

ORDINANCE NO. 2011-2

AN ORDINANCE GRANTING A FRANCHISE BY THE TOWN OF PONCHA SPRINGS, COUNTY OF CHAFFEE, COLORADO, TO ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO FURNISH, SELL AND DISTRIBUTE GAS TO THE TOWN AND TO ALL PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE TOWN AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID TOWN ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL AND DISTRIBUTE GAS TO THE TOWN AND TO ALL PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE TOWN AND IN THE TERRITORY ADJACENT THERETO AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AS MAY BE NECESSARY, AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF PONCHA SPRINGS, CHAFFEE COUNTY, COLORADO:

ARTICLE I

Definitions

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

1.1 "Board" or "Town Board" refers to and is the legislative body of the Town of Poncha Springs.

1.2 "Company" refers to and is Atmos Energy Corporation, a Texas and Virginia corporation, and its successors and assigns.

1.3 "Distribution Facilities" refer to and are only those facilities reasonably necessary to provide gas within the Town.

1.4 "Facilities" refer to and are all facilities reasonably necessary to provide gas into, within and through the Town and include plants, works, systems, lines, equipment, pipes, mains, underground links, gas compressors and meters.

1.5 "Emergency" refers to ruptures and leakage of pipelines, explosions, fires and similar instances where immediate action is necessary to prevent loss of life or significant damage to underground facilities and advance notice of proposed excavation is impracticable under the circumstances.

1.6 "Gas" or "Natural Gas" refers to and is such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured, or any mixture thereof.

1.7 "PUC" refers to and is The Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory powers of The Public Utilities Commission of the State of Colorado.

1.8 "Residents" refers to and includes all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.

1.9 "Revenues" refers to and are those amounts of money which the Company receives from its customers within the Town for the sale of gas or Tariff Services provided under rates, temporary or permanent, authorized by the PUC and from the use of others of its facilities within the Town and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

1.10 "Tariff Service" is a service provided by the Company pursuant to its tariffs which are filed with and approved by the PUC, for which the Company may charge a fee. Such fees include, but are not limited to fees for connecting and disconnecting customers, for transferring service and for returned check charges.

1.11 "Streets and Other Public Places" refer to and are streets, alleys, viaducts, bridges, roads, lanes, easements, public ways and other public places in said Town.

1.12 "Town" refers to and is the Town of Poncha Springs, Chaffee County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the Town of Poncha Springs.

ARTICLE II

Grant of Franchise

2.1 Grant of Franchise. The Town hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Ordinance, the right to furnish, transport, sell and distribute gas to the Town and to all persons, businesses and industries within the Town, the right to acquire, construct, install, locate, maintain, operate and

extend into, within and through the Town all facilities reasonably necessary to provide gas to the Town and to all persons, businesses and industries within the Town and in the territory adjacent thereto; and the right to make reasonable use of all streets and other public places as may be necessary to carry out the terms of the Ordinance.

2.2 Terms of Franchise. The term of this franchise shall be for twenty (20) years, beginning July 7th, 2011 and expiring July 7th, 2031.

ARTICLE III

Franchise Fee

3.1 Franchise Fee. In consideration for the grant of this franchise, the Company shall collect and remit to the Town a sum equal to three percent (3%) of the Company's Revenues excluding the amount received from the Town itself for gas service furnished it. Franchise Fee payments shall be made in quarterly installments not more than thirty days following the close of the quarter for which payment is to be made. Quarters shall end on March 31, June 30, September 30, and December 31. Payments at the beginning and end of the franchise shall be prorated.

3.2 Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax, assessment or excise upon the pipes, mains, meters or other personal property of the Company or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its real property or any other tax not related to the franchise or the physical operation thereof.

3.3 Change of Franchise Fee. Once during each calendar year of the franchise, the Town Board, upon giving 30 days notice to the Company, may review and change the franchise fee that the Town may be entitled to receive as a part of the franchise; provided, however, that the Board may only change the franchise fee amount such as to cause the Town to receive a franchise fee under this franchise equivalent to the franchise fee that the Company may pay to any other city or town in any other franchise under which the Company renders gas service in Colorado.

3.4 Contract Obligation. If the franchise fee specified in this Article is declared illegal, unconstitutional, or void for any reason by any court of proper authority, Company is contractually bound to pay the Town an amount that would be, as near as practicable, equivalent to the amount which would have been paid by the Company as a franchise fee

hereunder.

ARTICLE IV

Conduct of Business

4.1 Conduct of Business. The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State of Colorado.

4.2 Tariffs on File. The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the PUC. Said tariffs shall be available for inspection by the public.

4.3 Compliance with PUC Regulations. The Company shall comply with all rules and regulations adopted by the PUC.

4.4 Compliance with Company Tariffs. The Company shall furnish gas within the Town to the Town and to all persons, businesses and industries within the Town at the rates and under the terms and conditions set forth in its tariffs on file with the PUC.

4.5 Applicability of Company Tariffs. The Town and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the PUC are controlling over any inconsistent provision in this franchise dealing with the same subject matter.

ARTICLE V

Construction, Installation & Operation of Company Facilities

5.1 Obligations Regarding Company Facilities. The Company shall install, maintain, repair, renovate, and replace its facilities with due diligence in a good and workmanlike manner, and the Company's facilities will be of sufficient quality and durability to provide adequate and efficient gas service to the Town and its residents. Company Facilities shall not unreasonably interfere with the Town's Water Mains, Sewer Mains, Town Ditches, nor with other public improvements or other municipal use of streets and other public places within the Town. Company Facilities shall be located so as to cause minimum interference with public use of

streets and other public places and shall at all times be maintained in good repair and condition. Whenever feasible, Company's new and relocated facilities shall be located in existing public easements adjacent to streets, rather than in or beneath the streets.

5.2 Excavation and Construction. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner that minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable local, state and federal codes including specifically the Town's Standard Design Criteria and Standard Construction Requirements updated 2009. All public and private property whose use conforms to restrictions in easements disturbed by Company construction or excavation activities shall be restored as soon as practicable by the Company at its expense to substantially its former condition. The Company shall comply with the Town's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The Town reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time after notice from the Town.

5.3 Relocation of Company Facilities. If at any time the Town requests the Company to relocate any Distribution Facilities installed or maintained in streets or other public places in order to permit the Town to change street grades, pavements, sewers, water mains or other Town works, such relocation shall be made by the Company at its expense. The Company is not obligated hereunder to relocate any facilities at its expense, which were installed in private easements obtained by the Company, the underlying fee of which was, at some point subsequent to installation, transferred to the Town. Relocation shall be completed within a reasonable time as mutually agreed to by the parties; provided, however, that the Company shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control, provided that the Company proceeds with due diligence at all times. Following relocation, the Company, at its expense, shall restore all property to substantially its former condition.

5.4 Service to New Areas. If during the term of this franchise the boundaries of the Town are expanded, the Town will promptly notify Atmos in writing of any geographic areas annexed by the Town during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Atmos by certified mail, return receipt requested, and shall contain the

effective date of the annexation, maps showing the annexed area and such other information as Atmos may reasonably require in order to ascertain whether there exist any customers of Atmos receiving natural gas service in said annexed area. To the extent there are such Atmos customers therein, then the gross revenues of Atmos derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Atmos' billing cycle immediately following Atmos' receipt of the Annexation Notice. The failure by the Town to advise Atmos in writing through proper Annexation Notice of any geographic areas which are annexed by the Town shall relieve Atmos from any obligation to remit any franchise fees to Town based upon gross revenues derived by Atmos from the sale and distribution of natural gas to customers within the annexed area until Town delivers an Annexation Notice to Atmos in accordance with the terms hereof.

5.5 Town Designee. The Town Administrator shall designate in writing to the Company an official having full power and authority to administer the franchise. The Town Administrator may also designate one or more Town representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise and shall provide the Company with the name and telephone numbers of said Town representatives. The Town Administrator may change these designations by providing written notice to the Company. The Town's designee shall have the right, at all reasonable times, to inspect any Company Facilities in Town Streets, Public Utility Easements and Other Town Property.

5.6 Company Designee. The Company shall designate a representative to act as the primary liaison with the Town and to be the person designated to receive all notices from the Town to the Company. The Company shall provide the Town with the name, address, and telephone number for the Company's representative under this franchise at the commencement of the franchise. The Company may change its designation by providing written notice to the Town. The Town shall use this liaison to communicate with the Company regarding Utility Service and related service needs for Town facilities.

5.7 Restoration of Service. In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

5.8 Supply and Quality of Service. The Company shall make available an adequate supply of gas to provide service in the Town. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient gas service to the Town.

5.9 Safety Regulations by the Town. The Town reserves the right to adopt, from

time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein. The Company agrees to comply with all such regulations, in the construction, maintenance and operation of its facilities and in the provision of gas within the Town.

5.10 Town Review of Construction and Design. Except in instances of emergency, prior to construction of any significant facilities above ground, for gas control buildings, regulator stations or similar structures within the Town, unless otherwise requested in writing by the Town, the Company shall furnish to the Town the plans for such facilities. In addition, upon request, the Company shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain inter alia that the Company is in compliance with the following requirements: (1) that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with: (2) that aesthetic and good planning principles have been given due consideration: and (3) that adverse impact on the environment has been minimized. The Company shall incorporate all reasonable changes requested by the Town. The Town shall not require the Company to meet any standard higher than those required to meet federal, state or local laws.

5.11 Compliance with Federal, State and Local Laws. The Company shall comply with all applicable federal, state and local laws. The Company shall use its commercially reasonable best efforts to take measures which will result in its facilities meeting the standards required by applicable federal and state air and water pollution laws. Upon the Town's request, Company will provide the Town with a status report of such measures.

5.12 Inspection, Audit and Quality Control. The Town shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the Town and its residents. The Town also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Ordinance at all reasonable times. The Company agrees to cooperate with the Town in conducting the inspection and/or audit and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner.

ARTICLE VI

Assignment:

6.1 Assignment. The Company shall not transfer or assign any rights under this

franchise to a third party unless the Town shall approve such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld by the Town. A corporate merger, consolidation, or reorganization involving Company shall not constitute a transfer or assignment for purposes hereof.

ARTICLE VII

Purchase or Condemnation

7.1 Town's Right to Purchase or Condemn. Any right of the Town to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes are hereby expressly reserved and may be exercised at any time during the term of this franchise as provided by the Colorado Constitution and statutes.

7.2 Continued Cooperation by Company. In the event the Town exercises any right it may have under applicable law to purchase or condemn, the Company agrees that, at the Town's request, it will continue to supply and service its supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation.

ARTICLE VIII

Force Majeure

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Company is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Company is so prevented shall not be counted against Company for any reason. The term "force majeure," as used herein, shall mean any cause not reasonably within Company control and includes, but is not limited to, acts of God, strikes, lockouts, wars, terrorism, riots, orders, or decrees of any lawfully constituted federal, state or local body; contagions or contaminations hazardous to human life or health; fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe; inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits; temporary failures of gas supply; or necessary repair, maintenance or replacement of facilities used in the performance of the obligations contained in this Ordinance.

ARTICLE IX

Forfeiture

9.1 Forfeiture. Both the Company and the Town recognize there may be circumstances whereby compliance with the provisions of this franchise is impossible or is delayed because of circumstances beyond the Company's control. In this instance, the Company shall use its best efforts to comply in a timely manner and to the extent possible. If the Company fails to perform any of the material terms or conditions of this franchise, the Town shall notify the Company. In the notice, the Town shall specify the time, not to exceed three(3) months, in which the Company must remedy the violations. If after such time corrective actions have not been successfully taken, the Town shall determine, after a notice of not less than fourteen (14) days and a hearing before the Town Board whether any or all rights and privileges granted the Company under this franchise shall be forfeited. In the event the Company's failure to perform the terms or conditions of this franchise is caused by or arises out of a condition of Force Majeure, as described in Article VIII hereof, then, provided Company makes all reasonable effort to perform this Ordinance no forfeiture of this franchise will take place for the period that said condition exists under such circumstances, Company shall forthwith initiate and continue, with due diligence, reasonable efforts to remedy said condition.

9.2 Continued Obligations. Upon forfeiture, the Company shall continue to provide service to this Town and its residents in accordance with the provisions of this franchise.

9.3 Judicial Review. Any such declaration of forfeiture shall be subject to judicial review as provided by law.

9.4 Other Legal Remedies. Nothing herein contained shall limit or restrict any legal rights that the Town or the Company may possess arising from any alleged violation of this franchise.

ARTICLE X

Removal of Company Facilities at End of Franchise

10.1 Limitations on Company Removal. In the event this franchise is not renewed at the expiration of its term or is terminated for any reason whatsoever, and the Town has not purchased or condemned the system and has not provided for alternative gas service, the Company shall not be required nor shall it have the right to remove said system pending resolution of the disposition of the system. The Company further agrees it will not withhold any

temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount that it would have been entitled to were such services provided during the term of this franchise. However, in the event the obligation to maintain the facilities continues beyond the expiration of the franchise agreement, the Company and City shall negotiate terms and conditions for such continued operation. Only upon receipt of written notice from the Town stating that the Town has adequate alternative gas sources to provide for the people of the Town shall the Company be entitled to remove any or all of said systems in use under the terms of this franchise.

ARTICLE XI

Indemnification and Immunity

11.1 Town Held Harmless. The Company shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or directly arising from the grant of this franchise, and the exercise by the Company of the related rights herein to the extent caused by the Company, and shall pay the costs of defense plus reasonable attorneys' fees. The Town shall: (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and, (b) unless in the Town's judgment a conflict of interest may exist between the Town and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the Town or any of its officers or employees or to the extent that the Town is acting in the capacity of a Company customer.

11.2 Immunity. Nothing in this Section or any other provision of this agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado Governmental Immunity Act (§24-10-101, C.R.S., *et. Seq.*)

ARTICLE XII

Miscellaneous

12.1 Severability. Should any one or more provisions of this franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain in full force and effect; provided, however the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft an amendment that will achieve the original intent of the parties hereunder.

12.2 Successors and Assigns. The rights, privileges, franchises and obligations granted and contained in this Ordinance shall inure to the benefit of and be binding upon Company, its permitted successors and assigns.

12.3 Entire Agreement. This franchise constitutes the entire understanding and agreement of the parties. There have been no representations made other than those contained therein.

12.4 Other Legal Remedies. Nothing herein contained shall limit or restrict any legal rights that the Town or the Company may possess arising from any alleged violations of this franchise or failure to perform thereunder.

12.5 Third Parties. Except as expressly provided herein, no rights are granted to third parties under this franchise.

12.6 Applicable Law. Colorado law shall apply to the construction and enforcement of this franchise.

INTRODUCED, READ AND ORDERED PUBLISHED THE 11 DAY OF APRIL, 2011.

PASSED, ADOPTED AND APPROVED THIS 9 DAY OF MAY, 2011.

THE TOWN OF PONCHA SPRINGS, COLORADO

By: *Michael Thonhoff*
Mayor

ATTEST:

Diana K Heney
Town Clerk

DATE OF FINAL PUBLICATION: April 8, 2011.



ACCEPTED AND AGREED TO:

ATMOS ENERGY CORPORATION

By: *[Signature]*
Gary Schlessman
President (Colorado-Kansas Division)

Town's Mailing Address and Phone Number:

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