

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 (“Current Franchise”) that resulted from negotiation between the City and the Company, and was approved by TPUC in Docket No. 11-00048. The TPUC approval for that franchise agreement expired on July 1, 2021.

5. Starting in December 2020, 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 No. 13696 *"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 August 3, 2021 and has been approved by the Mayor of the City.

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 the

permit fee floor, 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
2021, and beyond	5.15%

8. Pursuant to Tenn. Code Ann. § 65-4-107, the franchise agreement between the Company and the City must be approved by the Commission 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.

9. The Company advises the Commission 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."

10. The franchise fees in the new franchise agreement and the Current Franchise are the same, and while the attached franchise is not effective until approved by TPUC, the Company will continue to collect the same amount from its customers and remit to the City pursuant to Tennessee Code Annotated § 65-4-107(b).

11. 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 Commission, Chattanooga Gas Company respectfully requests approval of the attached franchise agreement.

12. The testimony of Archie Henderson, Director of Rates and Tariff Administration, Southern Gas Company, in support of the franchise agreement is being filed concurrently with the filing of this Petition.

13. The Company recognizes and apologizes for the delay in filing this Petition and notes that it has continued to provide service to Chattanooga under the Current Franchise in the interim, as authorized by Tennessee Code Annotated § 65-4-107(b).

WHEREFORE, Chattanooga Gas Company respectfully requests that the Commission 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,



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Attorney for Chattanooga Gas Company

EXHIBIT A

City Ordinance No. 13696

First Reading: July 27, 2021
Second Reading: August 3, 2021

ORDINANCE NO. 13696

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.

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

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" approved by the City Council on March 1, 2011, Ordinance No.12480) 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 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 - \$150,000 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.12480. 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 Agreement shall inure to the benefit of the Company, its successors and assigns, and shall commence and remain in full force and effect for a period of ten (10) years from the date of approval of this Franchise Agreement by the Tennessee Public Utility Commission. Unless otherwise terminated, upon expiration of this Agreement, the parties may continue to perform under the rights and obligations of this Agreement, which shall remain in full force and effect to the extent then permitted by law.

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 Public Utility Commission, 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 Public Utility Commission, or any other duly constituted body as may have power and authority in such matters respecting rates, the quality of gas, pressure, safety 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, and provided the Company has been notified in writing of any claim against the City and has been given ample opportunity to defend the same. 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 to maintain and furnish verification to the City's Risk Manager or other officer as designated by the City's Chief Financial Officer evidence of liability insurance in the 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 this Agreement. If any of the above cited insurance policies expire during the life of this Agreement, it is the Company's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Notwithstanding the foregoing, the Company may provide the above cited insurance policies 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 cellular 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
2021 and beyond	5.15%

Such sum shall, in accordance with prevailing state law and the Company's rate tariffs, be approved by the Tennessee Public Utility Commission, be directly added to the gas bills of, and collected from, those customers of the Company located within the City. Said Franchise Fee shall be in addition to any sums due to or imposed by the City as ad valorem taxes, street cut fees, permit fees, water quality fees, administrative fees or any other related fees, taxes, charges, and associated costs to the Company for the exercise of the Company's work in the City (collectively referred to hereinafter as “Permit Fees and Costs”). Notwithstanding the foregoing, the Franchise Fee payable hereunder shall be reduced, on an annual basis, by the amount of Permit Fees and Costs incurred by the Company up to the Permit Fee Floor. The Company and the City shall have the ability to modify either the Franchise Fee and/or Permit Fee Floor by mutual agreement and such modification, if mutually agreed upon, shall be memorialized through an amendment to this Agreement. Any modification to the Franchise Fee amount as mutually agreed upon by the parties shall be subject to approval by the Tennessee Public Utility Commission.

Section 10. Each Franchise Fee payment shall be submitted with supporting detail and a statement certified by the Company's Director of Gas Accounting or any other responsible Company official. At a minimum, the detail should reflect the total amount of monthly gross revenues for the payment period, a breakdown by major revenue categories, the number of customers, average monthly bill amount, permit and other fees paid as offset, if any, and any other information that supports the calculation of the payment amount. The City shall have the right to request further supporting information if needed.

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 45th 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 the unpaid balance.

Section 11. All amounts paid shall be subject to audit or review by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount, provided, however, that any such audit review shall be initiated within three (3) year from the date the City accepts any such payment, after which period any such payment shall be considered final. The Franchisee shall be responsible for providing the City all the necessary records including financial records and customer address lists in order to confirm the accuracy of the Franchise Fee payment. The Franchisee shall maintain such records for five (5) years. Upon completion of any such audit review by the City, the City shall provide to the Franchisee in writing a final audit/review report, which sets forth the City's findings in detail, including, upon request, any and all substantiating evidence. The Franchisee shall have sixty (60) days from receipt of the audit/review report to provide the City with a written response to the audit/review report. In the event both parties agree upon a "Final Settled Amount" due to the City as a result of such audit/review, such Final Settled Amount shall be paid to the City within thirty (30) days from receipt of written notice of the Final Settled Amount from the City. For purposes of this subsection, the term "Final Settled Amount" shall mean the agreed upon underpayment, if any, to the City by the Franchisee as a result of such audit/review. In the event the parties do not agree on the amount of any underpayment of Franchise Fee discovered as a result of an audit/review, both parties reserve all of their rights under this Franchise Agreement and applicable law. The City's audit review expenses shall be borne by the City, unless the Final Settled Amount is an underpayment to the City by more than five percent (5%) in the audit/review period, in which

case the costs of the audit/review shall be borne by the Franchisee as a cost incidental to the enforcement of the Franchise. If an audit review determines that there has been an overpayment of Franchise Fee by the Franchisee, the Franchisee may credit any overpayment against its next quarterly Franchise Fee payment.

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 payment from or against any of said City taxes or other fees of general applicability, except as expressly permitted pursuant to Section 9 and Section 11 or by applicable law.

Section 12. Within ninety (90) days after the end of a calendar year, the Franchisee shall submit a written report to the City within ninety (90) days of receipt of such request, which shall include:

1. A summary of significant activities taken during the year to enhance the resiliency of the Gas System within the City;
2. A summary of complaints filed with the Tennessee Public Utility Commission by residents within the City during the year, identifying both the number and nature of the complaints received and an explanation of their dispositions;
3. A full schedule of Subscriber rates, fees and charges;
4. A summary of all new gas service connections within the City within the year;
5. A summary of all current gas service connections within the City within the year, and;
6. A summary of the miles of gas mains within the City.

Section 13. 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 Agreement in arriving at the purchase price to be paid by the City.

Section 14. Any flagrant or continuing violation of the provisions of this Agreement by the Company or its successors shall be cause for forfeiture of this 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 15. 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 16. Neither party shall be liable for failure to perform hereunder, in whole or in part, due to events beyond the party's reasonable control, including but not limited to acts of God, fire, floods, epidemics, earthquakes, embargos, quarantine restrictions, labor strikes not caused by the party, or government acts other than acts by or on behalf of the City.

Section 17. 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 unconstitutionally or invalidity of any other portion or provision or regulation.

Section 18. 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 Public Utility Commission, the Company shall promptly furnish the City a copy, which shall be filed with this Ordinance.

Section 19. 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 20. This 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 21. This Agreement shall be governed in all respects by the law of the State of Tennessee.

Section 22. Unless otherwise expressly stated herein, notices required under this 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 Southern Company Gas
10 Peachtree Place NE
Atlanta GA 30309
Attn: General Counsel

Chattanooga Gas Company
Attn: Director, External Affairs
2207 Olan Mills Dr.
Chattanooga, TN 37421

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. 11th Street, Suite 200
Chattanooga, TN 37402

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

Section 23. Time is of the essence in all provisions of this Agreement.

Section 24. 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 25. 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 Agreement.

Section 26. BE IT FURTHER ORDAINED, That this Ordinance has been adopted by the Council following first reading on July 27, 2021, and second reading on August 3, 2021.

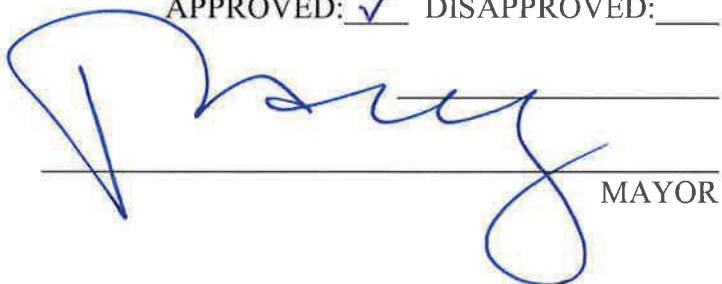
Section 27. BE IT FURTHER ORDAINED, That this Ordinance shall take effect immediately from and after its passage and upon approval of the Tennessee Public Utility Commission.

Passed on second and final reading: August 3, 2021



CHAIRPERSON

APPROVED: ☒ DISAPPROVED: ☐

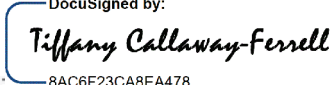


MAYOR

RDR/mem

The within Franchise and its terms and conditions are hereby accepted by Chattanooga Gas Company on this 15 day of August, 2021.

CHATTANOOGA GAS COMPANY

By:  DocuSigned by:
8AC6F23CA8EA478...
Name: Tiffany Callaway-Ferrell
Title: Vice President, Chattanooga Gas Company