

ORDINANCE NO. 2015-07-075

AN ORDINANCE APPROVING AN ORDINANCE EXTENDING  
AUTHORIZATION TO AMEREN ILLINOIS COMPANY  
TO CONSTRUCT, OPERATE AND MAINTAIN  
A GAS UTILITY SYSTEM IN THE CITY OF URBANA

(Thirty-Year Agreement Renewing Ameren Illinois Company  
Franchise Concerning Gas Utility System)

WHEREAS, the City of Urbana ("Urbana") is an Illinois home rule unit of local government pursuant to Section 6 of Article VII of the Illinois Constitution of 1970 and the Statutes of the State of Illinois; and

WHEREAS, the construction, expansion, operation and maintenance of a reliable gas utility system to, in and about the City of Urbana is an important component which contributes to the vitality of Urbana and the health, safety and comfort of its citizens; and

WHEREAS, heretofore, the City of Urbana and Ameren Illinois Company had entered into a twenty-year agreement (then denominated as an "ordinance") for the construction, expansion, operation and maintenance of a reliable gas utility system to, in and about the City of Urbana; and

WHEREAS, the aforesaid franchise agreement has expired pursuant to its terms; and

WHEREAS, approval of a long-term renewal of the City of Urbana gas franchise agreement with Ameren Illinois Company will allow for continued economic efficiencies and minimize inconveniences which would be attendant in the absence of such an agreement was not renewed.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS as follows:

**Section 1:** The Mayor shall be and hereby is authorized to enter into and execute on behalf of the City of Urbana "An Ordinance Extending the

Authorization to Ameren Illinois Company, Its Successors and Assigns, to Construct, Operate and Maintain a Gas Utility System in the City of Urbana, County of Champaign and State of Illinois" in form and substance substantially similar to the Exhibit appended hereto and incorporated into this Ordinance.

**Section 2.** The Mayor shall be and hereby is authorized to undertake such other actions as are necessary to carry out the purpose and intent of this Resolution.

**PASSED BY THE CITY COUNCIL** this 20<sup>th</sup> day of July, 2015.

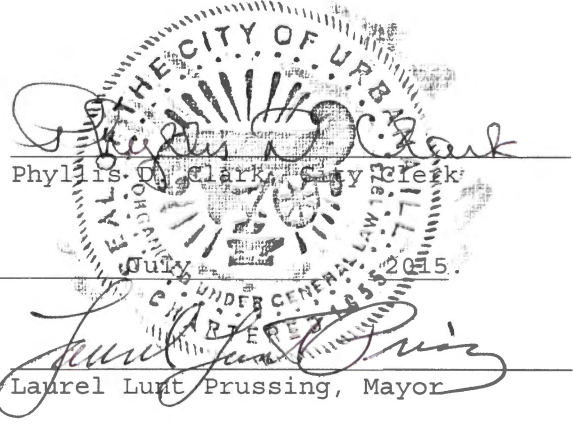
**AYES:** Ammons, Brown, Jakobsson, Madigan, Marlin, Smyth

**NAYS:**

**ABSENT:** Roberts

**ABSTAINED:**

**APPROVED BY THE MAYOR** this 23<sup>rd</sup> day of July, 2015.

  
Phyllis D. Clark, City Clerk  
Laurel Lunt Prussing, Mayor



City of Urbana  
400 South Vine Street  
Urbana, IL 61801

## CLERK'S CERTIFICATE

STATE OF ILLINOIS     )  
  )     SS  
COUNTY OF CHAMPAIGN )

I, PHYLLIS D. CLARK, City Clerk of the City of Urbana, Illinois, and keeper of the records, files and seal of said City, do hereby certify that the foregoing is a true and exact copy of an ordinance entitled:

**ORDINANCE NO. 2015-07-075: AN ORDINANCE APPROVING AN ORDINANCE EXTENDING AUTHORIZATION TO AMEREN ILLINOIS COMPANY TO CONSTRUCT, OPERATE AND MAINTAIN A GAS UTILITY SYSTEM IN THE CITY OF URBANA (Thirty-Year Agreement Renewing Ameren Illinois Company Franchise Concerning Gas Utility System)**

approved by the City Council of the City of Urbana, Illinois, on the 20th day of July, AD, 2015, as it appears in the records and files in my office remaining.

Given under my hand and seal of said City of Urbana, Illinois, this 31st day of July, AD, 2015



  
\_\_\_\_\_  
Phyllis D. Clark, City Clerk



**AN ORDINANCE**

EXTENDING THE AUTHORIZATION TO

Ameren Illinois Company  
d/b/a/ **Ameren Illinois**

ITS SUCCESSORS AND ASSIGNS

TO CONSTRUCT, OPERATE AND MAINTAIN  
A GAS UTILITY SYSTEM

IN THE

**City of Urbana**

COUNTY OF CHAMPAIGN

AND

STATE OF ILLINOIS

PASSED

07/20/2013

EXPIRES

07/20/2045

AN ORDINANCE RENEWING AN EXISTING FRANCHISE AND GRANTING FOR A PERIOD OF 30 YEARS TO AMEREN ILLINOIS, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE, RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR, PLACE, REMOVE, EXTEND, MAINTAIN, AND OPERATE A GAS UTILITY SYSTEM IN THE CITY OF URBANA, COUNTY OF CHAMPAIGN AND STATE OF ILLINOIS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, COUNTY OF CHAMPAIGN, AND THE STATE OF ILLINOIS, AS FOLLOWS:

SECTION 1 It is the intent of the parties by this Ordinance to extend for an additional term, subject to the terms and conditions here stated, the authorization to Ameren Illinois, its successors and assigns, to construct, operate and maintain a gas utility system within the city as originally authorized by an Ordinance approved on August 3, 1964. The parties acknowledge that by so doing they are continuing an existing relationship authorizing the services of a utility for the provision of gas energy and other purposes within the city for the benefit of its citizens and residents as well as other consumers of gas energy located within its corporate limits.

SECTION 2. There is hereby given and granted to Ameren Illinois, its successors and assigns (hereinafter referred to as the "Company"), the right, privilege and authority to construct, operate, maintain and/or extend within the corporate limits, as the same now exists or may hereafter be extended, of the City of Urbana (hereinafter referred to as "Municipality"), a gas utility system for the transmission, distribution and/or sale of gas energy and other purposes (the "System"), together with the right, privilege and authority to lay, erect, construct, install, operate and/or maintain all necessary mains, pipes, valves, equipment and/or other apparatus as may be necessary or convenient for the System, in, upon, along, over, under, through and/or across each and all of the streets, avenues, alleys, bridges, easements, rights of way and/or other public places as agreed upon by both parties. This Ordinance shall not create nor affect the Company's rights or abilities to provide service as an electric utility in, around, and throughout the Municipality.

SECTION 3. All mains, pipes, valves and apparatus shall, so far as practicable, be placed underground and shall be so located and laid as not to interfere unnecessarily with any pipes, conduits, sewers, drains, pavements, public places, or right-of-way existing at the time of such location, and said Company shall forthwith repair any damage caused to such improvements to the satisfaction of the official or officials of said Municipality having charge of the supervision thereof. There shall be no unnecessary obstruction to the streets, avenues, alleys, public places and right-of-way of said Municipality in the laying, installation, operation, repair, or maintenance of any of said mains, pipes, valves or other equipment. All facilities of Company in said Municipality shall be installed and maintained in accordance with the applicable rules and regulations of the Illinois Commerce Commission.

When any Municipality owned property or roadway within a right-of-way or any property over which the Municipality has jurisdiction of such right-of-way or property shall be graded, curbed, paved or otherwise changed or when there is a relocation of such right-of-way,

so as to make the resetting or relocation of any mains, pipes, valves or other equipment placed or installed under this Ordinance necessary, the Company shall make such resetting or relocation, at the Company's cost and expense. Municipality shall provide the Company with a suitable location for the resetting or relocation of such mains, pipes, valves or other equipment, and the Company's obligation shall be limited to resetting or relocating mains, pipes, valves or other equipment of the same type and configuration as the displaced mains, pipes, valve or other equipment. However, the Municipality shall have no obligation to purchase or acquire at its expense such suitable location for the resetting or relocation of the Company's mains, pipes, valves or other equipment. Company shall make such resetting or relocation within a reasonable time after receiving written notice of the need for the same from the authorized representative of the Municipality, and the establishment by the Municipality of the permanent grade at the new location. Except as expressly stated, nothing in this Section requires the Company to bear responsibility for any costs or expenses to relocate its mains, pipes, valves or other equipment for any other reason or cause.

Notwithstanding any above provision to the contrary, in the event that the Company's mains, pipes, valves and apparatus are located in an easement on private property that is also in a municipal right-of-way and the Company is required per this Ordinance to relocate those mains, pipes, valves and apparatus, the Municipality and the Company shall agree on a new location in which to relocate the Company's mains, pipes, valves and apparatus and the Municipality shall bear the cost of the relocation. For avoidance of doubt, in the event the new location is in an area that requires acquisition of an additional private easement, the Municipality shall also bear the costs and expenses of acquiring said private easement. In the event that the Company's mains, pipes, valves and apparatus are located in a municipal right-of-way with no private easement and the Company is required per this Ordinance to relocate those mains, pipes, valves and apparatus, the Municipality and the Company shall agree on a new location in which to relocate the Company's mains, pipes, valves and apparatus and the Company shall bear the cost of the relocation, as provided above. For avoidance of doubt, in the event the new location is in an area that requires acquisition of a private easement, the Company shall bear the costs and expenses of acquiring said easement.

Notwithstanding any above provision to the contrary, except in the case of an emergency, any time that the Company plans to install a new main, relocate or extend an existing main, or otherwise modify its natural gas transmission or distribution system or facilities in a material manner, whether above or below ground, within the Municipality's corporate limits or within the Municipality's extra-territorial jurisdiction (1½ miles from any Municipality boundary), the Company shall notify the Director of Public Works of the Company's plans. Such notice shall be in writing and sent to the aforesaid individual at least forty-five (45) calendar days prior to the anticipated commencement date of the Company's planned work. Thereafter and if the Municipality so requests within twenty-one (21) calendar days of receipt of the above-referenced notice, the parties shall meet to discuss whether the Company's plans may conflict with any future roadway and/or development, construction or improvements of which the City is or may be aware for the same area. The purpose of such meeting, if any is requested by the Municipality, shall be to coordinate the Company's and the Municipality's or developer's respective planned work so as to avoid or minimize any conflict between their respective planned work. Nothing herein shall be deemed, construed or interpreted as prohibiting the Company from proceeding with its plans to perform the work as originally planned.

SECTION 4. When any street, avenue, alley, bridge, easement, right of way and/or other public place, upon which or in which any facilities of Company have been placed, shall be graded, curbed, paved or otherwise changed by the Municipality so as to make the resetting or reconstruction of such facilities necessary, Company shall make such necessary change in construction at no cost to Municipality. Should it become necessary or should the Company desire to use conduits or other similar fixtures, Company shall make application to the Municipality for the establishment of permanent grades and such conduits or other similar fixtures shall not be installed until such permanent grades have been established. The Municipality agrees to establish promptly such permanent grades upon such application.

SECTION 5. The rates to be charged by the Company for gas service rendered under this Ordinance shall be such as are approved from time to time by the Illinois Commerce Commission of the State of Illinois and/or such other duly constituted governmental authority as shall have jurisdiction thereof. All Rules and Regulations of the Illinois Commerce Commission of the State of Illinois applicable to the rights, privileges and authority granted by this Ordinance, in the event of conflict herewith, shall govern.

SECTION 6. As a further consideration for the rights, privileges and authorities granted by this ordinance, the Company shall, in Year 1 of the agreement, furnish municipality compensation in the amount of \$86,625, payable within 30 days of the acceptance of this ordinance by the municipality. In subsequent years, a payment of the same amount will be made within 30 days of the anniversary date of the ordinance. Municipality may request a revision to the compensation amount after five years from the date of passage of this ordinance if Municipality has a reasonable belief that its population has increased or decreased by 3% or more. Municipality must request the revision at least 60 days prior to the next anniversary date. If Company confirms that the number of customers served by the System within Municipality's corporate limits has increased or decreased by 3% or more, the compensation amount will be revised by that percentage for the next and succeeding payments. Municipality may request similar revisions to compensation amounts under these criteria in additional five year periods throughout the term of this ordinance.

SECTION 7. The rights, privileges and authority hereby granted shall inure to and be vested in Company, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon Company shall devolve and be binding upon its successors and assigns, successively, in the same manner.

SECTION 8. The Company shall indemnify, defend and save harmless the Municipality and all contractors, officers, employees and representatives thereof from all claims, demands, causes of action, liability, judgments, costs and expenses or losses for injury or death to persons or damage to property owned by, and Worker's Compensation claims against any parties indemnified herein, arising out of, caused by, or as a result of the Company's construction, erection, maintenance, use or presence of, or removal of any mains, pipes, valves or other appurtenances thereto, or equipment or attachments thereto. The foregoing indemnification shall not apply to the extent any such claim, demand, cause of action, liability, judgment, cost, expense or loss arises out of, is caused by, or results from the negligent or wrongful willful act or omission of the Municipality or any contractor, officer, employee or representative thereof.

SECTION 9. This Ordinance shall confer no right, privilege or authority on Company, its successors or assigns, unless Company shall within ninety (90) days after due

notice to the Company of the enactment of this Ordinance, file with the City Clerk an acceptance of the terms and provisions hereof; provided, however, that if such acceptance be not so filed within said period of ninety (90) days, all rights, privileges, and authority herein granted shall become null and void.

SECTION 10. All rights, privileges and authority given and granted by this Ordinance are granted for a term of 30 years from and after the acceptance of this Ordinance as hereinafter provided (the "Initial Term"), and thereafter on a year-to-year basis (each a "Subsequent Term") unless either the Company or Municipality notifies the other in writing of its desire to terminate this Ordinance at least six (6) months prior to the expiration of the Initial Term or any Subsequent Term.

SECTION 11. The Municipality acknowledges that Company is vested in rights, permissions and authority independent of this Ordinance. Neither acceptance of this Ordinance nor compliance with its provisions shall impair in any way or waive any right, permission or authority which Company may have independent of this Ordinance. In addition, neither use by Company of public property as authorized by this Ordinance nor service rendered by Company in said Municipality shall be treated as use solely of the rights, permission and authority provided for by this Ordinance. In the event the Municipality vacates any streets, avenues, alleys, easements, rights of way, bridges or other public places during the term of this Ordinance, Municipality agrees to reserve unto Company the rights, privileges and authority herein given and granted to the Company in upon, under, along, over and across each and all of such vacated premises which are at that time in use by the Company.

SECTION 12. All ordinances and parts of ordinances in conflict with this Ordinance or with any of its provisions are, to the extent of such conflict, hereby repealed.

SECTION 13. This Ordinance shall not relieve Company of the obligation to comply with any ordinance now existing in the Municipality or enacted in the future requiring Company to obtain written permits or other approval from the Municipality prior to commencement of construction of facilities within the streets thereof, except Company shall not be required to obtain permits or other approval from the Municipality for the maintenance, upgrading and repair of its facilities. Except in cases of emergency, prior to engaging in any excavation activity that is expected to create an obstruction or other hazardous condition in any street avenue, alley or public place, the Company shall notify Municipality of the location and extent of the planned excavation. In cases of emergency, Company shall notify Municipality of the location and extent of any such activity as soon as practicable after the emergency has been abated.

SECTION 14. If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 15. If, at any time, during the term of this contract, Municipality permits another entity or person to provide gas distribution or similar services, and Company reasonably believes the other entity or person is granted more favorable treatment, terms, or conditions, then Company shall notify Municipality of such treatment, terms, or conditions. Alternatively, if Municipality reasonably believes the other entity or person grants Municipality more favorable treatment, terms, or conditions, then Municipality shall notify Company of such treatment, terms, or



conditions. Upon receipt of such notice, Municipality and Company shall negotiate in good faith to amend this ordinance to provide Company or Municipality such more favorable treatment, terms or conditions on an equivalent basis. Such amendment shall take into consideration all circumstances that distinguish between Company and the entity or person receiving the more favorable or less favorable treatment, terms, or conditions.

SECTION 16. The Company shall be exempt from any special tax, assessment, license, rental or other charge during the term of this Ordinance, on all mains, pipes, valves, equipment and other apparatus placed under the streets, alleys, avenues, bridges, easements, rights of way or other public places within the corporate limits of Municipality.

SECTION 17. In the event the Municipality or the Company (“Non-Defaulting Party”) believes that the other party (“Defaulting Party”) is in default of any provision contained in this Ordinance, the Non-Defaulting Party shall provide the Defaulting Party with a written notice setting forth the purported default and identifying the section of this Ordinance the Non-Defaulting Party believes has been violated. Within twenty-one (21) days of receipt of such notice, the Defaulting Party shall provide written notice to the Non-Defaulting Party—

- a. denying that the Defaulting Party is in default and providing a detailed statement supporting such denial; or
- b. acknowledging the default and describing the previous acts taken to cure the default; or
- c. acknowledging the default and providing a detailed plan of action in order to cure the default in a commercially-reasonable timeframe; or
- d. asserting a defense, as provided by law, to the allegations contained in the notice

SECTION 18. Any notice required to be given pursuant to this Ordinance shall be deemed received and effective five (5) business days after posting if, in the case of Ameren Illinois, such notice is sent via U.S. Postal Service, First Class, postage prepaid, to the Company's then-current Registered Agent as identified by the Illinois Secretary of State, and, in the case of the Municipality, such notice is sent via U.S. Postal Service, First Class, postage prepaid, to the Mayor for the Municipality with a courtesy copy to the City Attorney.

No other forms of notice shall be deemed effective.

SECTION 19. In the event a dispute arises concerning the interpretation or construction of this Ordinance, or breach thereof or any term contained therein, the parties shall make a reasonable effort to resolve such dispute. If the parties fail or are unable to resolve the dispute within sixty (60) business days from when written notice of such dispute was first sent, as provided above, the parties shall submit their dispute to mediation to be conducted by a mediator mutually selected by the parties. The parties shall exercise good faith and reasonable diligence in agreeing upon the aforesaid mediator. The rules of mediation established by the mediator shall govern. Each party shall bear and be responsible for its own costs incurred in relation to the mediation and for ½ of the costs of the mediator and the mediation process. If the parties are unable to resolve the dispute by mediation, either party shall be free to initiate and maintain a

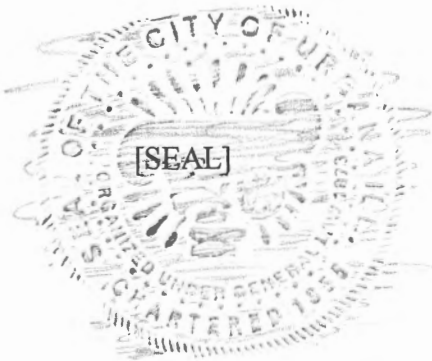
proceeding in Illinois state circuit court. The laws of the State of Illinois shall govern the construction and interpretation of this Ordinance and/or enforcement of this Ordinance or any term contained herein.

SECTION 20. This Ordinance may be amended, changed or modified only by a writing duly executed by the parties hereto.

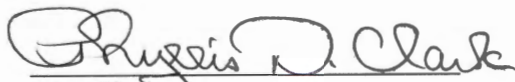
SECTION 21. This Ordinance shall take effect and the rights, privileges and authority hereby granted and renewed shall vest in Company upon its filing of an acceptance with the City Clerk according to the terms prescribed herein. This Ordinance shall then be in full force from and after its passage, approval and ten (10) day period of publication in the manner provided by law.

Passed and approved this 20<sup>th</sup> day of July, 2015.

  
\_\_\_\_\_  
Mayor, City of Urbana, Illinois



ATTEST:

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

**A C C E P T A N C E**

Ameren Illinois, ("Company") in consideration of the rights and privileges granted by Ordinance No. \_\_\_\_\_ of the City of Urbana, Illinois, passed July 20, A.D. 2015, approved July 20, A.D. 2015, and entitled "An Ordinance extending the authorization to Company, its successors and assigns, to construct, operate and maintain a gas utility system in the City of Urbana, County of Champaign and State of Illinois", hereby accepts said Ordinance and all the provisions thereof.

In Witness Whereof, Ameren Illinois, Company as aforesaid has caused these presents to be signed by its President or a Vice President and attested by its Secretary or an Assistant Secretary and its corporate seal to be affixed this 24 day of August, A.D. 2015.

Ameren Illinois

By   
Richard J. Mark  
President



  
Assistant Secretary