport, distribute and sell gas.
- (f) Mayor - The Mayor of the City of Chattanooga, Tennessee.
- (g) Permit Fee Floor - \$100,000 annually
- (h) Streets - The public streets, highways, avenues, roads, courts, alleys, lanes, ways, bridges, utility easements, sidewalks, parkways, public rights-of-way, or other public places or grounds in the City as they now exist or they may be established at any time during the term of this franchise in the City.

Section 3. That there is hereby granted to the Company a franchise to construct, reconstruct, maintain and operate a Gas System in, upon, along, and under the Streets within the City and to carry on, operate, enlarge and continue the same in said City as the same is now or may hereafter exist, for the purposes of furnishing gas service. The Company shall also have the right and privilege within the City to manufacture, sell and distribute natural gas and all other products and services, including appliances, which are related thereto. Neither the enactment of this Ordinance nor anything contained herein shall constitute any repeal or modification, expressed or implied, of any other ordinance of the City now in effect, whether codified or not; provided however, this Ordinance cancels and supersedes all prior Ordinances passed by the City specifically concerning Company and

repeals Ordinance No. 7746. The City expressly reserves the right to enact any and all such ordinances respecting the Company and its business as may be authorized by law, provided that any such ordinances shall not abridge the rights and privileges granted to the Company hereunder.

Section 4. That this franchise shall inure to the benefit of the Company, its successors and assigns, and shall exist and remain in effect from January 1, 2011 for a period of ten (10) years.

Section 5. That the Company shall not at any time charge in excess of such lawful rates as from time to time may be fixed by the Tennessee Regulatory Authority, or such other duly constituted body as may have power and authority in such matter. That the Company shall comply with all lawful orders of the Tennessee Regulatory Authority, or any other duly constituted body as may have power and authority in such matters respecting rates, the quality of gas, pressure, health measures and other conditions of service.

Section 6. That the Company in constructing or continuing a gas system along, across, under or through any City Street, shall comply with all ordinances of the City and shall take care not to obstruct or injure unnecessarily any such Streets, and shall with reasonable diligence restore such Streets to as good state of repair and condition as the same were before disturbed by said Company. The Company shall in all respects fully indemnify and save harmless the City from and against all damages, costs, attorneys fees, or other expenses which the City may incur by reason of such construction. The obligation of indemnity set forth in this section shall also extend to any construction in any Street or right-of-way of the City by any property owner pursuant to any contract between said property owner and the Company authorizing the property owner to construct a service line or other gas line from any main of the Company to such property owner's property.

Section 7. That the Company, its successors, or assigns, by the exercise of this franchise, agrees to hold harmless the City on account of any loss, expense, damage, cost, attorneys fees, litigation expenses, or liabilities that may result from Company's operation of its

gas system except to the extent that such loss, expense, damage, cost, attorneys fees, litigation expenses or liabilities is attributable to the negligence of the City, its agents, servants or employees. This right of indemnification shall include all expenses reasonably incurred by the City in defending any claim arising from the Company's operation of its gas system, whether or not the claim has merit. The Company hereby agrees, upon official request of the City, to maintain and furnish verification to the City's Risk Manager evidence of liability insurance in the minimum annual coverage amounts of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, or coverage limits as required by law, and list the City as an additional insured on the same. Failure to comply with the insurance requirements herein shall be deemed a material violation of the franchise. Notwithstanding the foregoing, the Company may provide the foregoing insurance through self-insurance or through an affiliated captive insurance carrier.

Section 8. The Company shall provide service personnel and equipment based in Chattanooga and/or Hamilton County, Tennessee to respond to customer service calls from locations within the City, and shall provide the local public service agencies, including the City police department, the City fire department, and the 911 Center with the Company's toll-free emergency telephone number and a listing of direct local telephone and/or pager numbers of local Company agents to contact in the event of an emergency. Company shall have trained personnel available 24 hours a day, 365 days per year, who will promptly respond to emergency calls. The Company shall make every reasonable effort to furnish an ample and uninterrupted supply of gas to all customers throughout its entire gas system within the City and on any enlargements and extensions thereof within the City. At the time each and every annexation ordinance of the City becomes operative, the City shall provide the Company with a copy of its ordinance and its accompanying map precisely describing the annexed territory. The Company shall not unreasonably or arbitrarily refuse to make an extension for the purpose of giving gas service to the City, its inhabitants, institutions and businesses.

Section 9. That in consideration of the grant of this franchise, the Company shall pay as a franchise fee (the "Franchise Fee") a sum as shown in

the table below:

| Year            | Percentage of the gross receipts received from sales of any type to the Company's customers within the city limits of the City |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------|
| 2011, 2012      | 3.15%                                                                                                                          |
| 2013, 2014      | 4.15%                                                                                                                          |
| 2015 and beyond | 5.15%                                                                                                                          |

Such sum shall, in accordance with prevailing state law and the Company's rate tariffs, be approved by the Tennessee Regulatory Authority, be directly added to the gas bills of, and collected from, those customers of the Company located within the City. Said fee shall be in addition to any sums due to the City from the Company as ad valorem taxes, street cut fees, permit fees, water quality fees, administrative fees or any other related fees, taxes or charges for the exercise of Company's work in the City ("Permit Fees"). Notwithstanding the foregoing, the Franchise Fee payable hereunder shall be reduced, on an annual basis, by the amount of Permit Fees paid by Company to the City up to the Permit Fee Floor.

The amount of the franchise fee billed by the Company each quarter shall be paid to the City on or before the 45th day following the end of each quarter. If the Company shall fail to pay the amount due, then the City reserves the right to revoke this franchise if said amount that is due and payable is not paid within a period of sixty (60) days after written notice of such delinquency to the Company.

There shall be a grace period of fifteen (15) days for any amount which is unpaid on the 45<sup>th</sup> day following the end of each quarter. In the event any Franchise fee payment or re-computation amount is not made on or before the expiration of said grace period, the Franchisee shall pay additional compensation and charges computed from such due date at an annual rate equal to one percent (1%) per month on any portion thereof of the unpaid amount.

The City shall have access with reasonable advance notice at all reasonable times to the books of the Company for the purpose of ascertaining and/or auditing the amount of fees due the City. The Company shall furnish the City with an annual report showing the amount of gross receipts from its sale of gas within the City. The franchise fee imposed herein shall be effective from and after the adoption of this Ordinance and acceptance by the Company.

The Franchise fee payments required by this Section shall be in addition to any and all taxes or fees of general applicability. The Franchisee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said Franchise fee payments from or against any of said City taxes or other fees of general applicability, except as expressly permitted pursuant to this Paragraph 9 or by applicable law.

Section 10. If the Company desires to sell the assets of its gas system located within the City as a stand-alone transaction and not as a sale of its larger gas system, then the Company must offer the City the opportunity to buy those assets located and situated in the City on the same terms as being offered to some other party. The City will have sixty (60) days to accept the offer and an additional one hundred twenty (120) days to close said transaction in the event the City elects to exercise the option to purchase.

In the event the City chooses not to exercise the option to purchase, the City shall continue to have the right to approve any sale, assignment, or transfer that Company may desire and this franchise cannot be sold, assigned, or transferred without the express written consent of the City Council, provided, however, that such consent shall not be unreasonably withheld.

In any negotiations between the City and the Company for the purchase of the Company's property by the City, no value shall be placed upon this franchise agreement in arriving at the purchase price to be paid by the City.

Section 11. Any flagrant or continuing violation of the provisions of this Franchise Ordinance by the Company or its successors shall be cause for forfeiture of this franchise agreement, provided that the City shall have given the Company written notification of such violation and allow the Company a

reasonable and appropriate time to correct the cited violations.

Section 12. In the event it becomes necessary or expedient for the City to change the course or grade of any highway, street, avenue, road, alley, way, parkway or other public ground in which the Company is maintaining its gas system, then, upon the written request of the City, the Company will remove or change the location or depth of such gas system to conform to the proposed street alteration. It is agreed that Company will, at its own expense, within sixty (60) days after written notice from the Mayor, Company's receipt of final plan approval, and notice to proceed, begin the work of completing any and all things necessary to effect such change in position or location in conformity with such written instructions; provided, however, that if such request is to accommodate any development by any person or entity other than the City or another governmental body, then the person or entity responsible for such development shall reimburse Company its expenses for such removal or change.

Section 13. After adoption of this Ordinance, should any section, subsection, sentence, provision, clause or phrase of this Ordinance be declared invalid by a court of competent jurisdiction or appropriate regulatory authority, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional, it being the intent in adopting this Ordinance that no portion thereof or provision or regulation contained therein shall become inoperative or fail by reason of the unconstitutionality or invalidity of any other portion or provision or regulation.

Section 14. That this Ordinance shall not be operative, as distinguished from its effectiveness, until it has been accepted by the Company. The Company shall have thirty (30) days from the date of the final passage of this Ordinance to file with the City Clerk its unconditional acceptance of the terms and conditions of this Ordinance. After receipt of the written approval of this franchise agreement from the Tennessee Regulatory Authority, the Company shall promptly furnish the City a copy, which shall be filed with this Franchise Ordinance.

Section 15. All rights herein granted and/or authorized shall be subject to and governed by this Ordinance, provided, however, the City Council expressly reserves unto itself all its police power to adopt general ordinances and to take other action necessary to protect and promote the safety and welfare of the general public in relation to the rights now reserved to or in the City of Chattanooga under its Charter and to all such rights as are now provided by general law.

Section 16. This Franchise Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding on the Franchisee and the City.

In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

Section 17. This Franchise Agreement shall be governed in all respects by the law of the State of Tennessee.

Section 18. Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be mailed first class, postage prepaid, to the



addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

Notices to the Franchisee shall be mailed to:

Chattanooga Gas Company  
c/o AGL Resources Inc.  
P.O. Box 4569  
Atlanta, GA 30302-4569  
Attn: General Counsel

Notices to the City shall be mailed to:

City of Chattanooga  
Attn: Mayor's Office  
City Hall  
101 East 11th Street  
Chattanooga, Tennessee 37402

with a copy to:

City Attorney  
City of Chattanooga  
100 E. 11<sup>th</sup> Street, Suite 200  
Chattanooga, TN 37402

Unless otherwise provided by the Municipal Code or by this Agreement, notices shall be effective upon receipt.

Section 19. Time is of the essence in all provisions of this Agreement.

Section 20. This Agreement is not intended to, and shall not be construed to, grant any rights to or vest any rights in third parties, except as expressly provided herein.

Section 21. This Agreement supersedes all prior oral or written agreements, drafts, commitments, or understandings with respect to the matters provided for herein. The parties recognize, however, the right of the City to establish and amend the Municipal Code and City regulations from time to time, as empowered by the State of Tennessee, and the Franchisee agrees to abide by all such applicable laws and regulations, subject to the provisions of the Franchise Agreement.

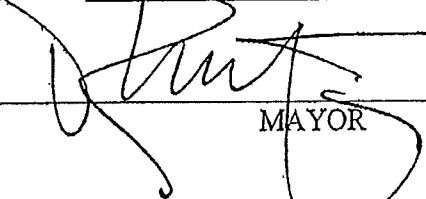
Section 22. BE IT FURTHER ORDAINED, That this Ordinance shall take effect two (2) weeks from and after its passage.

PASSED on Second and Final Reading.

  
CHAIRPERSON

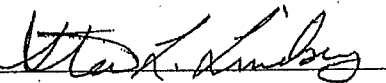
APPROVED: X DISAPPROVED:       

DATE: March 1, 2011.

  
MAYOR

The within Franchise and its terms and conditions are hereby accepted by Chattanooga Gas Company on this        day of                     , 20    .

CHATTANOOGA GAS COMPANY

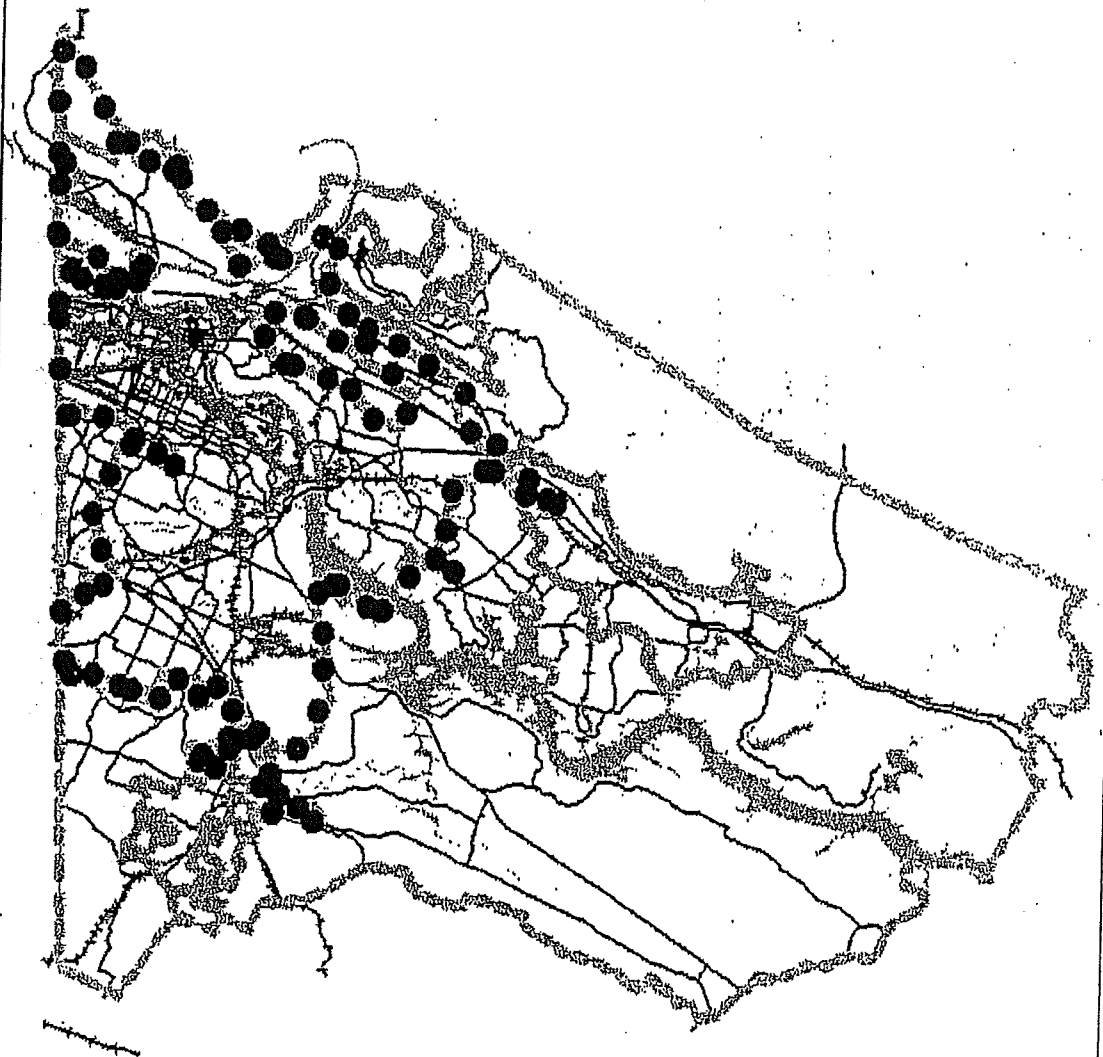
By: 

Name: Steven L. Lindsey

Title: Vice President & General Manager

PPB/mms

EXHIBIT A



2011-0028 Franchise Agreement with Chatt Gas Co for ten (10) years

PLANNING COMMISSION RECOMMENDATION FOR CASE NO. MR-2011-028: Approve

1 in. = 6.39 miles



Before the  
Tennessee Regulatory Authority

Docket No. 11-\_\_\_\_\_

Petition of Chattanooga Gas Company for Approval of Negotiated  
Franchise Agreement with the City of Chattanooga,  
Tennessee Pursuant to Tennessee Code Annotated § 65-4-107

Testimony  
Of  
Larry Buie  
On Behalf Of  
Chattanooga Gas Company

April 8, 2011

1   **Q.     Please state your name and business address.**

2    A.     My name is Larry Buie. My business address is 2207 Olan Mills Drive,  
3           Chattanooga, TN 37421.

4   **Q.     By whom and in what capacity are you employed?**

5    A.     I am employed by AGL Services Company as Region Manager for Chattanooga  
6           Gas Company operations in Tennessee, and Northwest Georgia operations for  
7           Atlanta Gas Light Company.

8   **Q.     Please describe your educational and professional background.**

9    A.     I have a Bachelor of Science Degree in Engineering from Mississippi State  
10          University and approximately 34 years of experience in the energy industry. For  
11          the last 10 years, I have been with Chattanooga Gas and Atlanta Gas Light  
12          companies and the prior 24 years with Southern Natural Gas, a natural gas  
13          transmission pipeline. In my current role as Region Manager, I manage  
14          operations throughout Chattanooga's service territory, which includes the cities of  
15          Chattanooga, Cleveland, Red Bank, East Ridge, Lookout Mountain and Signal  
16          Mountain. Approximately 62,000 customers are served in these areas. I also have  
17          responsibility for Atlanta Gas Light's service territory in Northwest Georgia,  
18          which includes operations in Dade, Walker, Catoosa, Murray, Gordon, Floyd,  
19          Bartow and Polk counties, where approximately 53,400 customers are served.

1           At Southern Natural Gas, I held the position of Engineer, Division and  
2           Senior Engineer, and Transmission Superintendent. As an Engineer for Southern  
3           Natural, I managed the construction and installation of offshore and transmission  
4           pipelines and the replacement and pipeline up-rating projects. As Division and  
5           Senior Engineer, I managed compression station automation projects and the  
6           design and installation of pipeline facilities. As Transmission Superintendent for  
7           Southern Natural, I was the area operations manager with the responsibility for  
8           the oversight of budgets, personnel, transmission and underground storage  
9           operations.

10   **Q.    Have you previously testified before this Authority or any other regulatory**  
11       **authority?**

12   A.    No.

13   **Q.    What is the purpose of your testimony in this proceeding?**

14   A.    The purpose of my testimony is to present information to the Authority relating to  
15           the Franchise Agreement entered into between Chattanooga Gas Company  
16           ("Company") and the City of Chattanooga, Tennessee ("City").

17   **Q.    Could you please explain the circumstances that caused a need for a**  
18       **franchise agreement between Chattanooga Gas Company and the City of**  
19       **Chattanooga?**

20   A.    Yes. Under Section 65-26-101 of the Tennessee Code Annotated, Chattanooga  
21           Gas Company is required to have the consent of the City of Chattanooga, in the

1 form of a municipal ordinance, in order to enter onto the streets and alleys of the  
2 City for the purpose of placing, maintaining, or expanding its natural gas  
3 distribution and transmission facilities. Chattanooga Gas Company has been  
4 providing natural gas service to customers within Chattanooga for the previous  
5 thirty years pursuant to such a negotiated Franchise Agreement that was approved  
6 by the Tennessee Public Service Commission. That agreement expired in 2010.  
7 As such, under Tennessee law, a new franchise agreement is necessary in order  
8 for Chattanooga Gas Company to continue its provision of service within the City  
9 of Chattanooga.

10 **Q. When did Chattanooga Gas Company begin pursuing a new franchise**  
11 **arrangement with the City of Chattanooga?**

12 A. Chattanooga Gas Company started discussions with the City in 2009 for the  
13 purpose of negotiating a new franchise arrangement. Negotiations continued  
14 during 2010 into early 2011. Since the parties were in negotiations at the time the  
15 previous agreement expired, the Company continued to operate and pay franchise  
16 fees in accordance with the prior agreement.

17 **Q. What was the result of these negotiations between the parties?**

18 A. These negotiations were successful as evidenced by an approved Ordinance No.  
19 12480 which is incorporated herein by reference and is attached as Exhibit A to  
20 the Company's Petition. This ordinance approves a new franchise arrangement  
21 with a term of ten (10) years.

1     **Q.     What are the primary provisions of the new franchise ordinance?**

2     A.     The new franchise ordinance provides that in exchange for the right to provide  
3           service to customers within the city limits of Chattanooga and for access to the  
4           streets and public rights-of-way within the City, Chattanooga Gas Company  
5           agrees to pay an annual franchise fee (in quarterly installments) equal to 3.15% of  
6           the gross receipts attributable to all sales within the Chattanooga city limits during  
7           2011 and 2012, 4.15% of the gross receipts attributable to all sales within the  
8           Chattanooga city limits during 2013 and 2014, and 5.15% of the gross receipts  
9           attributable to all sales within the Chattanooga city limits during the remainder of  
10          the term of the agreement, and to comply with certain procedures with respect to  
11          the conduct of its business within the City's corporate limits. The agreement  
12          provides that these franchise fee payments shall be reduced, on an annual  
13          basis, by the amount of permit fees paid by the Company to the City up to the  
14          permit fee floor of \$100,000.

15    **Q.     Is Chattanooga Gas Company satisfied with the negotiated resolution of**  
16       **these issues?**

17    A.     Yes. Both parties were ultimately able to agree with the negotiated results  
18           reflected in Ordinance No.12480 which was approved by the Chattanooga City  
19           Council on its second reading on March 1, 2011 and subsequently accepted by  
20           Chattanooga Gas Company.



1   **Q.     What is the standard to be utilized by the Authority in determining whether**  
2       **to approve Ordinance 12480?**

3   A.    My understanding is that, under the statute, the Authority is authorized to approve  
4       the Ordinance if it finds that it "is necessary and proper for the public  
5       convenience and properly conserves the public interest."

6   **Q.     In your opinion, are the franchise terms set forth in Ordinance 12480**  
7       **necessary and proper for the public convenience and in the public interest?**

8   A.    Yes, on a number of grounds. First, the new franchise terms reflected in  
9       Ordinance 12480 will establish a ten year arrangement through which the current  
10      and future residents, business enterprises and governmental facilities located  
11      within the city limits of Chattanooga will be able to receive, under the supervisory  
12      jurisdiction of the Authority, the benefits of continuing natural gas service  
13      provided by Chattanooga Gas Company. This arrangement will help ensure the  
14      continuing availability of high quality natural gas service to the citizens of  
15      Chattanooga for the foreseeable future. Second, the new franchise agreement  
16      facilitates the provision of such natural gas service to customers within the city  
17      limits of Chattanooga by an established and proven provider of that service well  
18      known to both the City of Chattanooga and this Authority and possessing the  
19      requisite expertise, facilities, systems and gas supply and transportation assets  
20      necessary to provide such service. Third, the new franchise arrangement  
21      establishes adequate and proper mechanisms for access by Chattanooga Gas  
22      Company to public rights-of-way, new and existing customers, and existing

1 service lines, transmission and distribution facilities located within the City.  
2 These mechanisms help to ensure that Chattanooga Gas Company is able to  
3 provide both adequate and efficient service and to comply with the requirements  
4 of this Authority to ensure the safety and protection of residents and property  
5 within the City of Chattanooga. Fourth, the new franchise arrangement provides  
6 an incentive for Chattanooga Gas Company to invest in infrastructure needed to  
7 provide improved and expanded service within Chattanooga by ensuring that the  
8 Company will have the right to provide service within these areas for a sufficient  
9 period in order to permit it to have the opportunity to recover the capital  
10 investment in such facilities under the rates approved by the Authority. Fifth,  
11 payment of the franchise fees provided for in the new franchise agreement, in  
12 addition to the Company's ongoing duty to repair excavation work as it is  
13 performed, will act to offset long term road maintenance expenses that may be  
14 incurred by the City during the term of the new arrangement and will help support  
15 the provision of municipal services by the City of Chattanooga to its citizens.

16 **Q. Could you please summarize your thoughts on the public convenience issue?**

17 A. Yes. Approval of the new franchise arrangement between Chattanooga Gas  
18 Company and the City of Chattanooga will ensure that the residents, businesses  
19 and governmental entities residing and operating within the city limits of  
20 Chattanooga continue to receive high quality, safe, and reliable natural gas service  
21 at economic rates from a provider with a long and successful history of providing  
22 that service. The franchise ordinance also provides substantial protections to the

1 citizens of Chattanooga while concurrently offering Chattanooga Gas Company a  
2 positive incentive to provide ongoing and expanded natural gas service to this  
3 area. That service will contribute to a stable infrastructure and expanded  
4 economic opportunity and will be beneficial to customers by bringing the  
5 desirable attributes of natural gas service to Chattanooga for some time into the  
6 future.

7 **Q. Do you know of any facts that would indicate that the new franchise**  
8 **arrangement reflected in Ordinance No. 12480 is not in the public interest?**

9 A. No.

10 **Q. What are you asking the Authority to do in this proceeding?**

11 A. Based on the facts discussed above, we are asking the Authority to approve the  
12 new franchise agreement between Chattanooga Gas Company and the City of  
13 Chattanooga as reflected in Ordinance No. 12480.

14 **Q. Does this conclude your testimony?**

15 A. Yes it does.

**CURRENT LEVEL OF APPLICABLE TAXES AND LOCAL GOVERNMENT FEES**

C

**APPLICABILITY**

This Schedule shall be applicable to all Rate Schedules and to each Customer rendered gas service hereunder except for those Customers qualifying for specific exemption. A copy of the appropriate State approved exemption certificate form shall be filed with the Company in order to qualify for a State of Tennessee Sale Tax exemption

C

**BILLING**

The taxes and fees due under this Schedule shall be included in the monthly bill for service rendered and shall be considered as an integral part of the total monthly bill due.

**APPLICABLE TAXES**

**STATE OF TENNESSEE SALES TAX**

This Tax shall be billed as follows:

*Residential* - Tax Exempt Effective July 1, 1985

*Multi-Family Housing Service* - Billed at rate of 7%.

*Commercial and Industrial* - Billed at rate of 7% unless Customer qualifies for special 1 1/2% rate or total exemption.

**APPLICABLE CITY FEES**

**CITY OF CLEVELAND FRANCHISE FEE**

This Fee shall be billed at the rate of 5% on customer located within the City limits of Cleveland Tennessee.

C

**CITY OF CHATTOOGA FRANCHISE FEE**

This Fee shall be billed to customers within the City Limits of Chattanooga Tennessee at the rate of:

N

3.15% for 2011 and 2012  
4.15% for 2013 and 2014  
5.15% for 2015 and beyond.