

## **ORDINANCE NO. 950**

AN ORDINANCE AMENDING AND MODIFYING ORDINANCE NO. 821, PROVIDING FOR AN AMENDMENT OF THE FRANCHISE GRANTED BY THE CITY OF CLINTON, OKLAHOMA TO OKLAHOMA NATURAL GAS COMPANY, A DIVISION OF ONEOK, INC., TO ALLOW THE CITY OF CLINTON DISCRETION IN THE COLLECTION OF VOLUMETRIC RATE FEES FOR TRANSPORT GAS CUSTOMERS, AND PROVIDING ADDITIONAL AMENDMENTS TO IMPLEMENT SUCH AMENDMENT; DEFINING THE WORDS AND PHRASES THEREIN; PROVIDING FOR THE RETROACTIVE APPLICATION OF THIS AMENDMENT; PROVIDING FOR THE SEVERABILITY OF PROVISIONS; PROVIDING FOR THE SUBMISSION OF THIS ORDINANCE TO AN ELECTION OF THE QUALIFIED ELECTORS OF THE CITY; AND PROVIDING FOR AN ACCEPTANCE OF SUCH AMENDMENT BY OKLAHOMA NATURAL GAS COMPANY, AND AN OPERATIVE DATE THEREOF.

**BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF CLINTON, OKLAHOMA:**

### **SECTION 1. DEFINITIONS**

As used in this ordinance, the capitalized words and phrases shall have the same meanings as set forth in Ordinance No. 821, passed and approved on June 14, 1999 and subsequently approved by the electors of the City of Clinton, Oklahoma, except as expressly amended hereby.

### **SECTION 2. AMENDMENT OF FRANCHISE GRANT**

The grant to the Grantee by the Grantor of the Franchise represented by Ordinance No. 821 is hereby amended and modified in the following particulars:

A. Section 1 of Ordinance No. 821 is hereby amended, to replace the specified definitions set forth in the subsections identified below with the following definitions:

- L. "Settlement Prices" shall mean the settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX), or any successor

exchange or index, on the 15<sup>th</sup> day of each month as published daily in *The Wall Street Journal* (or a similar national publication in which such prices are regularly published) on the following business day or the next day in which a Settlement Price is published for each month of the twelve-month period immediately following.

- N. "Volumetric Rate" shall mean Three Percent (3%) of the Calculated Value of Transport Gas as determined by Grantee in accordance with the provisions of this definition. The Volumetric Rate Calculation Form incorporated herein as Exhibit "A" shall be used for the calculation of the Volumetric Rate; provided, that if the Grantor enacts an ordinance as described in Section 3.B.2., the three percent (3%) multiplier labeled "3% Bundled Franchise Fee Rate" set forth on "Exhibit A" shall be completed by Grantee and filed with the City Clerk of the City annually by each July following Grantee's acceptance of this franchise. The calculation filed by Grantee on July 31 in each year following the year of acceptance of this franchise shall be effective on January 1 of the next succeeding calendar year through and including December 31 of such calendar year. The calculation shall be subject to review by the City for mathematical correctness, and the City shall notify Grantee in writing within forty-five (45) calendar days after submission if the City deems such calculation to be incorrect. The volumetric rate calculation shall be based on the average of the average Settlement Prices for the twelve-month period beginning in July of the immediately preceding year and ending in June immediately preceding the July 31 calculation. The average Settlement Prices for each month during said twelve-month period shall be calculated by adding the Settlement Prices for such month and the previous eleven (11) months as published and dividing by twelve. The average Settlement Prices for each of the twelve months shall then be summed and divided by twelve to determine the average of the average Settlement Prices, and the quotient shall then be multiplied by three percent (3%) to obtain the Volumetric Rate; provided, in the event the then-current average of the average Settlement Prices, as calculated above and entered on the Volumetric Rate Calculation Form attached as Exhibit A (see line designated on Exhibit "A" as "settlement price average"), exceeds the Index price for ONEOK Gas Transportation,

L.L.C., that is listed in the issue of Platt's "Inside FERC's Gas Market Report" published on the first business day of the respective month ("Platt's Index price"), then the Platt's Index price shall be used to calculate the Volumetric Rate for that delivery month in lieu of the average of the average Settlement Prices entered on the Volumetric Rate Calculation Form (Exhibit "A") (i.e., for that respective delivery month, the Volumetric Rate shall be determined by taking the Platt's Index price and multiplying that price by 3% or the then applicable increased percentage determined in the same manner set out in Subsection 11.A(2) of this franchise).

Attached to this ordinance as "Exhibit 'A'" is the Volumetric Rate Calculation Form referred to herein, which shall be deemed to be appended to Ordinance No. 821 as amended by this ordinance.

B. Section 1 of Ordinance No. 821 is hereby further amended to add the following definitions:

- O. "Calculated Value" shall mean the total Transport Gas measured in Dekatherms (Dth), delivered to a Transport Gas Consumer for a billing period, multiplied by the Settlement Price to arrive at the value of the Transport Gas transported by Grantee for that Transport Gas Consumer.
- P. "Dekatherm" or "Dth" shall mean a measurement of natural gas equal to 1,000,000 British Thermal Units ("BTU"), or 1 MMBTU, on a dry basis. BTU shall be computed on a temperature base of 60 degrees Fahrenheit and a pressure base of 14.73 PSIA.
- Q. "Transport Gas Consumer" shall mean a Consumer which uses Transport Gas.
- R. "Volumetric Rate Fee" or "Volumetric Rate Fees" shall mean the fee or fees based on the Volumetric Rate to be collected and remitted to the City by Grantee as required by Section 11.A(2) of this franchise upon the enactment of an ordinance as described in Section 3.B.2.

C. Section 3.B.1. of Ordinance No. 821 is repealed retroactively.

D. Section 3.B.2. of Ordinance No. 821 is replaced by the following:

After the operative date of this ordinance, Grantor shall have the elective right, by enacting a separate ordinance, to require compensation to be paid to Grantor by Transport Gas Consumers and other parties using Grantee's Distribution System for the Distribution of Transport Gas. If such separate ordinance is enacted, then Grantee agrees to act as agent for Grantor to collect such sums for Grantor and to submit such payments in the manner provided in Section 11.

E. Section 11.A(2) of Ordinance No. 821 is replaced by the following:

- (2) In the event that Grantor, pursuant to Section 3.B.2. of this ordinance, requires Transport Gas Consumers or other parties using Grantee's Distribution System for the Distribution of Transport Gas to pay compensation to Grantor for use of the public ways in connection the sale, transportation or distribution of Transport Gas, said compensation shall be calculated as a Volumetric Rate Fee for such Transport Gas, which shall be the amount equal to the then current Volumetric Rate multiplied by the number of Dth of Transport Gas reported or distributed through Grantee's facilities within the corporate city limits of the City by grantee or by any third-party to transport customers for consumption within the city. Grantee will in that event collect such Volumetric Rate Fees from Transport Gas Consumers and remit the same to Grantor.

F. Section 11 of Ordinance No. 821 is further amended to add the following Subsection 11.F.:

F. The Mayor or his designee may waive the Volumetric Rate Fee or any part thereof due from a Transport Gas Consumer, but such waiver shall only be granted if:

- (1) The Transport Gas Consumer could otherwise obtain its energy needs from another source that would not be subject to the fees imposed in Subsection 11.A(2) above and sufficient evidence is produced by the Consumer so as to substantiate such alternative source; and

- (2) Such alternative source, including all other fees, would be less than the cost of utilizing Grantee to furnish and transport the gas or transport alone, as the case may be.

### **SECTION 3. RETROACTIVE APPLICATION OF AMENDMENT**

This ordinance and the amendments of Ordinance No. 821 described in Section 2 herein shall be retroactive and shall apply to all Transport Gas Consumers that fell under the auspices of Ordinance No. 821, in order to ensure the fair and uniform application thereof.

### **SECTION 4. SEVERABILITY**

If any clause, sentence, or section of this ordinance shall be held to be invalid, it shall be severed herefrom and shall not affect the remaining portions of this ordinance.

### **SECTION 5. ELECTION REQUIRED**

This ordinance shall not become effective until it shall be approved by a majority of the qualified electors voting thereon residing within the corporate limits of the City of Clinton at an election called for that purpose, and a special election is hereby called for the purpose of submitting to the qualified electors residing in said City of Clinton, the question of approval or disapproval of this ordinance, which election shall be held on November 12, 2013, between the hours prescribed by law. The Mayor of the City of Clinton is hereby authorized and directed to issue a proper and lawful call and proclamation of such special election to be held on such date as aforesaid for said purposes, and the executive officers of the City of Clinton are hereby directed to give due and lawful notice of such election and submission of said question to the electors of the City of Clinton, prescribing in said proclamation and notice of the proposition to be voted upon, the time of opening and closing the polls, the number and location of the polling places and the names of the precinct election officers who shall conduct said election, and all other things prescribed by law, or the ordinances of the City of Clinton, Oklahoma.

### **SECTION 6. ACCEPTANCE AND EFFECTIVE DATE**

In the event this ordinance is approved by a majority vote of said electors voting thereon at said election, the Grantee shall file with the City Clerk of the City of Clinton, within ten (10) days after the official canvass of the votes and declaration by the City Commission of the results thereof, a written acceptance hereof. This ordinance shall become operative on the date of filing of such acceptance.

PASSED and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED:

\_\_\_\_\_  
City Attorney

**Exhibit "A"**

**The City of Clinton, Oklahoma  
Volumetric Rate Calculation Form  
For the Transportation of Natural Gas in Pipelines Located in the City of Clinton, Oklahoma**

Based on the NYMEX settlement prices for each month of the twelve forward months as occurred on the 15th of each month, published the following business day.

Source: *Wall Street Journal*  
 Deadline: Form must be filed each year with the City Clerk by July 31 and notice sent to the Natural Gas Companies.

Month	Last Year Jul 15	Last Year Aug 15	Last Year Sep 15	Last Year Oct 15	Last Year Nov 15	Last Year Dec 15	This Year Jan 15	This Year Feb 15	This Year Mar 15	This Year Apr 15	This Year May 15	This Year Jun 15
Aug Last Year												
Sep Last Year												
Oct Last Year												
Nov Last Year												
Dec Last Year												
Jan Current Year												
Feb Current Year												
Mar Current Year												
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Oct Current Year												
Nov Current Year												
Dec Current Year												
Jan Next Year												
Feb Next Year												
Mar Next Year												
Apr Next Year												
May Next Year												
Jun Next Year												
Avg Settlement Price												

July ____ through June ____ settlement price average	_____
X. Bundled Franchise Fee Rate	_____ %
= Volumetric Rate/MCF	_____

Note: If the 15th of the month falls on a week-end or holiday,  
then use the next business day settlement price.