

ORDINANCE NO. 632

AN ORDINANCE AMENDING AN ELECTRIC AND GASEOUS FUEL FRANCHISE GRANTED BY THE TOWN OF BERTHOUD, LARIMER COUNTY, COLORADO, TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS

Be it ordained by the Board of Trustees of the Town of Berthoud, Larimer County, Colorado:

Section I. Ordinance No. 382, pertaining to the Public Service Company franchise is hereby amended as follows:

A. Article V, Section 1. Franchise Payment is repealed and re-enacted as follows:

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 three percent (3%) of all gross revenues received from the sale and transportation of gas and the sale of electricity within the corporate limits of the Town, excluding all revenues received within the Town from the sale of interruptible industrial gas and excluding all revenues received from the Town for street lighting service furnished it. The term "gross revenue" as used herein shall be construed to mean all amounts billed under authorized rates, temporary or permanent, within the Town

from the sale and transportation of gaseous fuel and the sale of electrical energy 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 said amounts paid in excess of said percentage of its gross revenue as adjusted by such refund. The Company shall pay the actual amount of said franchise fee in monthly installments not more than 30 days following the close of the month for which payment is to be made. Payments for the portion of the terminal month of this franchise shall be prorated for the portion of the month at the end of the term of this franchise. 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 or auditor 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.

B. A new Section 2 of Article V is enacted as follows:

Section 2. Change of Franchise Fee and Other Franchise Terms. Once during each calendar year of the franchise term, the Town Board, upon giving thirty (30) days notice to the Company of its intention so to do may review and change the consideration the Town may be entitled to receive as a part of the franchise; provided, however, the Board may only change the consideration to be received by the Town under the terms of this franchise to the equivalent of the consideration paid by the Company to any city or town in the State of Colorado in which the Company supplies gas or electric service under franchise.

The Company shall, upon request, report to the Town within sixty (60) days of the execution of a subsequent franchise or of any change of franchise in other municipalities that could have a significant financial impact on the consideration to be paid by the Company to the Town hereunder. If the Town Board decides the consideration

shall be so changed, it shall provide for such change by ordinance; provided, however, that any change in the franchise fee is then allowed to be surcharged by the Company; and provided, further, that the consideration is not higher than the highest consideration paid by the Company to any municipality within the State of Colorado. For purposes of this Section, consideration means the franchise fee established in Article V, Section 1, the undergrounding program established in Article VII, Section 2 and also includes any other provision which is of similar significant financial benefit to the Town.

C. A new Article VII is enacted as follows:

Section 1. Underground Electrical Distribution Lines in New Areas. The Company shall place newly constructed electrical distribution lines underground to serve new residential subdivision areas in accordance with the Company's tariffs and Town's subdivision regulations; provided, however, that the Company shall not be required to install any such facilities for which the charges provided in its tariffs have not been paid.

Section 2. Overhead Conversion at Expense of Company.

a. As and when requested by the Town, the Company will spend annually an amount equal to one percent (1%) of the preceding calendar year's electric revenues received from customers within the Town to move electric distribution

lines located in streets and other public places within the Town underground, provided that the undergrounding shall extend for a minimum distance of one block or 750 feet, whichever is less or as may be agreed to by the parties.

b. Any unexpended portion of the one percent (1%) of electric revenue may be carried over to succeeding years and, in addition, upon request by the Town, the Company shall anticipate amounts to be available for up to three (3) years in advance. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. No relocation expenses which the Company is required to expend pursuant to Article II, Section 4 shall be charged to this allocation.

c. Funds to be expended pursuant to this Section shall not be used in any project or situation for which and to the extent that the Town has received federal or state funds for the purpose of undergrounding utilities. Funds to be expended pursuant to this Section may be used for "matching" purposes with state or federal monies.

d. If the Public Utilities Commission authorizes a system-wide program or programs of undergrounding electric distribution lines, the Company will allocate to the program of undergrounding in the Town such amount as is authorized by the Public Utilities Commission, but in no

case less than a sum equal to one percent (1%) of annual electric revenues.

e. In addition to the provisions of this Section, the Town may require additional lines to be moved underground at the Town's expense.

f. The Town acknowledges that the establishment of this undergrounding program creates no vested right in the Town to the undergrounding monies. Further, if such monies are not expended pursuant to the conditions hereof, the allocation is not convertible to cash or available for any other purposes.

Section 3. Review of Undergrounding Program.

Representatives of both the Town and the Company shall meet periodically to review the Company's undergrounding program. This review shall include:

a. Undergrounding programs including conversions and replacements which have been accomplished or are underway by the Company together with the Company's plans for additional undergrounding;

b. Undergrounding projects anticipated by the Town. Such a meeting shall be held to achieve a continuing program for the orderly undergrounding of electrical distribution lines in the Town.

Section 4. Cooperation with Other Utilities. When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies which have their lines overhead to attempt to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the Company shall cooperate with these utilities and companies and undertake to underground company lines as part of the same project where feasible. The Company shall not be required to pay the cost of any other utility in connection with work under this Section.

Section II. This Ordinance is deemed necessary for the protection of the health, safety and welfare of the citizens of Berthoud.

Section III. If any article, section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one part or parts hereof be declared unconstitutional or invalid.

INTRODUCED, READ AND PASSED ON FIRST READING AT A REGULAR MEETING OF THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO, this 11th day of July, 1989.

READ, PASSED AND ADOPTED ON SECOND READING AT A REGULAR MEETING OF
THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO, this 8th day
of August, 1989.

TOWN OF BERTHOUD, COLORADO


Mayor

ATTEST:


Town Clerk

APPROVED AS TO FORM:

PUBLISHED: _____

PROCEEDINGS OF THE BOARD OF TRUSTEES OF
THE TOWN OF BERTHOUD, LARIMER COUNTY, COLORADO
HELD ON JULY 11, 1989

The Board of Trustees of the Town of Berthoud, Larimer County, met in session at a regular meeting on July 11, 1989 at 7:30 p.m. in said Municipality.

Present: Mayor Strachan and Trustees Conder, Banzhaf,

Olinger, Vaughan, and Andersen

and Town Clerk: Patterson.

Absent: Trustee LeFeber.

Public Service Company of Colorado, acting by Ann Stringfellow, its District Manager, Northern Division, then filed with the Board its NOTICE OF APPLICATION FOR FRANCHISE AMENDMENT BY PUBLIC SERVICE COMPANY OF COLORADO which application was duly read to the Board of Trustees.

The Town Clerk then presented to the Board of Trustees the affidavit of the editor and/or publisher of the Berthoud Recorder, showing that said NOTICE OF APPLICATION FOR FRANCHISE AMENDMENT BY PUBLIC SERVICE COMPANY OF COLORADO had been published in said newspaper on June 22, June 29 and July 6, 1989, on which the affidavit of publication was ordered made a part of the records of the municipality.

It appearing that all necessary steps had been taken to enable the municipality to permit the franchise amendment applied for to be introduced and read at length for the first time at this meeting, the Mayor directed the Town Clerk to read in full the proposed franchise amendment to the Board and after the same had been read it was moved by Trustee Banzhaf, seconded by Trustee Andersen, that

the proposed franchise amendment be passed on first reading and that this Board desired to further consider the proposed franchise amendment and that copies of said proposed franchise amendment and a NOTICE OF FURTHER CONSIDERATION OF ORDINANCE AMENDING A GAS AND ELECTRIC FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO be published in the Berthoud Recorder, until the time such franchise amendment is again read and put upon its passage at the regular meeting of the Board of Trustees on the 8th day of August, 1989.

The question, of passage on first reading of the franchise amendment, being out to vote, Mayor Strachan, Trustee Conder, Trustee Olinger, Trustee Vaughan, Trustee Andersen, and Trustee Banzhaf

voted aye, and _____

voted nay, and the franchise amendment was duly passed on first reading.



Town Clerk

CERTIFICATE OF CLERK
AS TO TRANSCRIPT OF ALL PROCEEDINGS

I, Orahbelle Patterson, the duly qualified and acting Town Clerk of the Town of Berthoud, certify that the foregoing transcript of all proceedings relative to the passage and adoption of Ordinance No. 632 of the Town of Berthoud, Larimer County, Colorado, is a full, true and correct copy and transcript of all affidavits and other papers on file in my office and a full, true and correct copy and transcript of all minutes and records of said Municipality relative thereto:

1. Affidavit of the editor and/or publisher of the Berthoud Recorder, as to the publishing of the attached NOTICE OF APPLICATION FOR FRANCHISE AMENDMENT BY PUBLIC SERVICE COMPANY OF COLORADO on June 22, June 29 and July 6, 1989;

2. Proceedings of the Board of Trustees of said Municipality dated July 11, 1989, relative thereto;

3. Affidavit of the editor and/or publisher of the Berthoud Recorder, as to the publication of the attached NOTICE OF FURTHER CONSIDERATION OF ORDINANCE AMENDING A GAS AND ELECTRIC FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO and of the proposed franchise amendment, in full, on July 27 and August 3, 1989;

4. Proceedings of the Board of Trustees of said Municipality dated August 8, 1989, relative thereto;

5. Signed copy of Ordinance No. 632 attested by myself as Town Clerk;

6. CERTIFICATE OF CLERK AS TO INTRODUCTION, PUBLICATION, PASSAGE AND SIGNATURE BY MAYOR OF ORDINANCE NO. 632;

7. Affidavit of the editor and/or publisher of the Berthoud Recorder, as to publication of Ordinance No. 632 with certificate of myself as Town Clerk as to passage and signing by Mayor attached thereto;

8. CERTIFICATE OF CLERK AS TO RECORDING AND AUTHENTICATING OF ORDINANCE NO. 632;

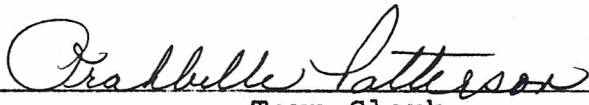
IN WITNESS WHEREOF, I have affixed my hand at the Town of Berthoud, Colorado, on August 9, 1989, and attested the same with the Seal of said Municipality.

Grabelle Patterson
Town Clerk

CERTIFICATE OF CLERK AS TO RECORDING AND
AUTHENTICATING OF ORDINANCE NO. 632

I, Orahbelle Patterson, the duly qualified and acting Town Clerk of the Town of Berthoud, Larimer County, Colorado, certify that on August 9, 1989, I did cause to be recorded in the Ordinance Book of the Town of Berthoud, Ordinance No. 632, amending Ordinance No. 382 which granted to Public Service Company of Colorado a franchise for the purpose mentioned therein, as signed by Richard D. Strachan, Mayor, and attested by me as Town Clerk, under the Seal of the Municipality, which Ordinance so signed and attested and recorded in the Ordinance Book was authenticated in the Ordinance Book by the signature of the Mayor and of myself as Town Clerk of said Municipality under the Seal thereof.

Dated at the Town of Berthoud, this 9th day of August,
1989.


Town Clerk

CERTIFICATE OF CLERK AS TO INTRODUCTION,
PUBLICATION, PASSAGE AND SIGNATURE BY MAYOR
OF ORDINANCE NO. 632

I, Orahbelle Patterson, the duly qualified and acting Town Clerk of the Town of Berthoud, Larimer County, Colorado, certify that the annexed Ordinance No. 632 of said Municipality amending Ordinance No. 382 which granted to Public Service Company of Colorado a franchise for the purpose therein mentioned was, after proper publication of Notice of Application, introduced and read in full at the regular meeting of the Board of Trustees of said Municipality, held on July 11, 1989.

That thereafter said Ordinance No. 632, as introduced and read, after having been published in the Berthoud Recorder, on July 27 and August 3, prior to the time when such franchise amendment was to be again read, was again read in full at a regular meeting of the Board of Trustees of said Municipality on August 8, 1989, and after so being read was by a majority vote of all the Board members of said Municipality by aye and nay vote, regularly passed and adopted as Ordinance No. 632.

That after said Ordinance was passed and adopted by the Board of Trustees of said Municipality, it was presented within 48 hours after passage to Richard Strachan, the Mayor of said Municipality, and was immediately signed by the Mayor and attested by me as Town Clerk under the Seal of the Municipality.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Town of Berthoud, Larimer County, Colorado, on August 9, 1989.



Town Clerk

The Mayor directed the Town Clerk to again read in full the proposed franchise amendment to the Board and after the same had been read for the second and final time, it was moved by Trustee Banzhaf, seconded by Trustee Andersen that such proposed franchise amendment be now passed and adopted as an ordinance of the Municipality. The ayes and nays being called, the following voted aye, Mayor Strachan and Trustees Andersen, Olinger, Banzhaf, Conder, and Vaughan

and the following voted nay, _____.

It appearing that a majority of all the Board members voted aye, said Ordinance was declared passed and adopted by the Board of Trustees of the Municipality and was numbered as Ordinance No. 632.

Trustee Banzhaf, member of the Board, directed that the Ordinance which had just been passed, upon its signing by the Mayor, be recorded in the Ordinance Book and authenticated in such book by the signatures of the Mayor and Town Clerk, and that the Town Clerk issue a certificate as to the proper introduction, reading, publication, and passage of said Ordinance, and that said Ordinance be published, together with such certificate as to proper procedure, in the Berthoud Recorder on August 17, 1989.


Town Clerk

PROCEEDINGS OF THE BOARD OF TRUSTEES OF THE
TOWN OF BERTHOUD, LARIMER COUNTY, COLORADO
HELD ON AUGUST 8, 1989

The Board of Trustees of the Town of Berthoud, Larimer County, Colorado, met in session at a regular meeting on August 8, 1989 at 7:30 p.m. in said Municipality.

Present: Mayor Strachan and Trustees Conder, Olinger, Banzhaf, Andersen, and Vaughan
and Orabelle Patterson, its Town Clerk.

Absent: Trustee LeFeber.

The Town Clerk presented to the Board the affidavit of the editor and/or publisher of the Berthoud Recorder as to publication of the NOTICE OF FURTHER CONSIDERATION OF ORDINANCE AMENDING A GAS AND ELECTRIC FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO and of the proposed franchise amendment, entitled:

AN ORDINANCE AMENDING A GAS AND ELECTRIC FRANCHISE GRANTED BY THE TOWN OF BERTHOUD TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS.

Said affidavit stated that said notice and said proposed franchise amendment were published in the entire and regular issue of the Berthoud Recorder, on July 27 and August 3, 1989, which affidavit of publication was ordered made a part of the records of the Board of Trustees.

Said NOTICE OF FURTHER CONSIDERATION OF ORDINANCE AMENDING A GAS AND ELECTRIC FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO states that the proposed franchise amendment had been introduced and read in full for the first time at the regular meeting of the Board held on July 11, 1989, and that at the next regular meeting of the Board on August 8, 1989, such proposed franchise amendment would come up before the Board for consideration by it as to its adoption and passage as provided by law.

NOTICE OF FURTHER CONSIDERATION
OF ORDINANCE AMENDING A GAS AND ELECTRIC
FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO

PUBLIC NOTICE IS HEREBY GIVEN that at the regular meeting of the Board of Trustees of the Town of Berthoud, Larimer County, Colorado, at 7:30 p.m. in said Municipality held on August 8, 1989, the attached proposed franchise amendment of said Town of Berthoud, amending a gas and electric franchise to Public Service Company of Colorado as therein provided, will come before the Board of Trustees of the Town of Berthoud for further consideration as to its adoption and passage, as provided by law. Said franchise amendment was introduced and read for the first time at the regular meeting of said Board of Trustees held on July 11, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Municipal Seal this 18th day of July, 1989.


Town Clerk

Section 3. Drainage Fund:

The money collected through the drainage fee assessment shall be deposited in a fund to be used exclusively for the resolution of drainage related problems.

Section 4. Enforcement:

In the event the drainage fee is unpaid and a delinquency is created the clerk of the town, its treasurer or its designated representative may certify the delinquencies to the office of the treasurer of Larimer County. The treasurer may then proceed to collect these delinquencies through the applicable statutory tax sale procedure.

The town may also proceed to collect the unpaid fee by terminating utility service for water or sewer or both, or by litigation or through a combination of these remedies.

Section 5. Amendment of Existing Ordinance:

Paragraph number 2. of Section 3 of Ordinance 484 is hereby amended to read as follows:

2. Drainage

a. For each property containing structures which have a total of 1,000 or less square feet, a minimum fee of \$2.50 per month will be assessed.

b. Any property containing structures whose square footage is in excess of 1,000 square feet will be assessed an additional \$.25 for each 100 square feet, or fraction thereof, for square footage equal to or greater than 50 square feet. The assessment calculation for excess square footage shall be made as follows: Square footage up to fifty shall be rounded to the lowest 100 square feet and square footage of fifty or more shall be rounded to the next highest 100. (e.g. properties with structures whose square footage is less than 1050 would be \$2.50 per month, but those structures whose square footage is 1050 but less than 1100 would pay \$2.75 per month.)

c. The square footage of applicable structures shall be established based upon the most recent records available to the Town through the office of the Larimer County Assessor. The applicable square footage shall include the primary structure on the premises, secondary structures in excess of 120 square feet, attachments to the principal structure such as carports and patios. In the event a dispute should arise with respect to the accuracy of the square footage shown on the records of the assessor the Town will, at the owner's request, measure the

exterior perimeter of the buildings and make any necessary corrections.

Section 6. Exemptions and Deferrals:

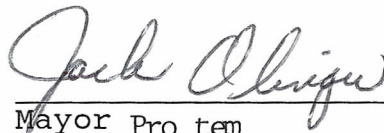
a. The Town Board of Trustees reserves the right to consider the individual financial situation of the property owners and the factual circumstances regarding drainage on specific property. In appropriate cases, and after establishment of the necessary administrative guidelines, the drainage fee may be deferred, waived, reduced or increased.

Section 7. Effective Date:

The Board of Trustees of the Town of Berthoud herewith finds, determines and designates that this ordinance shall take effect and be in force thirty (30) days after publication.


At its meeting May 23, 1989, a public hearing was set by the Board of Trustees of the Town of Berthoud for its meeting held on the 13th, of June, 1989. After the public hearing, the ordinance was read, passed and ordered published by the Board of Trustees at its meeting this 13th day of June, 1989.

TOWN OF BERTHOUD:



Mayor Pro tem

ATTEST:



Town Clerk

Published:

Berthoud Recorder June 22, 1989
