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PROPERTY DEPT.

ORDINANCE NO.

(New Series)

11342

O. 74-35

JUN 27 1974

AN ORDINANCE OF THE CITY OF SAN DIEGO GRANTING
TO SAN DIEGO GAS & ELECTRIC COMPANY
A STEAM FRANCHISE FOR A PERIOD OF APPROXIMATELY
FORTY YEARS TO INSTALL, CONSTRUCT, MAINTAIN AND
OPERATE STEAM PIPE CONDUITS IN ORDER TO CARRY
STEAM AND/OR STEAM CONDENSATE FOR HEATING AND
ALL OTHER PURPOSES IN CERTAIN STREETS WITHIN
THE CITY OF SAN DIEGO.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. The Council of The City of San Diego does hereby determine and declare that after favorable recommendations thereon have been made and filed by the City Manager with the City Clerk of said City, and after public hearings have been held pursuant to published notice, and after free and open competition has been conducted after publication of notice, that the public interest, convenience and necessity of said City and its inhabitants require that said City Council shall grant to Grantee the franchise to install, construct, maintain and operate underground steam pipe conduits in order to carry steam and/or steam condensate for heating and all other purposes in certain streets within the City of San Diego, for a period of approximately forty (40) years expiring on February 17, 2013, upon the terms and subject to the conditions and restrictions in this ordinance as hereinafter stated.

Section 2. That said Council does further determine and declare that pursuant to its Resolution No. 210011 adopted February 28, 1974, publication, notice and advertisement of intention to grant such franchise and inviting sealed bids thereon

as provided for in said resolution was duly and regularly made and published for the time and in the manner as in said resolution and under the terms of the Charter of said City as provided.

Section 3. That said Council further determines and declares that after said advertisement duly and regularly published as required by law, said Council, in open, regular session received, opened and considered bids for said franchise; extended opportunity to responsible persons, firms and corporations to bid for such franchise, as provided by law, and said notice inviting sealed bids, and full opportunity having been given to increase the amount of sealed bids received, and it appearing that the highest bid received was in the sum of Five Hundred dollars (\$ 500), said franchise was thereupon by said Council awarded, sold and granted to said Grantee; that Grantee has deposited with said City, within the time required by law, the total sum aforesaid in lawful money of the United States; that said Grantee has filed with the said Council a bond in the sum of two thousand and no/100 dollars (\$2,000.00), with good and sufficient sureties satisfactory to said Council, running to said City, conditioned that the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages and shall be recoverable from the principal and sureties upon said bond; that said bond is in the form and contains the terms required by law and the order of the Council, and said bond has been regularly approved by said Council.

Section 4. Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the

respective meanings assigned to them in the following definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

A. The word "Grantee" shall mean SAN DIEGO GAS & ELECTRIC COMPANY and its lawful successors or assigns;

B. The word "City" shall mean The City of San Diego, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form;

C. The word "street" shall mean any public street or highway under the jurisdiction of The City of San Diego now or hereafter dedicated within the City of San Diego;

D. The phrase "steam pipe conduits" shall mean pipes, pipelines, mains, services, traps, meters, gauges, regulators, valves, conduits, vaults, manholes, appliances, attachments, appurtenances and, without limitation of the foregoing, any other property located or to be located in or below the streets of the City, and used or useful in transmitting and carrying steam and/or steam condensate;

E. The phrase "install, construct, maintain and operate" shall mean to construct, erect, install, lay, operate, maintain, use, repair or replace.

Section 5. There is hereby granted to Grantee, and to its successors or assigns, the franchise to install, construct, maintain and operate steam pipe conduits for heating and all other purposes in certain streets within the City of San Diego as hereinafter described:

Beginning at the intersection of the Easterly line of India Street with a line that is parallel with and 50.00 feet Northerly of the Northerly line of Grape Street, said point herein designated Point "A"; thence Westerly along said parallel line and its Westerly prolongation to the Westerly line of Harbor Drive, said point herein designated Point "B"; thence Southerly and Southeasterly along the Westerly and Southwesterly line of Harbor Drive to the intersection with the Southerly prolongation of a line that is parallel with and 50.00 feet Easterly of the Easterly line of Eighth Avenue; thence Northerly along said parallel line to a line that is parallel with and 50.00 feet Southerly of the Southerly line of Commercial Avenue; thence Easterly along said parallel line and its Easterly prolongation to the center of Interstate 5; thence Northerly, Northwesterly and Westerly along the center of Interstate 5 to the intersection with the Easterly prolongation of Course ("A"- "B") described above, said Course being parallel with and 50.00 feet Northerly of the Northerly line of Grape Street; thence Westerly along said prolongation to the POINT OF BEGINNING; but excluding all that area included within that franchise granted to San Diego Gas & Electric Company on January 17, 1963, a copy of which is on file in the office of the City Clerk of City as Document No. 650514.

Section 6. The term of this franchise shall be approximately forty (40) years, expiring on February 17, 2013, provided that upon written notice given by the City or Grantee to the other not less than one (1) year prior to February 17, 1988, the terms and conditions of this franchise may be subject to renegotiation for an additional fifteen-year term. If this first renegotiation is successful, then upon written notice given by the City or Grantee to the other not less than one (1) year prior to February 17, 2003, the terms and conditions of this franchise may be subject to further renegotiation for the remainder of the franchise term.

Renegotiations shall be directed toward effecting alterations in the terms and conditions of the franchise in order to reflect those technical and economic changes which have occurred during the interim period. If renegotiation at any time prior to the end of the term of the franchise does not result in agreement between City and Grantee for continuance of the franchise for a succeeding term as specified above, the franchise shall terminate without further action by City on February 17, 1988 or, if the first renegotiation is successful, on February 17, 2003. At no time shall any renegotiation of this franchise lower the consideration charged by the City for this franchise below three percent (3%) of the gross annual receipts of the Grantee arising from the use, operation, or possession of the franchise.

Section 7. This franchise is granted upon the following terms and subject to the following conditions:

A. The franchise herein granted is upon the express condition that the Grantee, as consideration therefor and as compensation for the use of the City streets, shall pay annually to the City during the term of the franchise a sum equal to three percent (3%) of the gross annual receipts of the Grantee arising from the use, operation, or possession of the franchise, such percentage to commence to accrue on the date the ordinance granting the franchise becomes effective.

B. The Grantee shall file with the Clerk of the City within three (3) months of the expiration of each calendar year, following the date of granting hereof and

during the life of said franchise, a duly verified statement showing in detail the gross receipts of Grantee during the preceding calendar year, arising from the use, operation or possession of the franchise. Grantee shall pay the City within three (3) months and fifteen (15) days after the expiration of the calendar year, in lawful money of the United States of America, the aforesaid percentage of its gross receipts for such calendar year, covered by the above mentioned statement. Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights of Grantee hereunder.

C. The Grantee of said franchise shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof; such payment to be made within thirty (30) days after the City shall have furnished Grantee with a written statement of such expenses.

D. Before Grantee commences any work, the location of any steam main installation shall be approved by the City Engineer.

E. This franchise does not relieve the Grantee of any requirement, ordinance, rule or regulation of the City relating to street work, or the use, removal, or relocation of property in streets.

F. The right to grade, sewer, pave, macadamize, or otherwise improve or alter or repair City streets, or to change the grade thereof, shall be reserved to the City. Such work shall be done so as to interfere as little as possible with the rights and privileges enjoyed by the Grantee of this franchise, under the terms and provisions thereof. The Grantee, at its own expense, shall change the location of steam pipe conduits placed in the City streets so as to comply with any change of grade of said streets ordered by the City Council.

G. Whenever a street or portion thereof is closed, the Grantee shall be granted by the City a permanent easement covering the location of steam pipe conduits then existing in said closed street or portion thereof, with access for maintenance, repair and operation; provided, however, that (1) when the construction of a structure or structures for municipal purposes shall require the removal or relocation of a portion or portions of said steam pipe conduits, said easement shall be revoked with respect to such portions of said steam pipe conduits and the Grantee shall remove and relocate such portions at its own expense, and (2) in all other cases said easement may be revoked only upon condition that the Grantee is reimbursed for any and all costs incurred by it occasioned by such revocation and for the cost of relocation or removal of existing steam pipe conduits and the construction of alternative steam pipe conduits to supply steam service

to its customers. The Grantee shall not install any new extension of its steam pipe conduits or any new steam service in any streets regarding which Grantee has received written notice that the same shall be closed within a period of five (5) years from date of notice.

H. Within ten (10) days after the passage and taking effect of this ordinance, the Grantee shall file with the City Clerk of said City a written acceptance of the franchise hereby granted and an agreement to comply with the terms thereof.

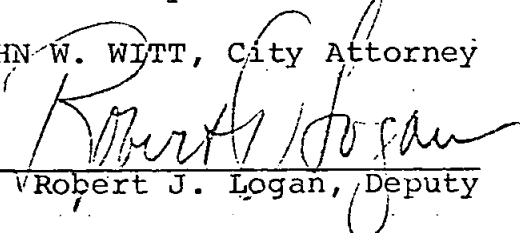
I. This franchise shall not be transferred except with the approval of the Council expressed by ordinance.

J. This franchise may be amended by agreement of the City and Grantee, but such amendment must be authorized by ordinance.

Section 8. Notwithstanding any other provisions contained herein, this franchise is granted solely and exclusively under Sections 103, 103.1, 104 and 105 of the Charter of The City of San Diego and under no other authority.

Section 9. This ordinance shall take effect and be in force on the thirty-first day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By 
Robert J. Logan, Deputy

of the Easterly line of India Street with a line that is parallel with and 50.00 feet Northerly of the Northerly line of Grape Street; said point herein designated Point "A"; thence Westerly along said parallel line and its Westerly prolongation to the Westerly line of Harbor Drive; said point herein designated Point "B"; thence Southerly and Southeasterly along the Westerly and Southwesterly line of Harbor Drive to the intersection with the Southerly prolongation of a line that is parallel with and 50.00 feet Easterly of the Easterly line of Eighth Avenue; thence Northerly along said parallel line to a line that is parallel with and 50.00 feet Southerly of the Southerly line of Commercial Avenue; thence Easterly along said parallel line and its Easterly prolongation to the center of Interstate 5; thence Northerly, Northwesterly and Westerly along the center of Interstate 5 to the intersection with the Easterly prolongation of Course ("A"- "B") described above, said Course being parallel with and 50.00 feet Northerly of the Northerly line of Grape Street; thence Westerly along said prolongation to the POINT OF BEGINNING; but excluding all that area included within that franchise granted to San Diego Gas & Electric Company on January 17, 1963, a copy of which is on file in the office of the City Clerk of City as Document No. 650514.

Section 6. The term of this franchise shall be approximately forty (40) years, expiring on February 17, 2003, provided that upon written notice given by the City or Grantee to the other not less than one (1) year prior to February 17, 1988, the terms and conditions of this franchise may be subject to renegotiation for an additional fifteen-year term. If this first renegotiation is successful, then upon written notice given by the City or Grantee to the other not less than one (1) year prior to February 17, 2003, the terms and conditions of this franchise may be subject to further renegotiation for the remainder of the franchise term.

Renegotiations shall be directed toward effecting alterations in the terms and conditions of the franchise in order to reflect those technical and economic changes which have occurred during the interim period. If renegotiation at any time prior to the end of the term of the franchise does not result in agreement between City and Grantee for continuance of the franchise for a succeeding term as specified above, the franchise shall terminate without

further action by City on February 17, 1988 or, if the first renegotiation is successful, on February 17, 2003. At no time shall any renegotiation of this franchise lower the consideration charged by the City for this franchise below three percent (3%) of the gross annual receipts of the Grantee arising from the use, operation, or possession of the franchise.

Section 7. This franchise is granted upon the following terms and subject to the following conditions:

A. The franchise herein granted is upon the express condition that the Grantee, as consideration therefor and as compensation for the use of the City streets, shall pay annually to the City during the term of the franchise a sum equal to three percent (3%) of the gross annual receipts of the Grantee arising from the use, operation, or possession of the franchise, such percentage to commence to accrue on the date the ordinance granting the franchise becomes effective.

B. The Grantee shall file with the Clerk of the City within three (3) months of the expiration of each calendar year, following the date of granting hereof and during the life of said franchise, a duly verified statement showing in detail the gross receipts of Grantee during the preceding calendar year, arising from the use, operation or possession of the franchise. Grantee shall pay the City within three (3) months and fifteen (15) days after the expiration of the calendar year, in lawful money of the United States of America, the aforesaid percentage of its gross receipts for such calendar year, covered by the above mentioned statement. Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights of Grantee hereunder.

C. The Grantee of said franchise shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof; such payment to be made within thirty (30) days after the City shall have furnished Grantee with a written statement of such expenses.

D. Before Grantee commences any work, the location of any steam main installation shall be approved by the City Engineer.

E. This franchise does not relieve the Grantee of any requirement, ordinance, rule or regulation of the City relating to street work, or the use, removal, or relocation of property in streets.

ORDINANCE NO. 11342 (New Series)

AN ORDINANCE OF THE CITY OF SAN DIEGO GRANTING TO SAN DIEGO GAS & ELECTRIC COMPANY A STEAM FRANCHISE FOR A PERIOD OF APPROXIMATELY FORTY YEARS TO INSTALL, CONSTRUCT, MAINTAIN AND OPERATE STEAM PIPE CONDUITS IN ORDER TO CARRY STEAM AND/OR STEAM CONDENSATE FOR HEATING AND ALL OTHER PURPOSES IN CERTAIN STREETS WITHIN THE CITY OF SAN DIEGO.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. The Council of The City of San Diego does hereby determine and declare that after favorable recommendations thereon have been made and filed by the City Manager with the City Clerk of said City, and after public hearings have been held pursuant to published notice, and after free and open competition has been conducted after publication of notice, that the public interest, convenience and necessity of said City and its inhabitants require that said City Council shall grant to Grantee the franchise to install, construct, maintain and operate underground steam pipe conduits in order to carry steam and/or steam condensate for heating and all other purposes in certain streets within the City of San Diego, for a period of approximately forty (40) years expiring on February 17, 2003, upon the terms and subject to the conditions and restrictions in this ordinance as hereinafter stated.

Section 2. That said Council does further determine and declare that pursuant to its Resolution No. 210011 adopted February 28, 1974, publication, notice and advertisement of intention to grant such franchise and inviting sealed bids thereon as provided for in said resolution was duly and regularly made and published for the time and in the manner as in said resolution and under the terms of the Charter of said City as provided.

Section 3. That said Council further determines and declares that after said advertisement duly and regularly published as required by law, said Council, in open, regular session received, opened and considered bids for said franchise; extended opportunity to responsible persons, firms and corporations to bid for such franchise, as provided by law, and said notice inviting sealed bids, and full opportunity having been given to increase the amount of sealed bids received, and it appearing that the highest bid received was in the sum of Five

Hundred dollars (\$500), said franchise was thereupon by said Council awarded, sold and granted to said Grantee; that Grantee has deposited with said City, within the time required by law, the total sum aforesaid in lawful money of the United States; that said Grantee has filed with the said Council a bond in the sum of two thousand and no/100 dollars (\$2,000.00), with good and sufficient sureties satisfactory to said Council, running to said City, conditioned that the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages and shall be recoverable from the principal and sureties upon said bond; that said bond is in the form and contains the terms required by law and the order of the Council, and said bond has been regularly approved by said Council.

Section 4. Whenever in this ordinance the words or phrases herein-after in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

A. The word "Grantee" shall mean SAN DIEGO GAS & ELECTRIC COMPANY and its lawful successors or assigns;

B. The word "City" shall mean The City of San Diego, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form;

C. The word "street" shall mean any public street or highway under the jurisdiction of The City of San Diego now or hereafter dedicated within the City of San Diego;

D. The phrase "steam pipe conduits" shall mean pipes, pipelines, mains, services, traps, meters, gauges, regulators, valves, conduits, vaults, manholes, appliances, attachments, appurtenances and, without limitation of the foregoing, any other property located or to be located in or below the streets of the City, and used or useful in transmitting and carrying steam and/or steam condensate;

E. The phrase "install, construct, maintain and operate" shall mean to construct, erect, install, lay, operate, maintain, use, repair or replace.

Section 5. There is hereby granted to Grantee, and to its successors or assigns, the franchise to install, construct, maintain and operate steam pipe conduits for heating and all other purposes in certain streets within the City of San Diego as hereinafter described:

Beginning at the Intersection

F. The right to grade, sewer, pave, macadamize, or otherwise improve or alter or repair City streets, or to change the grade thereof, shall be reserved to the City. Such work shall be done so as to interfere as little as possible with the rights and privileges enjoyed by the Grantee of this franchise, under the terms and provisions thereof. The Grantee, at its own expense, shall change the location of steam pipe conduits placed in the City streets so as to comply with any change of grade of said streets ordered by the City Council.

G. Whenever a street or portion thereof is closed, the Grantee shall be granted by the City a permanent easement covering the location of steam pipe conduits then existing in said closed street or portion thereof, with access for maintenance, repair and operation; provided, however, that (1) when the construction of a structure or structures for municipal purposes shall require the removal or relocation of a portion or portions of said steam pipe conduits, said easement shall be revoked with respect to such portions of said steam pipe conduits and the Grantee shall remove and relocate such portions at its own expense, and (2) in all other cases said easement may be revoked only upon condition that the Grantee is reimbursed for any and all costs incurred by it occasioned by such revocation and for the cost of relocation or removal of existing steam pipe conduits and the construction of alternative steam pipe conduits to supply steam service to its customers. The Grantee shall not install any new extension of its steam pipe conduits or any new steam service in any streets regarding which Grantee has received written notice that the same shall be closed within a period of five (5) years from date of notice.

H. Within ten (10) days after the passage and taking effect of this ordinance, the Grantee shall file with the City Clerk of said City a written acceptance of the franchise hereby granted and an

agreement to comply with the terms thereof.

I. This franchise shall not be transferred except with the approval of the Council expressed by ordinance.

J. This franchise may be amended by agreement of the City and Grantee, but such amendment must be authorized by ordinance.

Section 8. Notwithstanding any other provisions contained herein, this franchise is granted solely and exclusively under Sections 103, 103.1, 104 and 105 of the Charter of The City of San Diego and under no other authority.

Section 9. This ordinance shall take effect and be in force on the thirty-first day from and after its passage.

Passed and adopted by the Council of The City of San Diego on June 27, 1974, by the following vote:

YEAS: Johnson, O'Connor, Hubbard, Williams, Mardnet, Ellis, Wilson.
NAYS: Morrow, Bates.
ABSENT: None.

AUTHENTICATED BY:

PETE WILSON,
Mayor of The City of
San Diego, California.
EDWARD NIELSEN,
City Clerk of The City of
San Diego, California.
By LA VERNE E. MILLER,
Deputy.

(Seal)

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on June 13, 1974, and on June 27, 1974.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

EDWARD NIELSEN,
City Clerk of The City of
San Diego, California.
By LA VERNE E. MILLER,
Deputy.

(Seal)

Published July 5, 1974

LS 8051