

ORDINANCE NO. 119

AN ORDINANCE GRANTING A FRANCHISE BY THE TOWN OF LA JARA, CONEJOS COUNTY, COLORADO, TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS, TO LOCATE, BUILD, CONSTRUCT, ACQUIRE, PURCHASE, EXTEND, MAINTAIN AND OPERATE INTO, WITHIN AND THROUGH THE TOWN OF LA JARA, A PLANT OR PLANTS, AND WORKS, FOR THE PURCHASE, MANUFACTURE, TRANSMISSION AND DISTRIBUTION OF GAS, EITHER NATURAL, ARTIFICIAL OR MIXED, AND TO FURNISH, SELL AND DISTRIBUTE SAID GAS TO THE TOWN OF LA JARA, AND THE INHABITANTS THEREOF, FOR HEATING, COOKING, OR OTHER PURPOSES BY MEANS OF PIPES, MAINS, OR OTHERWISE, OVER, UNDER, ALONG, ACROSS AND THROUGH ANY AND ALL STREETS, ALLEYS, VIADUCTS, BRIDGES, ROADS, LANES, AND OTHER PUBLIC WAYS AND PLACES IN SAID TOWN OF LA JARA, AND FIXING THE TERMS AND CONDITIONS THEREOF.

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BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LA JARA, CONEJOS COUNTY, COLORADO:

ARTICLE I.

Whenever the word Town is hereinafter employed it shall designate the Town of La Jara, Conejos 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.

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, transmission and distribution of 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 gas to the Town, and the inhabitants thereof, for heating, cooking or other purposes, by means of pipes, mains, or otherwise, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, lanes, and other public ways and places in said Town and over, under, along, across and through any extension, connection with or continuation of the same and/or over, under, along, across and through any and all such new

streets, alleys, viaducts, bridges, roads, lanes and other 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, parkways, and other public ways and places under the supervision of properly constituted authority for the purpose of bringing gas into, within and through the Town and supplying 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, equipment, mains and pipes 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 other public places.

Section 3. The Company shall so maintain its structures, apparatus, mains, pipe and other equipment 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 all reasonable 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. If at any time it shall be necessary to change the position of any 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.

#### ARTICLE III.

Section 1. 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 on file from time to time with The Public Utilities Commission of the State of Colorado.

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.

Section 3. The Company shall defray all necessary expenses incident to the adjustment of domestic appliances, including the changing or redrilling of orifices or burners, in making the substitution of natural gas for liquid petroleum gas and shall also defray such expenses in the event it should later be necessary to revert to manufactured, artificial, or other suitable, or mixed, gas.

#### ARTICLE IV.

Section 1. The Company shall furnish 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 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, filed with or fixed by The Public Utilities Commission of the State of Colorado from time to time 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 an established classification would be entitled.

Section 3. The rates to be charged by said Company for industrial gas used in said Town may be lower and different from those charged for gas used for other purposes, provided that contracts for industrial gas contain a "cut-off" clause which recognizes the preferred right of the other uses over industrial uses.

Section 4. Company will from time to time during the term of this franchise make such enlargements and extensions of its distribution system as the business of the Company and the growth of the Town justify, in accordance with its Standards for Service, Rules and Regulations, and Service Connection and Extension Policies for gas service concurrently in effect and on file from time to time with The Public Utilities Commission of the State of Colorado or other competent authority having jurisdiction in the premises.

Section 5. The Company from time to time may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of gas 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 a 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 office in La Jara, Colorado, available to the public, copies of its Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies concurrently in effect and on file from time to time with The Public Utilities Commission of the State of Colorado or other competent authority having jurisdiction in the premises.

#### ARTICLE V.

Section 1. As a further consideration for this franchise, and accepted by the Town in lieu of all occupancy and license taxes and all other special taxes, assessments or excises upon the pipes, mains, meters, or other property of the Company, or other levies that might be imposed, either as a franchise tax, occupancy tax, license tax, permit charge, or for the inspection of pipes, mains, meters, or other property of the Company, or otherwise, the Company shall pay to the Town a sum equal to two percent (2%) of its annual gross revenue derived from the sale of gas within the corporate limits of the Town, excluding the revenue received from the sale of industrial gas, and excluding the amount received from the Town itself for gas service furnished it and excluding all revenue received in excess of \$2500.00 derived per annum from the sale of gas service rendered to each customer at any one location. Payments shall be made on or before the first day of March of each year for the calendar year next previous and shall be adjusted for 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 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. 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-five (25) years from and after said effective date.

Section 2. Upon the expiration of this 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, 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 or other property, 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 and other public places after the removal of its mains, pipes or other structures.

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. The right is hereby reserved to the Town to terminate all rights and privileges given herein to the Company or its assigns, if, within two years from the effective date of this ordinance, natural gas is not made available to the inhabitants of the Town by the Company or its assigns in accordance with the provisions hereinabove set forth. The Board of Trustees of the Town may exercise said right

to terminate by giving the Company thirty (30) days written notice of the termination of said rights and privileges granted herein.

INTRODUCED, READ AND ORDERED PUBLISHED, the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 1960.

PASSED, ADOPTED AND APPROVED, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 1960.

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Mayor

(SEAL)

ATTEST:

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Town Clerk