

ORDINANCE NO. 3255

**ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO
APPROVING GAS PIPELINE FRANCHISE**

The following Ordinance is now offered and read:

WHEREAS, the County of San Luis Obispo, California (hereafter referred to as “County”), pursuant to County Ordinance No. 301, granted a franchise ordinance to Pacific Lighting Gas Supply Company, for the installation and maintenance of pipes and other appurtenances for the conveyance of gas under County streets for a period of fifty (50) years, dated February 7, 1955; and,

WHEREAS, on November 26, 1985, Pacific Lighting Gas Supply Company merged with the Southern California Gas Company, a corporation (hereafter referred to as “Gas Company”; and

WHEREAS, the County and Gas Company have successfully negotiated a new thirty (30) year term franchise ordinance; and

WHEREAS, the new franchise ordinance, including the incorporated abandoned line agreement, will supersede County Ordinance No. 301; and

WHEREAS, pursuant to County Code Section 2.18.030, and in accordance with Streets and Highways Code Section 2006.1, the office of county road commissioner was abolished and all duties of the road commissioner were transferred to the director of public works and transportation.

THEREFORE, The Board of Supervisors of the County of San Luis Obispo ordains as follows:

1. The attached “Gas Franchise Ordinance” is hereby approved, ordained and adopted, subject to the Gas Company filing the written acceptance specified therein with the Clerk of the Board of Supervisors within sixty (60) days of the date this Ordinance is adopted by the Board; and
2. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage, and before the expiration of fifteen (15) days after passage of this Ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the Ordinance in a newspaper of general circulation published in the County of San Luis Obispo, State of California.

INTRODUCED at a regular meeting of the Board of Supervisors held on the 26th day of November, 2013 and PASSED and ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 17th day of December, 2013 the following roll call vote, to wit:

AYES: Acting Chairperson Bruce S. Gibson, Supervisors Frank R. Mecham, Adam Hill, Caren Ray and Debbie Arnold

NOES: None

ABSENT: None

ABSTAINING: None

/s/ Bruce S. Gibson
Acting Chairperson of the Board of Supervisors

ATTEST:

JULIE L. RODEWALD
Clerk of the Board of Supervisors

By: Annette Ramirez
Deputy Clerk

GAS FRANCHISE ORDINANCE

§1. Scope of Franchise.

Upon the terms and conditions provided in this ordinance, the County of San Luis Obispo (“County”) hereby grants a franchise to Southern California Gas Company (hereafter “Grantee”) to lay and use pipes and appurtenances for transmitting and distributing gas for all purposes under, along, across, or upon the public highways, streets, ways, alleys, and places (hereafter collectively “highways”) as they now or hereafter exist within the unincorporated area of the County. This ordinance does not provide Grantee a franchise for oil or products thereof, or for any nonpublic utility pipeline for industrial gas.

§2. Term of Franchise

The franchise granted under this ordinance shall be for a definite term of 30 years, and shall become effective upon the date Grantee files an unqualified written acceptance thereof with the County Clerk in the form attached hereto as Exhibit A. When so filed the acceptance constitutes a continuing agreement by the Grantee that if and when the County thereafter annexes, or consolidates with, additional territory, all other franchises, rights and privileges owned by the Grantee therein shall be deemed abandoned within the limits of the additional territory in lieu of this franchise.

§3. Franchise Fee.

- (a) Grantee shall pay to the County during the life of the franchise 2 percent of the Grantee’s gross annual receipts arising from the use, operation, or possession of the franchise, except that this payment shall be not less than 1 percent of the Grantee’s gross annual receipts derived from the sale of gas service within the limits of the unincorporated area of the County.
- (b) The Grantee shall file with the clerk of the County, within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the granting of the franchise and within three (3) months after the expiration of each calendar year thereafter, a verified statement showing in detail the total gross receipts of the Grantee, its successors, or assigns during the preceding calendar year or fractional calendar year from the sale of the utility service for which the franchise was granted.
- (c) The Grantee shall pay to the County within fifteen (15) days after the time for filing its statement of gross receipts, in lawful money of the United States, the specified percentage of its gross receipts for the calendar year or fractional calendar year covered by the statement. Any neglect, omission, or refusal by the Grantee to file the verified statement, or to pay the percentage at the times or in the manner provided constitutes grounds for the declaration of forfeiture of the franchise and of all rights thereunder.

§4. County Regulation of Grantee's Use of County Highways.

- (a) The Grantee shall construct, install, and maintain all pipes, conduits, poles, wires, and appurtenances in accordance and in conformity with all of the ordinances and rules adopted by the Board of Supervisors of the County in the exercise of its police powers and not in conflict with the paramount authority of the State.
- (b) The Grantee shall repair any damage to any public highway of the County if any portion thereof shall be damaged by reason of any cause arising from the operation or existence of any pipes and appurtenances constructed or maintained under this franchise. Grantee shall at its own cost and expense promptly repair any such damage, and Grantee warrants its workmanship and repair for the life of the highway.
- (c) To the fullest extent the law allows now or at any time this franchise is in effect and subject to the terms of this franchise: (1) the County reserves its powers of control to supervise and regulate the relationship between Grantee and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public highways by Grantee, and the location of the poles, wires, mains, or conduits of Grantee, on, under, or above any public highways within the unincorporated area of the County, except Grantee shall be exempt from any County ordinances or requirements regarding abandoned pipes and appurtenances (the treatment of abandoned pipes and appurtenances shall be governed by the parties' Agreement Regarding Abandoned, Inactive and Unidentified Pipelines, dated December 17, 2013, the terms of which are incorporated herein by this reference), and (2) the County further reserves all of the powers and rights provided to the County and/or its Director of Public Works under Chapter 5.5 of Division 2 of the Streets & Highway Code (sections 1450 et seq.). All of the provisions of Chapter 5.5 applicable to Grantee pursuant to section 1450 are hereby incorporated herein by reference as though fully set forth herein. Grantee acknowledges that section 1462 allows the County to provide conditions as to the location and manner in which the work is to be done as the Director of Public Works finds necessary for the protection of the highway, and as long as said standards are not inconsistent with section 1450.
- (d) The Grantee shall remove or relocate without expense to the County any facilities installed, used, and maintained under the franchise if and when made necessary by any lawful change of grade, alignment, or width of any public highway, including the construction of any subway or viaduct, by the County.
- (e) The County and Grantee acknowledge that the construction, installation, and maintenance of any pipes, conduits, poles, wires, and appurtenances of Grantee in any state highways shall be subject to the applicable contracts and laws relating to the location and maintenance of such facilities therein.
- (f) This ordinance shall not limit in any way the jurisdiction of the Public Utilities Commission of this state now or at anytime this franchise is in effect, and in the event of any conflict between the provisions of this ordinance and any preemptive powers of the Public Utilities Commission, those powers of the Public Utilities Commission shall prevail.

§5 Transfer of Gas Utility.

The Grantee shall file with the legislative body of the County within thirty (30) days after any sale, transfer, assignment, or lease of the franchise or any part thereof, or any of the rights or privileges granted thereby, written evidence of the transaction certified to by the Grantee or its duly authorized officers.

§6 Grantee's Liability for Damages.

- (a) The Grantee shall be liable to the County for all damages proximately resulting from the failure of the Grantee to faithfully observe and perform any provision of the franchise.
- (b) The Grantee shall pay to the County on demand the cost of all repairs to public property made necessary by any of the operations of the Grantee under the franchise.

§7 Grantee's Indemnification of County.

The Grantee shall indemnify and hold harmless the County and its officers from all liability for damages proximately resulting from any operations under the franchise.

§8 Bond.

- (a) The Grantee shall file an annual bond running to the County in the form attached hereto as Exhibit B in a penal sum of \$500,000. Grantee agrees to renew or replace such bond so that an equivalent bond remains in place throughout the entire Franchise term and each is conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of the franchise, and that in case of any breach of condition of the bond the amount of the penal sum therein named shall be recoverable to the extent of damages suffered by the County as a result thereof.
- (b) The bond shall be filed with the legislative body within five days of the Grantee's acceptance of the franchise. If the bond is not so filed, or does not receive the approval of the legislative body of the County, the franchise may be refused or forfeited and any money paid to the County in connection therewith shall be retained by the County.
- (c) The Grantee's timely filing with the County of the annual bond(s) required by this section, including all required renewals thereof, is one of the preconditions to Grantee's lawful authority to occupy any County highways with any works or facilities allowed under this franchise.

§9 Forfeiture.

If the Grantee fails, neglects or refuses to comply with any of the provisions or conditions prescribed in this ordinance, and does not within ten (10) days after written demand for compliance begin the work of compliance, or after such beginning does not prosecute the work with due diligence to completion, the County, by its legislative body, may declare the franchise forfeited. The County may sue in its own name for the forfeiture of the franchise in the event of noncompliance with any of the conditions thereof by the Grantee, its successors, or assigns.

§10 County's Reservation of its Eminent Domain Powers.

No franchise granted under this ordinance in any way impairs or affects the right of the County to acquire the property of the Grantee by purchase or condemnation, and nothing contained in this ordinance shall be construed to contract away, modify or abridge either for a term or in perpetuity the County's right of eminent domain in respect to Grantee or any other public utility.

§11 Public Lands Use Surcharge.

Pursuant to Chapter 2.5 of Division 3 (sections 6350, et al.) of the Public Utilities Code, Grantee shall pay to County, to the fullest extent the law allows now or at anytime this franchise is in effect, a surcharge for those uses of public lands within the unincorporated area of the County that fall within the scope of said Chapter.

§12 Audit of Records.

The County Treasurer, or any certified public accountant, or qualified person designated by the County, at any reasonable time during business hours, may make an examination at the Grantee's office of its books, accounts, and records, germane to and for the purpose of verifying Grantee's compliance with this franchise, including, but not limited to, the statement(s) required by Sections 3 and 11 above.

§12 Publication Expenses.

The Grantee shall pay to the County a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of the franchise. Such payment shall be made within thirty (30) days after the County furnishes the Grantee with a written statement of the expenses.

§13 Acceptance of Franchise by Grantee.

The franchise granted under this ordinance does not become effective until the Grantee files written acceptance thereof with the County Clerk.

EXHIBIT A

**ACCEPTANCE OF ORDINANCE NO. 3255
OF THE COUNTY OF SAN LUIS OBISPO**

WHEREAS, the Board of Supervisors, for San Luis Obispo County, California, has granted a franchise ordinance to Southern California Gas Company, its successors or assigns, by enacting Ordinance No. 3255 (including the "Gas Franchise Ordinance" attached therewith), bearing the date of December 17, 2013; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Southern California Gas Company on _____, from said County of San Luis Obispo, California.

NOW, THEREFORE, Southern California Gas Company, for itself, its successors and assigns, hereby unconditionally accepts the said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the County Clerk-Recorder of San Luis Obispo County.

IN TESTIMONY WHEREOF said Southern California Gas Company has caused this written Acceptance to be executed in its name by its undersigned Vice President, and its undersigned Secretary, Assistant Secretary, Chief Financial Officer, Or Assistant Treasurer.

Signature

Name

Title

Date

Signature

Name

Title

Date

NOTARY ACKNOWLEDGMENT:

EXHIBIT B

FRANCHISE FAITHFUL PERFORMANCE BOND

We, _____, as Principal, and _____, a corporation existing under the laws of the State of California, duly authorized to transact surety business in the State of California, as Surety, are held and firmly bound unto the County of San Luis Obispo, hereinafter called County, as Beneficiary, in the sum of five hundred thousand dollars (\$500,000) for payment whereof the Principal and the Surety bind themselves, their administrators, successors and assigns, jointly and severally by these presents.

The condition of this bond is such that:

WHEREAS, the County has, or is about to issue a franchise ordinance to Principal to lay and use pipes and appurtenances for transmitting and distributing gas for all purposes under, along, across, or upon the public highways, streets, ways, alleys, and places as they now or hereafter exist within the unincorporated area of the County.

WHEREAS, under the franchise ordinance the Principal is required to provide an annual bond within five (5) days of the Principal’s acceptance of the franchise ordinance.

WHEREAS, the filing of said bond is to guarantee performance by Principal of all the provisions of the franchise ordinance and the safeguarding against damage to public or private property from the transmitting and distributing of gas.

NOW, THEREFORE, if the Principal shall for the thirty (30) year term of the franchise ordinance comply with all the provisions of the franchise ordinance as contained in the Ordinance No. 3255 (including the “Gas Franchise Ordinance” attached therewith), then this bond shall be void, otherwise it shall remain in full force and effect.

If any recovery be had against this bond, the Principal shall within ten (10) days notice by the County restore the bond to the full amount required by the terms of the franchise ordinance.

Witness our hands this _____ day of _____ A.D. 20__

_____ (Principal)

_____ (Attorney-in-Fact)

_____ (Surety)

NOTARY ACKNOWLEDGMENT ATTACHED