

ORDINANCE NO. 2164

AN ORDINANCE AMENDING THE EXISTING GAS FRANCHISE BETWEEN THE CITY AND TXU GAS COMPANY, TO PROVIDE FOR A DIFFERENT CONSIDERATION AND TO AUTHORIZE THE LEASE OF FACILITIES WITHIN THE CITY'S RIGHTS-OF-WAY; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR ACCEPTANCE BY TXU GAS COMPANY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, TXU Gas Company, (hereinafter called "TXU Gas") is, through its TXU Gas Distribution division, is engaged in the business of furnishing and supplying gas to the general public in the City, including the transportation, delivery, sale and distribution of gas in, out of, and through the City for all purposes, and is using the public streets, alleys, grounds and rights-of-ways within the City for that purpose under the terms of a franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by TXU Gas; and

WHEREAS, the City and TXU Gas desire to amend said franchise ordinance to provide for a different consideration and to authorize the lease of facilities within the City's rights-of-way;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Terrell, Texas: that

SECTION 1: The existing gas franchise ordinance between the City and TXU Gas Company is amended as follows:

A. Effective January 1, 2004, the consideration payable by TXU Gas for the rights and privileges granted to TXU Gas by the franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by TXU Gas is hereby changed to be four percent (4%) of the Gross Revenues, as defined in Section 1.B. below, received by TXU Gas.

B. "Gross Revenues" shall mean all revenue derived or received, directly or indirectly, by the Company from or in connection with the operation of the System within the corporate limits of the City and including, without limitation:

- (1) all revenues received by the Company from the sale of gas to all classes of customers within the City.
- (2) all revenues received by the Company from the transportation of gas through the pipeline system of Company within the City to customers located within the City.
- (3) the value of gas transported by Company for Transport Customers through the System of Company within the City ("Third Party Sales"), with the value of such gas to be reported by each Transport Customer to the Company, provided, however, that should a Transport Customer refuse to furnish Company its gas purchase price, Company shall estimate same by utilizing TXU Gas Distribution's monthly industrial Weighted Average Cost of Gas, as reasonably near the time as the transportation service is performed; and
- (4) "Gross revenues" shall include:
 - (a) other revenues derived from the following 'miscellaneous charges':

- i. charges to connect, disconnect, or reconnect gas within the City;
 - ii. charges to handle returned checks from consumers within the City;
 - iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and
 - iv. contribution in aid of construction (“CIAC”);
 - (b) revenues billed but not ultimately connected or received by the Company; and,
 - (c) gross receipts fees.
- (5) “Gross revenues” shall not include:
 - (a) the revenue of any Person including, without limitation, an affiliate, to the extent that such revenue is also included in Gross Revenues of the Company;
 - (b) sales taxes; and
 - (c) any interest income earned by the Company; and
 - (d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City’s right of way.
- (C) Calculation and Payment of Franchise Fees Based on CIAC
 - (1) The franchise fee amounts based on “Contributions in aid of Construction: (“CIAC”) shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year.
 - (2) The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year.
- (D) Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by TXU Gas
 - (1) If TXU Gas should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by TXU Gas to City pursuant to this Ordinance shall be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

- (2) The provisions of this Subsection D apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, including without limitation the timing of such payments.

(E) TXU Gas Franchise Fee Recovery Tariff

- (1) TXU Gas may file with the City a tariff amendment(s) to provide for the recovery of the franchise fees under this amendment.
- (2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of TXU Gas' rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of TXU gas' franchise fees is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by TXU Gas and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will taken an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by TXU Gas.
- (3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by TXU Gas.

(F) Lease of Facilities Within City's Rights-of-Way. TXU Gas shall have the right to lease, license or otherwise grant to a party other than TXU Gas the use of its facilities within the City's public rights-of-way provided: (i) TXU Gas first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) TXU Gas makes the franchise fee payment due on the revenues from such lease pursuant to Sections I.A. and I.B. of this Ordinance. This authority to Lease Facilities Within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

SECTION 2: In all respects, except as specifically and expressly amended by this ordinance, the existing effective franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by TXU Gas shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided therein.

SECTION 3: This ordinance shall take effect upon its final passage and TXU Gas's acceptance. TXU Gas shall, within thirty (30) days from the passage of this ordinance, file its written acceptance of this ordinance with the Office of the City Secretary in substantially the following form:

To the Honorable Mayor and City Council:

TXU Gas Distribution, a division of TXU Gas Company, acting by and through the undersigned authorized officer, hereby accepts in all respects, on this the ____ day of _____, 20____, Ordinance No. 2164 amending the current gas franchise between the City and TXU Gas and the same shall constitute and be a binding contractual obligation of TXU Gas and the City.

TXU Gas Distribution
A division of TXU Gas Company

By _____
Vice President

SECTION 4: It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS, this the ___ day of _____, 2003, at which meeting a quorum was present and voting.

APPROVED:

Frances Anderson, Mayor

ATTEST:

John Rounsavall, City Secretary

APPROVED AS TO FORM:

Mary Gayle Ramsey, City Attorney