

ORDINANCE NO. 382

AN ORDINANCE GRANTING A FRANCHISE BY THE TOWN OF BERTHOUD, LARIMER COUNTY, COLORADO, TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, PURCHASE, ACQUIRE, LOCATE, MAINTAIN, OPERATE, AND EXTEND INTO, WITHIN AND THROUGH SAID TOWN, PLANTS, WORKS, SYSTEMS AND FACILITIES FOR THE GENERATION, PRODUCTION, MANUFACTURE, PURCHASE, STORAGE, EXCHANGE, TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY, GASEOUS FUELS OR MIXTURES THEREOF, BY MEANS OF PIPES, MAINS, CONDUITS, WIRES, CABLES, POLES AND STRUCTURES, OR OTHERWISE, ON, OVER, UNDER, ALONG AND ACROSS ALL STREETS, ALLEYS, VIADUCTS, BRIDGES, ROADS, LANES, PUBLIC WAYS AND OTHER PUBLIC PLACES IN SAID TOWN OF BERTHOUD TO SELL, FURNISH AND DISTRIBUTE SAID PRODUCTS TO THE TOWN AND THE INHABITANTS THEREOF; 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 shall designate not only Public Service Company of Colorado, a Colorado corporation, the grantee, but also its successors and assigns. Whenever The Public Utilities Commission of the State of Colorado is referred to, it shall be deemed to include any authority succeeding to the regulatory powers thereof.

ARTICLE II

Section 1. Grant of Authority. There is hereby granted by the Town to the Company the franchise right, privilege and authority to construct, purchase, acquire, locate, maintain, operate and extend into, within and through said Town, plants, works, systems and facilities for the generation, production, manufacture, storage, purchase, exchange, transmission and distribution of electrical energy and gaseous fuels (natural, artificial, synthesis, liquefied natural, liquefied petroleum, manufactured, or any mixture thereof), for lighting,

heating, cooling, power, or other similar utility purposes, with the right and privilege for the period and upon the terms and conditions hereinafter specified, to sell, furnish and distribute any or all of said products to the Town and the inhabitants thereof, by means of pipes, mains, conduits, wires, cables, poles and structures, or otherwise, on, over, under, along and across all streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places in the Town, and on, over, under, along and across any extension, connection with or continuation of the same, and on, over, under, along and across all new streets, alleys, viaducts, bridges, roads, lanes, public ways and other public 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. Manner of Use - Repair. 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, public ways and other public places under the supervision of properly constituted authority for the purpose of bringing electrical energy and gas into, within and through the Town 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, substations, 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 street or public place or any other public improvement, the Company shall repair the same in a workmanlike manner. The Company shall use due care not to interfere with or damage any water mains, sewers, or other structures in said streets, alleys or other public places.

The Company will place underground newly constructed electric distribution lines within newly developed areas within the corporate limits in accordance with the Company's tariffs as required by subdivision and other regulations adopted by the Town.

Section 3. Town Held Harmless. The Company shall so maintain its electric and gas plant equipment and distribution systems 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 and expenses necessarily accruing against the Town arising out of the negligent exercise by the Company of the rights and privileges hereby granted; provided, that the Company shall have had notice of the pendency of any action against the Town arising out of such exercise by the Company of said rights and privileges and be permitted at its own expense to appear and defend or assist in the defense of the same.

Section 4. Changes at Company Expense. If at any time it shall be necessary to change the position of any pole, gas main, conduit or service connection of the Company located in dedicated streets or alleys to permit the Town to change street grades or make street or sidewalk improvements, such changes shall be made by the Company at its own expense.

ARTICLE III

Section 1. Heating Value. The natural gas to be supplied hereunder shall contain a monthly average gross heating value of not less than the heating value set forth in applicable and effective Rules and Regulations as are effective from time to time with The Public Utilities Commission of the State of Colorado.

Section 2. Adequacy of Supply. The Company shall, at all times during the term of this franchise, take all reasonable and necessary steps to assure an adequate natural gas supply, but if unable to reasonably procure the same, the Company shall and is hereby authorized to supply an adequate amount of other gaseous fuels, as hereinbefore defined, or mixture thereof, to satisfy the requirements of the Town and the inhabitants thereof. The Company shall have the further right to supply said other gaseous fuels, or mixtures thereof, at periods of peak usage or at such other times or for such purposes which will result in efficiencies in the operation of the Company's system, provided that the supply of said other gaseous fuels will not impair service to the Company's customers. Such other gaseous fuels, or mixtures thereof, shall be supplied by Company in accordance with all applicable rules and orders of The Public Utilities Commission of the State of Colorado.

ARTICLE IV

Section 1. Rates - Regulation. The Company shall furnish electrical energy and gaseous fuels within the corporate limits of the Town or any addition thereto, to the Town, and to the inhabitants thereof, and to any person or persons 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, as are effective from time to time with The Public Utilities Commission of the State of Colorado, all of which collectively are hereinafter referred to as "Company's Tariffs."

Section 2. No Discrimination. 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 an established classification would be entitled.

Section 3. Extensions. Company will from time to time during the term of this franchise make such enlargements and extensions of its distribution systems as the business of the Company and the growth of the Town justify, in accordance with Company's tariffs.

Section 4. Rules and Regulations. The Company from time to time may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of electrical energy and gaseous fuel and payment therefor, and the interference with, or alteration of any of the Company's property upon the premises of its customers, as shall be necessary to insure continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefor, provided that the Company shall keep on file in its Berthoud office, available to the public, copies of its Rate Schedules, Standards for Service, Rules and Regulations and Service Connection and Extension Policies currently in effect and as are effective from time to time with The Public Utilities Commission of the State of Colorado.

ARTICLE V

Section 1. Franchise Payment. As a further consideration for this franchise, and accepted by the Town in lieu of all occupancy, occupation and license taxes or other taxes on the right to do business, or other special taxes, assessments or excises upon the property of the Company (except uniform taxes or assessments applicable to all taxpayers or businesses), the Company shall pay to the Town a sum equal to two percent (2%) of its gross revenue derived from the sale of gaseous fuel within the corporate limits of the Town, excluding the revenue received from the sale of interruptible industrial gas; and three percent (3%) of its gross revenue derived from the sale of electricity within the corporate limits of the Town for electrical energy furnished, excluding the amount received from the Town for electrical street lighting service furnished it, and excluding all revenue received in excess of \$2,500.00 derived per annum from the sale of electric service rendered to each customer at any one location.

In the event that the Company should pay to any other city or town in Larimer, Boulder or Weld Counties, of the same or smaller population than the Town, in which it serves both gas and electricity, a higher level of franchise payments expressed as a percentage of gross revenue than is herein provided, the Company agrees to place the same percentage formula in effect under this franchise. After the first ten years of the term of this franchise, the Company agrees that the Town may, at its option, elect to raise or lower the franchise payment payable on the revenue subject to such payment determined as outlined above, provided that the percentage figure upon which the franchise payment on electric service is based shall not be higher than that paid by the Company to any other city or town in the same rate area and that the percentage figure upon which the franchise payment on gas service is based shall not be higher than that paid by the Company to any other city or town of comparable size. The term "gross revenue" as used herein shall be construed to mean all amounts billed under authorized rates, temporary or permanent, within the Town for the sale of electrical energy and gaseous fuels adjusted for uncollectible accounts and corrections of bills theretofore rendered, and in the event that the gross revenue of the Company for any period of time during the term of this franchise is subsequently reduced by virtue

of a refund to any of the customers of the Company upon which the above referred to franchise payment is calculated and as a result thereof the Company has paid in excess of the percent of its gross revenue provided herein as so adjusted for any such period of time, the Company shall be entitled to a refund from the Town of all of said amounts paid in excess of said percentage of its gross revenue as adjusted by such refund. Payments shall be made on or before the first days of February and August of each year, for the six months of the calendar year next preceding. Payments for the portions of the initial and terminal years of this franchise shall be made on the basis of revenue as above derived for the months and portions of months in which this franchise is in effect. The franchise payments to be made by the Company as provided herein shall not be paid at any time that payment thereof by the Company would be in violation of the Presidential Executive Order No. 11615 or any extension thereof or other order, law or regulation prohibiting increased payments of this nature. During such period of time that the Company may be prohibited from making such payment it shall, in lieu thereof, make payments to the Town in the amount and in the manner provided for in the existing franchise between the Company and the Town. 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 Board of Trustees 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. Term - Effective Date. This ordinance shall become effective as provided by law, thirty days after its publication following final passage, upon acceptance in writing by the Company within said period and the terms, conditions and covenants thereof shall remain in full force and effect for a period of twenty (20) years from and after said effective date.

Section 2. Removal. Upon the expiration of this franchise, if the Company shall not have acquired an extension or renewal thereof and accepted same, it is hereby granted the right to enter upon the streets, alleys, bridges, viaducts, roads, lanes, public ways 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 wires, or equipment 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, wire and equipment, the Company shall, at its own expense and in a workmanlike manner, refill any excavations that shall be made by it in the graveled or paved streets, alleys, bridges, viaducts, roads, lanes, public ways and other public places after the removal of mains, pipes, conduits, poles, or other structures.

Section 3. Acquisition by Town. It is agreed and understood that in the event the Town should purchase or condemn the electrical distribution system or the gas distribution system of Company, or both, as provided by law, then 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.

Section 4. Police Power Reserved. 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. Performance - Forfeiture. It is agreed that in case of the failure of Company to perform and carry out any of the stipulations, terms, conditions and agreements herein set forth in any substantial particular, and with respect to which redress is not otherwise herein provided, the Town acting by and through its Board of Trustees may, after hearing, determine such substantial failure; and, thereupon, after notice given the Company of such determination, the Company shall have a reasonable time not to exceed six (6) months in which to remedy the conditions respecting which such determinations shall have been made. After the expiration of such time and failure to correct such conditions, the Board of Trustees may declare this franchise forfeited, and thereupon the Company shall have no further right, privilege or authority hereunder.

Section 6. Assignment. 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.

INTRODUCED, READ AND ORDERED PUBLISHED, this 9th day of October, A. D. 1973.

PASSED, ADOPTED, AND APPROVED, this 13th day of November, A. D. 1973.

R. B. Kickel
Mayor

SEAL

ATTEST:

Carol A. Mayo
Town Clerk