

ORDINANCE NO. 798

AN ORDINANCE SETTING FORTH THE PLAN FOR THE ACQUISITION OF THE ELECTRICAL DISTRIBUTION SYSTEM OWNED BY NEW CENTURY ENERGIES, INC. AND PUBLIC SERVICE COMPANY OF COLORADO IN THE TOWN OF BERTHOUD, TO BE PAID FOR SOLELY FROM THE OPERATIONAL REVENUES FROM THE ELECTRICAL DISTRIBUTION SYSTEM AT A PRICE NOT TO EXCEED \$3,500,000, AT AN INTEREST RATE NOT TO EXCEED 5.75% FOR THE FIRST FIVE YEARS, NOT TO EXCEED 6.5% FOR THE LIFE OF THE DEBT OR EXCEED A MAXIMUM NET EFFECTIVE INTEREST RATE OF 6.4%.

WHEREAS, the Board of Trustees of the Town of Berthoud has determined by prior resolutions that the Town should evaluate the financial feasibility of purchasing the electrical distribution system owned and operated by New Century Energies, Inc. and Public Service Company of Colorado (Public Service Company) in Berthoud; and,

WHEREAS, the Board of Trustees has determined that this acquisition is for the following public purposes and that it will not proceed with the purchase and operation of this electrical distribution system unless the three following conditions are met:

1. The system will be operated more reliably;
2. All operating and acquisition costs for the system including, but not limited to, power, transmission, operations, maintenance, administration, repairs, billing, principal, interest and insurance can be paid solely through the revenues generated from the operation of the electrical distribution system without any taxes or assessments; and,
3. The costs of acquiring this distribution system at its fair market value including the payment of principal and interest to repay the loan, not in excess of \$3,500,000, can be paid solely through the revenues generated from the operation of the electrical distribution system without any taxes or assessments; and,

WHEREAS, the Town has entered into a contract with the City of Loveland which guarantees that the electric customers of Berthoud will be provided the same level of service and maintenance as the electric customers in Loveland who have a 99.99% level of reliable service at .8 cents per kilowatt hour; and,

WHEREAS, the Town has entered into a contract with Platte River Power Authority to provide electric power at a cost of 2.9 cents per kilowatt hour which includes .6 cents per kilowatt hour for transmission of power; and,

WHEREAS, Platte River Power Authority currently serves customers in Loveland, Longmont, Fort Collins and Estes Park and all of these cities have lower rates than Public Service's rates to Berthoud and Berthoud can join this network; and,

WHEREAS, the Town is able to purchase insurance to cover the loss of a portion or of the entirety or damage to the distribution system and the liability of the Town for ownership and operation of this distribution system; and,

WHEREAS, the Board of Trustees has obtained professional appraisals of the fair market value of this electrical distribution system and has also obtained estimates of the cost of completely building a new system comparable to the existing system and all these evaluations and costs are significantly less than \$3,500,000; and,

WHEREAS, Public Service Company was offered the opportunity to meet the terms of the contract with the City of Loveland and it has rejected this opportunity; and,

WHEREAS, Public Service Company was offered the opportunity to provide electrical power to customers in Berthoud under the same terms and conditions as set forth in Berthoud's contract with Platte River Power Authority and Public Service Company has stated that it did not wish to provide electrical service to the Town at these rates; and,

WHEREAS, there are approximately two thousand electric customers in the Town who generate about 1.4 million dollars a year in gross revenues for Public Service Company; and

WHEREAS, the estimated cost for power, operations, maintenance, insurance, billing and administration in accordance with the contracts with Loveland and Platte River Power Authority is approximately \$700,000 annually; and,

WHEREAS, Public Service Company has provided no financial data to rebut these estimates; and

WHEREAS, during the five year terms of the Town's contracts with Platte River Power Authority and the city of Loveland, the Town would have approximately \$700,000 available annually or almost \$350 per customer per year to purchase this electric distribution system and any required transmission facilities; and

WHEREAS, if the citizens decide to purchase this distribution system after payment of the fair market value of the distribution system is completed, it is the Town's obligation to return any profits to the customers;



NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, LARIMER AND WELD COUNTIES, COLORADO:

1. In order to supply electricity and accomplish these public purposes and in confirmation of the recitals above which are incorporated herein by reference, the Town's staff, with the appropriate professional assistance, is directed to:

- (a) Commence negotiations with New Century Energies, Inc. and/or Public Service Company of Colorado, (Public Service Company) for the acquisition, at its fair market value, of all necessary components of the electrical distribution system owned and operated by Public Service Company in the Town;
- (b) Notify Public Service Company through the appropriate entity that pursuant to applicable regulations of the Federal Energy Regulatory Commission the Town is requesting a quotation on the cost of transmission of electrical power through the Longmont and Loveland transmission lines currently serving the Town;
- (c) Evaluate the financial feasibility and improved reliability of alternate transmission lines such as those owned by Poudre Valley REA and the construction of new transmission lines by the Town;
- (d) Procure a quotation on property damage insurance to cover the electrical distribution system at its replacement value to ensure that in the event a catastrophic event occurred and destroyed all or a portion of the electrical distribution system, the system could be rebuilt without additional cost to the customers;
- (e) In the event Public Service Company of Colorado refuses to negotiate with respect to the Town's purchase of this electrical distribution system, staff shall prepare and present a resolution that would notify Public Service Company that the Town will, if necessary, use its constitutionally and statutorily authorized powers of eminent domain to purchase the electrical distribution system at its fair market value. This resolution shall comply with all requirements of the U.S. Constitution, Colorado Constitution and the Colorado Revised Statutes.
- (f) After passage of the resolution and initiation of any additional acts and rights which the Town is authorized to carry out pursuant to the U.S. Constitution, Colorado Constitution and Colorado Revised Statutes, Public Service Company of Colorado shall be advised that the Town will pay for the cost of an appraisal of this distribution system; and,

(g) Upon the Town's receipt of the appraisal, staff is again directed to advise the Board of Trustees of its activities. The Board of Trustees may direct staff to proceed to negotiate with Public Service Company as to the purchase of this electrical distribution system at its fair market value. If staff is again unsuccessful in arriving at a mutually acceptable purchase price, then, if appropriate, it is directed to immediately proceed to enforce the Town's constitutional and statutory rights of eminent domain. In the alternative, the Board of Trustees may determine that the Town's goals of obtaining more reliable electric service and buying the system without increasing rates is not attainable and may direct staff to terminate the acquisition.

2. In the event that the price of this distribution system as established by the courts at its fair market value exceeds \$3,500,000 which is the maximum amount which the Board of Trustees is authorizing to be expended the staff is directed to return to the Board of Trustees in order for it to evaluate how or if it wishes to proceed further with the acquisition.

3. The Board of Trustees is well aware of the possible deregulation of the electric utility industry which may result in individual customers being able to select their own electric service provider.

(a) Based upon deregulation in other states, the Board believes that larger customers will generally be able to negotiate better rates thus it may be in the citizens' best interests for the Town to negotiate a rate for the entire Town rather than each individual customer negotiating their own rate;

(b) Individual customers will still pay a fee to have the electric power transmitted through the distribution system and thus this system will be a continuing source of revenue to the entity which owns and operates it;

(c) Staff is directed to evaluate and report to the Board of Trustees the effects of deregulation and the impact this will have on the Town's operation of the electrical distribution system at the end of the Town's five year contract with Loveland and Platte River Power Authority.

4. Public Service Company has denied the Board of Trustee's request to provide discounted electric service to customers in Berthoud and instead states that the Town should enter into a twenty (20) year franchise.

(a) Staff is directed to evaluate whether there is any benefit to the citizens of Berthoud to be derived by entering into a franchise with Public Service Company other than the 1% undergrounding fee and



whether the detriments to the franchise outweigh this benefit and report back to the Board of Trustees.

5. In order to improve the reliability of the Town's electrical distribution system, staff is directed to proceed with evaluating the feasibility of placing all electric lines in the residential areas of Town underground at no cost to the customers.

6. Pursuant to §31-32-201(2), C.R.S., this is required to describe the property to be acquired;

(a) The property to be acquired is the electrical distribution system owned and operated by Public Service Company of Colorado/New Century Energies, Inc. which provides retail electric service to the customers of these companies located in Berthoud including, but not limited to, all poles, transformers, street lights, meters and wire and automatic throw over which assets are generally evaluated to include but not be limited to the following assets:

<u>ITEM</u>	<u>ESTIMATED QUANTITIES</u>
Wood poles	510
Single arm & double arm assemblies	500
Overhead and street light conductor	149,000 linear feet
Neutral & overhead guy wires	52,000 linear feet
Down guy assemblies	450
Pole ground assemblies	510
Distribution transformers - pole type (7-5 kva, 13-10kva, 2-15 kva, 101-25 kva, 3-37.5 kva, 58-50 kva, and 11-100 kva)	195
Residential and commercial meters	2026
Street light fixture assemblies	74
Riser pole assemblies	20
Fused cutouts assemblies	206
Surge arresters assemblies	206
Capacitor bank assemblies	6
Pad mounted transformers (60-25 kva, 2-50 kva, 3-75 kva, 1-300 kva)	66
Underground circuits	15,100 ckt. ft.
Miscellaneous underground equipment	1 ls.

(b) The purchase price shall not exceed \$3,500,000 and the net effective interest rate shall not exceed 6.4%.

(c) All operating, maintenance, repairs, insurance, administration and other costs shall be paid solely out of the income of the electrical distribution utility being acquired. The Town may receive payment into the electrical utility fund for services rendered for municipal purposes, but such payments shall at all times be reasonable.

7. Staff is further to proceed with preparation for and the conduct of a special election to be held on July 7, 1998.

8. It is the intent of the Board of Trustees and, if approved by the electorate, to comply with § 31-32-201 of Colorado Revised Statutes. The maximum net effective interest rate at which the indebtedness may be incurred will be 6.4%. This ordinance sets forth the plan for acquisition of the electrical distribution system owned by New Century Energies, Inc. and Public Service Company of Colorado which serves their customers within the town of Berthoud and to the extent any portion of this ordinance is not in conformance with this section it shall be modified to comply or that portion shall be construed to be nullified if modification cannot be accomplished. They further intend that the Town should acquire this distribution system at its fair market value which shall not exceed \$3,500,000 through negotiation or arbitration if possible and eminent domain proceedings if this is not possible. This ordinance shall be irrevocable until the indebtedness incurred by the acquisition is fully paid or discharged.

At the special meeting of the Board of Trustees, this 4th day of June, 1998, Ordinance 797 was reconsidered, rescinded and repealed except for section 7 which set the special election which is re-affirmed herein and this Ordinance number 798, was read, passed and ordered published.

ATTEST:

TOWN OF BERTHOUD:

  
Mary K. Cowdin - Town Clerk

  
Richard Strachan - Mayor

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