

ORDINANCE NO. 225

AN ORDINANCE GRANTING A FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS, TO LOCATE, BUILD, CONSTRUCT, ACQUIRE, PURCHASE, MAINTAIN AND OPERATE INTO, WITHIN AND THROUGH THE TOWN OF BERTHOUD, LARIMER COUNTY, COLORADO, A PLANT OR PLANTS, AND WORKS, FOR THE PURCHASE, MANUFACTURE, GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY AND GAS, EITHER NATURAL, ARTIFICIAL OR MIXED, AND TO FURNISH, SELL AND DISTRIBUTE SAID ELECTRICAL ENERGY AND GAS TO THE TOWN OF BERTHOUD, AND THE INHABITANTS THEREOF, FOR LIGHT, HEAT AND POWER OR OTHER PURPOSES BY MEANS OF PIPES, MAINS, CONDUITS, CABLES, POLES AND WIRES STRUNG THEREON, or OTHERWISE, ON, OVER, UNDER, ALONG, ACROSS AND THROUGH ALL STREETS, ALLEYS, VIADUCTS, BRIDGES, ROADS, LANES, PUBLIC WAYS AND PLACES IN SAID TOWN OF BERTHOUD, AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, LARIMER COUNTY, COLORADO:

ARTICLE I.

Whenever the word Town is hereinafter employed, it shall designate the Town of Berthoud, Larimer County, Colorado, the grantor, and whenever the word Company is used it is intended to include not only Public Service Company of Colorado, a Colorado corporation, the grantee, but also its successors and assigns.

ARTICLE II.

Section 1. There is hereby granted to the Company the right, privilege and authority to locate, build, construct, acquire, purchase, extend, maintain and operate into, within and through said Town a plant or plants and works, for the purchase, manufacture, generation, transmission and distribution of electrical energy and gas, either natural, artificial or mixed, with the right and privilege for the period and upon the terms and conditions hereinafter specified to furnish, sell and distribute said electrical energy and gas to the Town, and the

inhabitants thereof, for light, heat and power or other purposes, by means of pipes, mains, conduits, cables, poles with wires strung thereon, or otherwise, on, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, lanes, and public ways and places in said Town and on, over, under, along, across and through any extension, connection with or continuation of the same and/or on, over, under, along, across and through any and all such new streets, alleys, viaducts, bridges, roads, lanes and public ways and places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of said Town.

Section 2. The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all streets, alleys, viaducts, bridges, roads, lanes, and public ways and places under the supervision of properly constituted authority for the purpose of bringing electrical energy and gas into, within and through the town of Berthoud and supplying electrical energy and gas to said Town and the inhabitants thereof and in the territory adjacent thereto, provided, however, that the Company shall so locate its plants, works, transmission and distribution structures, lines, equipment, mains, pipes and conduits within said Town as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said streets, alleys or other public ways and places. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved streets, roads or alleys, or any other public or private improvement, the Company shall repair in a workmanlike manner such sidewalk, graveled or paved street, road, alley, or other improvement after the installation of its pipes or other structures. The Company shall use due

care not to interfere with or damage any water mains, sewers, or other structures now in or which may hereafter be placed in said streets, alleys or public places.

Section 3. The Company shall so maintain its structures, apparatus, equipment, poles, wires, mains, pipe and conduits as to afford all reasonable protection against injury or damage to persons or property therefrom, and the Company shall save the Town harmless from all liability or damage accruing against said Town arising out of the negligent exercise by the Company of the rights and privileges hereby granted.

Section 4. If at any time it shall be necessary to change the position of any pole, gas main or service connection of the Company to permit the Town to lay, make or change street grades, pavements, sewers, water mains or other Town works, such changes shall be made by the Company at its own expense.

Section 5. The Town shall have the right, without cost, to use all poles of the Company within said Town for the purpose of stringing wires thereon for its fire alarm and police signal systems; provided, however, the Company assumes and shall be subject to no liability and shall be subject to no additional expense in connection therewith. It is further provided that the use of said poles by said Town shall not interfere in any unreasonable manner with the Company's use of same.

ARTICLE III.

Section 1. The natural gas to be supplied hereunder shall contain a monthly average gross heating value of not less than 950 B.t.u. per cubic foot when tested at 60° F., saturated with water vapor and under a pressure of 30 inches of mercury.

Section 2. If, during the term of this franchise, there occurs a failure or partial failure of the supply of natural gas available to Company because of the depletion of such supply, the Company shall take all reasonable steps to obtain an additional natural gas supply from other sources to be delivered to the Company, and if unable to procure same it is hereby authorized

to supply artificial or mixed gas for the unexpired term of this franchise. If Company within a reasonable period after the failure of the supply of natural gas shall fail to supply to its customers either artificial and/or mixed gas the franchise rights granted herein shall terminate.

ARTICLE IV.

Section 1. The Company shall furnish electrical energy and gas within the corporate limits of the Town or any addition thereto, to the Town, and to the inhabitants thereof, and to any person or corporation doing business in the Town or any addition thereto, at the rates and under the terms and conditions set forth in the Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies, filed with or fixed by the Public Utilities Commission of the State of Colorado, or by any other competent authority having jurisdiction in the premises.

Section 2. The Company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within classification would be entitled.

Section 3. The rates to be charged by said Company for gas service to industrial users for heating, manufacturing, power and other industrial processes in said Town for the term of said franchise may be lower and different from those charged for other purposes and the Company shall have the right to contract with industrial users for the sale of such gas, provided that all such contracts contain a "cut-off" clause which recognizes the preferred right of the other users over industrial users.

Section 4. Company will from time to time during the term of this franchise make such enlargements and extensions of its

industrial gas, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered, and two percent (2%) of its annual gross revenue derived from the sale of electricity within the corporate limits of the Town, after adjustment for the net write-off of uncollectible accounts and corrections of bills heretofore rendered. Such payments shall be made on or before the first day of March of each year for the calendar year next previous, including the portions of the years at the beginning and expiration of this franchise. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this paragraph, the Town Clerk and/or any committee appointed by the Town Board of said Town shall have access to the books of said Company for the purpose of checking the gross revenue received from operations within said Town.

ARTICLE VI.

Section 1. This Ordinance shall be in full force and effect from and after its passage, approval and publication, as by law required, and acceptance thereof in writing by the Company within ten (10) days from and after said publications, and the terms, conditions and covenants hereof shall remain in full force and effect for a period of twenty-five (25) years from and after such passage, approval and publication, and acceptance thereof.

Section 2. Upon the expiration of the franchise, if the Company shall not have acquired an extension or renewal thereof and accepted same, it may have, and it is hereby granted, the right to enter upon the streets, alleys, bridges, viaducts, roads, lanes and other public places of the Town, for the purpose of removing therefrom any or all of its plants, structures, pipes, mains, conduits, cables, poles and wire, or otherwise pertaining thereto, at any time after the Town has had ample time and opportunity to purchase, condemn or replace them. In so removing said pipes, mains, conduits, cables, poles and wire, the Company shall, at its own expense, refill any excavations that shall be made by it in the streets, alleys, bridges, viaducts,

roads, lanes and other public places and shall leave the same in as good condition as that prevailing prior to such removal.

Section 3. Nothing in this ordinance shall be so construed as to prevent the Company from assigning all of its rights, title or interest, gained or authorized under or by virtue of the terms of this Ordinance.

Section 4. The right is hereby reserved to the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction in the premises.

Section 5. It is agreed and understood that in the event grantor should wish to purchase or condemn the electrical distribution system or the natural gas distribution system of grantee, or both, as provided by law, during the period this franchise is in full force and effect, then grantor may purchase or condemn either electrical distribution or natural gas distribution system, or both, and for such purpose, this franchise shall be construed as two separate and independent franchises, one relating to the electrical distribution system, and the other relating to the natural gas distribution system.

INTRODUCED, READ AND ORDERED PUBLISHED, this 8th day of June, A.D., 1948.

PASSED, ADOPTED AND APPROVED, this 13th day of July, A.D., 1948.

L. K. Ludge
Mayor

Attest:

Viola Barrowman
Town Clerk