

RESOLUTION NO. 2703

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, CONSENTING TO THE SALE, ASSIGNMENT, AND TRANSFER OF THE FRANCHISE AGREEMENT BETWEEN SEMSTREAM ARIZONA PROPANE AND THE TOWN OF PAYSON AND APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS WITH ALLIANT ARIZONA PROPANE L.L.C., FOR A FRANCHISE FOR PROPANE DELIVERY IN THE TOWN OF PAYSON.

(ASSIGNMENT OF PROPANE FRANCHISE  
FROM SEMSTREAM TO ALLIANT)

**WHEREAS**, the Town of Payson and Energy West Arizona, a division of Energy West, Inc., entered into a Franchise Agreement (the "Franchise") for a gas distribution system for the purpose of supplying manufactured gas, including liquefied petroleum and/or artificial gas to the Town of Payson; and

**WHEREAS**, the Franchise was entered into effective May 9, 1999 for a period of twenty-five (25) years; and

**WHEREAS**, in 2006, the Franchise was assigned and transferred to SemStream Arizona Propane, L.L.C, ("SemStream"); and

**WHEREAS**, in 2012, SemStream's parent company, SemStream LP entered into a Purchase and Sale Agreement with Alliant Gas, L.L.C. ("Alliant"), which was approved by the Arizona Corporation Commission, whereby Alliant obtained all interest in SemStream (see Exhibit A, Corporation Commission Approval); and

**WHEREAS**, Alliant has requested the consent of the Town to the sale, assignment, and transfer of the Franchise to Alliant Arizona Propane, L.L.C. (see Exhibit B, Alliant Request); and

**WHEREAS**, the Mayor and Common Council desire to evidence the consent of the Town to the sale, assignment, and transfer of the Franchise,

**NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:**

Section 1. That the Town of Payson consents to the sale, assignment, and transfer of the Franchise Agreement from Semstream Arizona Propane, L.L.C. to Alliant Arizona Propane, L.L.C.

Section 2. That the consent given in Section 1 shall be contingent upon the execution by Alliant Arizona Propane, L.L.C., of the Franchise Agreement issued to Energy West, Inc.

Section 3. That Kenny J. Evans, Mayor of the Town of Payson, is hereby authorized to execute all agreements or documents necessary to carrying out the intent of this Resolution, including but not limited to, a Franchise Agreement for gas service in substantially the form attached as Exhibit C.

Section 4. That the Town of Payson is hereby authorized to take and perform such other and further actions as are necessary to carrying out the terms of such Franchise Agreement.

**PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA**, this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

\_\_\_\_\_  
Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Silvia Smith, Town Clerk

  
\_\_\_\_\_  
Timothy M. Wright, Town Attorney

**Exhibit A**  
**to**  
**Resolution 2703**



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**BEFORE THE ARIZONA CORPORATION**

COMMISSIONERS

GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

IN THE MATTER OF THE OF SEMSTREAM  
ARIZONA PROPANE, L.L.C.'S NOTICE OF  
INTENT TO REORGANIZE PURSUANT TO  
A.A.C. R14-2-803, OR, ALTERNATIVELY,  
APPLICATION FOR A LIMITED WAIVER OF  
THE AFFILIATED INTEREST RULES  
PURSUANT TO A.A.C. R14-2-806.

DOCKET NO. G-20471A-12-0425

DECISION NO. 73614

ORDER

Open Meeting  
December 11 and 12, 2012  
Phoenix, Arizona

**BY THE COMMISSION:**

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On October 1, 2012, SemStream Arizona Propane, L.L.C. ("SemStream or SemStream Arizona") filed with the Arizona Corporation Commission ("Commission") a notice of intent to reorganize pursuant to A.A.C. R14-2-803, or, alternatively, application for a limited waiver of the affiliated interest rules pursuant to A.A.C. R14-2-806.

2. On October 9, 2012, Alliant Gas, L.L.C. ("Alliant") filed an Application to Intervene. Alliant stated that it entered into a Purchase and Sale Agreement with SemStream's parent company, SemStream LP, for the purchase of all outstanding units of membership interest in SemStream.

3. On October 30, 2012, SemStream filed a Request for Procedural Conference for the purpose of addressing various procedural issues.

4. On October 31, 2012, a Procedural Order was issued setting a telephonic procedural conference for November 2, 2012, and granting intervention to Alliant.

1           5.     On November 2, 2012, the telephonic procedural conference was conducted as  
2 scheduled, with SemStream, Alliant, and the Commission's Utilities Division ("Staff") participating  
3 through counsel.

4           6.     On November 2, 2012, SemStream filed a Notice of Proposed Customer Notice.  
5 SemStream stated that both Alliant and Staff were in agreement with the proposed notice.

6           7.     On November 5, 2012, a Procedural Order was issued directing SemStream to mail to  
7 each of its customers, and publish in a newspaper of general circulation in its service area, a copy of  
8 the notice set forth in the Procedural Order.

9           8.     On November 19, 2012, SemStream filed Affidavits of Publication attesting that the  
10 required notice was published in the *Payson Roundup* on November 9, 2012, and in the *Arizona*  
11 *Daily Sun* on November 12, 2012.

12          9.     On November 20, 2012, SemStream filed certification that the required notice was  
13 mailed to all of its Payson and Page customers in the first billing cycle of November 2012.

14          10.    On November 29, 2012, Staff filed its Staff Report recommending approval of the  
15 application subject to certain conditions.

16          11.    SemStream Arizona is a Delaware limited liability company that provides  
17 underground propane gas utility service in and around the Payson and Page, Arizona, pursuant to  
18 authority granted by the Commission in Decision Nos. 69394 (March 22, 2007) and 69579 (May 21,  
19 2007). (Application, at 2.) SemStream Arizona is wholly owned by SemStream LP, a Delaware  
20 limited partnership, which, in turn, is a subsidiary of SemGroup Corporation ("SemGroup"), a  
21 Delaware corporation. (*Id.*)

22          12.    As described in its application, SemStream's parent company, SemStream LP and  
23 Alliant entered into a purchase and sale agreement on September 12, 2012, whereby Alliant will  
24 acquire from SemStream LP all of the issued and outstanding units of membership interest in  
25 SemStream Arizona. Pursuant to the agreement, SemStream Arizona will remain a wholly owned  
26 subsidiary within a larger corporate structure (under Alliant), and although SemStream Arizona's  
27 name will change "its personnel and operations will remain the same in all material respects." (*Id.*)

28          13.    The application states that Alliant is a Texas limited liability company that provides

1 underground propane service to residential and commercial developments in several areas of Texas  
2 where natural gas service is not available. (*Id.* at 3.) Alliant is a wholly owned subsidiary of Pinnacle  
3 Propane, LLC ("Pinnacle"), a limited liability company that operates traditional retail propane  
4 delivery services. Pinnacle is a subsidiary of JP Energy Partners LP ("JP Energy"), a Delaware  
5 limited partnership that distributes approximately 50 million gallons of propane annually through  
6 Alliant and Pinnacle. (*Id.*)

7 14. According to the application, the purchase price for the SemStream membership units  
8 is approximately \$9.2 million, which includes certain non-regulated assets held by SemStream.  
9 Following closing, SemStream Arizona will remain the same legal entity, but will be renamed by  
10 Alliant. The application states that the transaction "does not involve the sale, lease, assignment,  
11 encumbrance, transfer or conveyance of any of SemStream Arizona's used and necessary plant,  
12 assets, revenue or property." (*Id.*)

13 15. SemStream's application claims that the proposed reorganization of SemStream  
14 Arizona will not impair its financial status or ability to attract capital, and that Alliant's propane  
15 services are much more extensive than SemStream Arizona's limited operations. In addition, the  
16 application indicates that Alliant's parent company, Pinnacle, is one of the largest propane  
17 distributors in the country. (*Id.* at 4.)

18 16. The application claims that Alliant has not identified and of SemStream Arizona's  
19 operations that would require workforce changes; and Alliant expects to retain all positions in the  
20 Payson and Page areas following the acquisition by Alliant. (*Id.*)

21 17. As described in the application, following the acquisition SemStream Arizona will  
22 have access to necessary capital needs and propane supplies as part of a much large corporate  
23 structure provided by JP Energy and its subsidiaries. SemStream asserts that JP Energy has access to  
24 numerous lending institutions and credit facilities which enhances negotiating power and will create  
25 greater economies of scale. (*Id.*)

26 18. SemStream's application states that service to customers will not be impacted in any  
27 way as a result of the transaction, SemStream will continue to operate as a public service corporation  
28 subject to the Commission's jurisdiction, and it "will continue to provide safe, reliable and adequate

1 propane service to customers in its service territories under the same rates and tariffs approved by the  
2 Commission.” (*Id.* at 5.)

3 19. Based on its analysis, Staff found that Alliant is a fit and proper entity to acquire all of  
4 the issued and outstanding membership units in SemStream Arizona and to retain SemStream’s  
5 existing CC&N. According to Staff, Alliant has adequate resources and expertise to operate  
6 SemStream’s propane distribution service in Arizona, based on the substantial assets and experience  
7 provided by Alliant’s parent company, Pinnacle. (Staff Report, at 4.)

8 20. Staff indicated that although transfer of SemStream’s membership interests to Alliant  
9 is in the public interest, Staff does not recommend that a waiver of the affiliate interest rules should  
10 be granted. Staff states that JP Energy is a growing company and the Commission has an ongoing  
11 interest in receiving the annual reports required by the affiliate interest rules. (*Id.*)

12 21. The Staff Report indicates that, as discussed above, Alliant intends to retain  
13 SemStream’s current employees after completion of the transaction, and there are currently no  
14 outstanding safety issues pending with the Commission’s Pipeline Safety Division. (*Id.*)

15 22. Staff states that SemStream is in good standing with the Commission’s Corporations  
16 Division. The Consumer Services database shows that SemStream had six complaints filed since  
17 2009 related to billing and service issues; however, according to Staff, all of the complaints have  
18 been resolved and closed. (*Id.* at 4-5.)

19 23. Staff recommends approval of the reorganization of SemStream Arizona, or the  
20 successor named entity in which Alliant Gas, LLC, will acquire all of the issued and outstanding  
21 units of membership from SemStream Arizona’s direct parent, SemStream, LP, subject to the  
22 following conditions:

- 23 • That SemStream Arizona retains the tariff, rates and charges approved by the  
24 Commission in Decision No. 73160 for the Payson Division, and in Decision No.  
25 66101 for the Page Division, pending conclusion of a subsequent rate case.
- 26 • That SemStream Arizona maintain separate accounting records for the Payson and  
27 Page Divisions and retain copies of the related books and records in Arizona.
- 28 • That SemStream Arizona and its parent companies make available to Staff all

1 requested books and records during a rate case or other proceedings before the  
2 Commission.

- 3 • That SemStream Arizona shall not seek regulatory recovery of any costs arising from  
4 the transaction in a future rate case.
- 5 • That the Commission deny SemStream Arizona recovery of any acquisition  
6 adjustment resulting from the transaction.
- 7 • That if the Commission decides to defer consideration of regulatory recovery of  
8 acquisition costs and adjustments to a future rate proceeding, SemStream Arizona  
9 should be required to “demonstrate that clear, quantifiable and substantial net benefits  
10 to ratepayers have resulted from the acquisition of the Page and Payson Divisions’  
11 systems that would not have been realized had the transaction not occurred, before the  
12 Commission would consider recovery of any acquisition adjustment in a future rate  
13 proceeding.” (*Id.* at 5.)
- 14 • That SemStream Arizona be required to maintain adequate levels of staffing, including  
15 qualified technical personnel, sufficient to avoid a degradation of service to customers  
16 in Arizona.
- 17 • That SemGroup Corporation assume full responsibility for any gain or loss arising  
18 from the reorganization of SemStream Arizona.
- 19 • That SemStream Arizona comply with all Commission rules, orders and other  
20 applicable requirements relevant to the provision of service in Arizona.
- 21 • That SemStream Arizona file timely financial and other reports required by the  
22 Commission in the proper format.
- 23 • That SemStream Arizona maintain all procedures and records needed to demonstrate  
24 compliance with pipeline safety regulations at the Page and Payson offices. (*Id.* at 6.)

25 24. Pursuant to Arizona Administrative Code (“A.A.C.”) R14-2-803, SemStream  
26 Arizona’s application to reorganize in the manner described herein should be approved, subject to  
27 compliance with Staff’s recommendations set forth above.

28

**CONCLUSIONS OF LAW**

1  
2 1. SemStream Arizona is a public service corporation within the meaning of Article 15,  
3 Section 3 of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

4 2. The Commission has jurisdiction over SemStream Arizona and the subject matter of  
5 the Notice of Intent to Reorganize, pursuant to Article 15, Section 3 of the Arizona Constitution and  
6 the Commission's Affiliated Interests Rules, A.A.C. R14-2-801 through 806.

7 3. Public notice of the Notice of Intent was given in accordance with Arizona law.

8 4. The public interest requires that the Commission apply the Affiliated Interests Rules in  
9 a manner that will maximize protection to ratepayers.

10 5. Approval of the proposed transaction would serve the public interest only if the  
11 conditions set forth and discussed herein are imposed to provide adequate protection to ratepayers.

12 6. It is in the public interest to approve the proposed transaction subject to compliance  
13 with the conditions set forth and discussed herein.

14 7. Pursuant to A.A.C. R14-2-801 *et seq.*, the proposed transaction will not impair the  
15 financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable  
16 terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

17 8. The transaction proposed in the Notice of Intent, with the conditions set forth and  
18 discussed herein, is reasonable and in the public interest and should be approved.

19 **ORDER**

20 IT IS THEREFORE ORDERED that the transaction proposed by SemStream Arizona, LLC's  
21 Notice of Intent is hereby approved, as a reorganization of a holding company pursuant to A.A.C.  
22 R14-2-803, subject to the conditions set forth hereinabove as recommended by Staff.

23 IT IS FURTHER ORDERED that SemStream Arizona, LLC, shall, within thirty days of the  
24 close of the transaction, in a form approved by the Commission's Utilities Division, notify its  
25 customers of the change in ownership of the utility, and shall file, as a compliance item in this docket,  
26 proof of such customer notice.

27 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,  
28 shall retain the tariff, rates and charges approved by the Commission in Decision No. 73160 for the

1 Payson Division, and in Decision No. 66101 for the Page Division, pending conclusion of a  
2 subsequent rate case.

3 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,  
4 shall maintain separate accounting records for the Payson and Page Divisions and retain copies of the  
5 related books and records in Arizona.

6 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,  
7 and its parent companies shall make available to Staff all requested books and records during a rate  
8 case or other proceedings before the Commission.

9 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,  
10 shall not seek regulatory recovery of any costs arising from the above-described transaction in a  
11 future rate case.

12 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,  
13 shall not be permitted recovery of any acquisition adjustment resulting from the above-described  
14 transaction.

15 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,  
16 shall maintain adequate levels of staffing, including qualified technical personnel, sufficient to avoid  
17 a degradation of service to customers in Arizona.

18 IT IS FURTHER ORDERED that SemGroup Corporation shall assume full responsibility for  
19 any gain or loss arising from the reorganization of SemStream Arizona, LLC.

20 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,  
21 shall comply with all Commission rules, orders and other applicable requirements relevant to the  
22 provision of service in Arizona.

23 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,  
24 shall file timely financial and other reports required by the Commission in the proper format.

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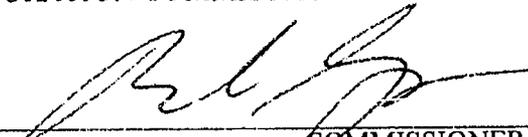
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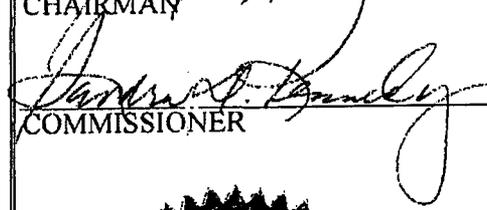
1 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,  
2 shall maintain all procedures and records needed to demonstrate compliance with pipeline safety  
3 regulations at the Page and Payson offices.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

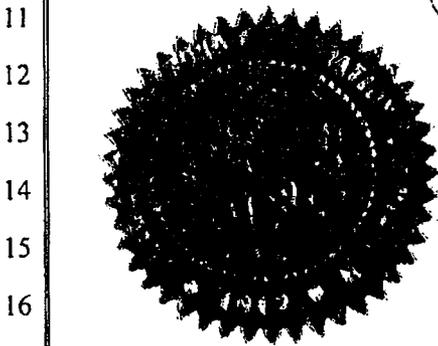
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8 CHAIRMAN

  
COMMISSIONER

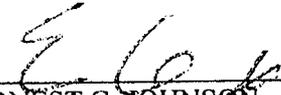
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10 COMMISSIONER

**EXCUSED**  
COMM. NEWMAN  
COMMISSIONER

COMMISSIONER



11  
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
13 Executive Director of the Arizona Corporation Commission,  
14 have hereunto set my hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the City of Phoenix,  
16 this 12<sup>th</sup> day of December 2012.

17   
18 ERNEST G. JOHNSON  
19 EXECUTIVE DIRECTOR

20 DISSENT \_\_\_\_\_

21 DISSENT \_\_\_\_\_

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1 SERVICE LIST FOR: SEMSTREAM ARIZONA PROPANE, L.L.C.

2 DOCKET NO.: G-20471A-12-0425

3  
4 Michael M. Grant  
5 Jennifer A. Cranston  
6 GALLAGHER & KENNEDY, P.A.  
7 2575 E. Camelback Road  
8 Phoenix, AZ 85016-9225  
9 Attorneys for SemStream Arizona Propane, L.L.C.

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11 Todd C. Wiley  
12 Jay L. Shapiro  
13 FENNEMORE CRAIG, P.C.  
14 3003 N. Central Ave., Suite 2600  
15 Phoenix, AZ 85012-2913  
16 Attorneys for Alliant Gas, L.L.C.

17  
18 Janice Alward, Chief Counsel  
19 Legal Division  
20 ARIZONA CORPORATION COMMISSION  
21 1200 W. Washington Street  
22 Phoenix, Arizona 85007

23  
24 Steven Olea, Director  
25 Utilities Division  
26 ARIZONA CORPORATION COMMISSION  
27 1200 W. Washington Street  
28 Phoenix, Arizona 85007

**Exhibit B**  
**to**  
**Resolution 2703**



Mr. Tim Wright, Town Attorney  
Payson Town Attorney's Office  
303L North Beeline Highway  
Payson, AZ 85541

Dear Mr. Wright:

As we discussed earlier this week, the ownership of SemStream Arizona Propane, L.L.C. ("SemStream Arizona") was recently transferred to Alliant Gas, L.L.C. ("Alliant"). The acquisition was approved by the Arizona Corporation Commission in Decision No. 73614 dated December 12, 2012 (copy enclosed herewith), and the transaction was completed on December 31, 2012.

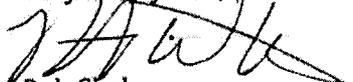
By way of background, SemStream Arizona's parent company, SemStream LP, and Alliant entered into a Purchase and Sale Agreement on September 12, 2012, whereby Alliant acquired from SemStream LP all outstanding units of membership interest in SemStream Arizona. As such, Alliant is now the owner of SemStream Arizona. Alliant is a Texas limited liability company that provides underground propane service to residential and commercial developments in several communities in Texas. Alliant is a wholly-owned subsidiary of Pinnacle Propane, LLC, a Texas limited liability company ("Pinnacle"), which operates traditional retail propane delivery services. Pinnacle in turn is a subsidiary of JP Energy Partners LP, a Delaware limited partnership ("JP Energy"). Pinnacle is one of the 15 largest propane distributors in the United States and has a significant number of metered gas distribution systems throughout the country. JP Energy distributes approximately 50 million gallons of propane annually through Alliant and Pinnacle. Alliant has approximately 2,500 existing customers (not including Page and Payson) and will sell between 1,500,000-2,000,000 gallons. Pinnacle (including its cylinder exchange business) has in excess of 40,000 customers and will sell approximately 48,000,000 gallons.

Under the Purchase and Sale Agreement, SemStream Arizona will remain the same legal entity, except that it will be a subsidiary of Alliant rather than SemStream LP. Alliant has retained all positions in the Payson and Page divisions. Alliant is in the process of changing the name of SemStream Arizona to Alliant Arizona Propane, LLC. We expect to have the name change completed by February 1, 2013.

Accordingly, Alliant requests that the Town of Payson authorize and approve transfer of SemStream Arizona's Franchise Agreement to Alliant Arizona Propane, LLC. We simply ask that you include this request as an agenda item for the February 7, 2013 Town Council meeting.

If you have any questions or need any additional information, please let me know.

Very truly yours,



Rob Chalmers

**Exhibit C**  
**to**  
**Resolution 2703**

**FRANCHISE AGREEMENT**  
**between**  
**ALLIANT ARIZONA PROPANE, L.L.C.**  
**and**  
**TOWN OF PAYSON, ARIZONA**

**Section 1. - Grant of Franchise:**

There is hereby granted to Alliant Arizona Propane, L.L.C, a \_\_\_\_\_ company authorized to do business in the State of Arizona (herein called "Grantee"), its successors and assigns, the right, privilege and franchise to construct, maintain, and operate upon, over, along, across, and under the present and future public rights-of-way (including but not limited to streets, alleys, ways, highways, and bridges) in the Town of Payson, Arizona (herein called "Municipality"), a gas distribution system together with all necessary or desirable appurtenances (including but not limited to pipes, pipelines, mains, services, vaults, casings, sleeves, vents, fences, meters, gauges, regulators, valves, conduits, appliances, attachments for its own use) (herein called the "Franchise"), for the purpose of supplying manufactured gas including liquified petroleum, and/or artificial gas including gas manufactured by any method whatsoever, and/or gas containing a mixture of natural gas and such artificial gas, and/or natural gas, to Municipality, its successors, the inhabitants thereof, and all individuals and entities either within or beyond the limits thereof for all purposes.

**Section 2.- Grantee's Compliance With Municipality Practice; Plans Submitted for Approval:**

All construction under this Franchise shall be performed in accordance with established practices of Municipality with respect to such public rights-of-way.

**Section 3.- Construction and Relocation of Grantee's Facilities; Payment:**

All facilities installed or constructed pursuant to this Franchise shall be so located or relocated and so erected as to minimize the interference with traffic, or other authorized uses over, under or through the public rights-of-way. Those phases of construction of Grantee's facilities relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of lines and related facilities herein provided for, shall be subject to regulation by Municipality. Grantee shall keep accurate records of the location of all facilities in the public rights-of-way and furnish them to Municipality upon request.

A. If Municipality requires Grantee to relocate Grantee's facilities which are located in private easements obtained by Grantee prior to Municipality's acquisition of the public right-of-way from which the facilities must be relocated, the entire cost of relocating Grantee's facilities (including the cost of purchasing a new private easement if necessary) shall be borne by Municipality. Municipality shall also bear the entire cost of all subsequent relocations of the relocated facilities required by Municipality until such time as Municipality condemns or purchases Grantee's private easement.

B. If Grantee's facilities are relocated because of the actions or operations of a third party, the entire cost of relocating Grantee's facilities (including the cost of purchasing a new private easement if necessary) shall be borne by third party.

C. Except as covered in Paragraph A and B above, Grantee shall bear the entire cost of relocating its facilities located on public rights-of-way.

D. If Municipality participates in the cost of relocating Grantee's facilities for any reason, the cost of relocation to Municipality shall not include any upgrade or improvement of Grantee's facilities as they existed prior to relocation.

**Section 4. - Indemnification; Hold Harmless; Defend:**

In the construction, installation, location, operation, safeguarding, maintenance and repair of all facilities of Grantee, Grantee shall use every reasonable and proper precaution to avoid damage, injury or death to persons or property. Grantee assumes sole responsibility for the construction, installation, location, operation, safeguarding, maintenance, repair and condition of any facility of Grantee placed in a public right-of-way pursuant to this Franchise. Grantee shall indemnify, hold harmless, and defend Municipality, and its officials, employees, servants and agents, against all claims for injuries or death to persons or damages to Municipal property due to the construction, installation, location, operation, safeguarding, maintenance, repair and condition of any facility of Grantee in a public right-of-way, including the safeguarding of persons using the public right-of-way and adjacent roadway from such facilities and activities of Grantee.

If Municipality is sued in any court by any person, firm, association, corporation or entity to recover damages for injuries or death to person or property arising out of the construction, installation, operation, maintenance, repair or replacement of any facilities of the Grantee, Grantee shall defend all such suits and pay any resulting final judgments, and may at the option of the Grantee be made a party to any such court proceeding. This provision shall not bar Grantee from claiming contribution for such injuries, death, damages and defense costs after, and to the extent, Municipality is found liable by a court of competent jurisdiction for such damages, injuries or death by reason of acts or omissions of Municipality or its employees, servants or agents.

**Section 5. - Restoration of Rights-of-Way:**

Whenever Grantee shall cause any opening or alteration whatsoever to be made for any purpose in any public right-of-way, the work shall be completed with due diligence within a reasonably prompt time, and Grantee shall, upon completion of such work, restore the property disturbed to as good condition as it was prior to such opening or alteration.

**Section 6. - Franchise Fee:**

Grantee agrees to pay to Municipality in consideration of the grant of this Franchise \$.024 dollars per therm supplied via Grantee's underground pipeline by any and all suppliers to all users, within the present and future corporate limits of the Municipality, such payments to be due and payable quarterly.

**Section 7. - Other Taxes and Fees:**

Grantee shall, in addition to the payment of a Franchise Fee provided in Section 6, pay property taxes, transaction privilege (sales) taxes, business license taxes, use taxes, special assessments, user, and permit fees established and levied by the municipality authorized by Arizona statutes without any offset or deduction for franchise fees paid to the municipality.

**Section 8. - Term:**

This Franchise shall continue and exist for a period of twenty-five (25) years from May 9, 1999.

**Section 9. - Franchise; Non-Exclusive:**

This Franchise and the privileges granted herein shall not be exclusive, and the Municipality expressly reserves the right to grant, from time to time, similar franchises and privileges to any person, firm, corporation, or entity.

**Section 10. - Independent Provisions:**

If any section, paragraph, clause, phrase or provision of this Franchise, other than Section 6, shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise as a whole or any part of the provisions hereof other than the part so adjudged invalid or unconstitutional. If Section 6 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, this Franchise shall immediately terminate and shall be of no further force or effect.

**Section 11. - Condemnation; Right Reserved by Municipality:**

This grant is made upon the condition that Municipality may, pursuant to lawful procedure, purchase and take over the whole or any part of the property and plants of Grantee, which property or plants serve consumers in the Town of Payson, whether such property or plants are located inside or outside the Town of Payson as provided by law.

**Section 12. - Dispute Resolution**

This Franchise shall be governed and construed in accordance with the internal laws of the State of Arizona. Any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may, but in no event need, be settled by submission, with the written consent of both parties, to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq., and judgment upon any award rendered by the arbitrator(s) shall be entered in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona. Both parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient forum based upon lack of venue. Neither party shall be entitled to recover from the other party any of its attorney's fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees, whether the same is resolved through arbitration, litigation in a court, or otherwise.



**Section 17. - Voter Approval Required:**

This franchise shall be submitted to be voted upon by the qualified electors residing within the corporate limits of the Town of Payson at a special municipal election of the Town to be held for that purpose. The cost of such election shall be equally shared by Grantee and any other utility seeking a franchise at the same location. *[Note - the original Franchise Agreement was approved by the voters at the March 9, 1999 election]*

**Section 18. Conflict of Interest:**

This agreement may be terminated in accordance with Arizona Revised Statutes Section 38-511 without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this contract on behalf of the Town is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract with respect to the subject matter of the contract. The parties presently believe that no such circumstances exist.

**TOWN OF PAYSON,**  
an Arizona municipal corporation,

**ALLIANT ARIZONA PROPANE,**  
L.L.C., a \_\_\_\_\_ limited liability company

By \_\_\_\_\_  
Kenny J. Evans, Mayor

By: \_\_\_\_\_  
\_\_\_\_\_, President

ATTEST:

\_\_\_\_\_  
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Timothy M. Wright, Town Attorney

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