

ORDINANCE NO: 00 - 1**CURRY COUNTY FRANCHISE**

AN ORDINANCE GRANTING TO PUBLIC SERVICE COMPANY OF NEW MEXICO, A CORPORATION, ITS LEGAL REPRESENTATIVE, SUCCESSORS, LESSEES AND ASSIGNS, GRANTEE HEREIN, CERTAIN POWERS, LICENSES, RIGHTS-OF-WAY, PRIVILEGES AND FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN IN THE COUNTY OF CURRY, NEW MEXICO, AS NOW OR HEREAFTER CONSTITUTED, WORKS, SYSTEMS AND PLANTS FOR THE HANDLING, PRODUCTION, MANUFACTURING, TRANSPORTING, STORING, SALE AND DISTRIBUTION OF GAS INTO, OUT OF AND THROUGH SAID COUNTY TO ITS INHABITANTS, AND OTHERS, INCLUDING CUSTOMERS INSIDE, BEYOND AND OUTSIDE THE LIMITS OF SAID COUNTY; AND TO USE THE STREETS, AVENUES, EASEMENTS, RIGHTS-OF-WAY, ALLEYS, HIGHWAYS, SIDEWALKS, PATHS, BRIDGES AND OTHER STRUCTURES IN SAID COUNTY FOR A PERIOD OF TWENTY-FIVE (25) YEARS AND PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS HEREIN MENTIONED.

BE IT ORDAINED BY THE GOVERNING BODY, THAT IS THE COUNTY COMMISSION, OF THE COUNTY OF CURRY, STATE OF NEW MEXICO.

Section I.

That the County of Curry, New Mexico (hereinafter called "County", which term includes all areas within the boundaries of said County, as now existing or hereafter extended), hereby grants to and vests in Public Service Company of New Mexico, a corporation organized and existing under the laws of the State of New Mexico, and duly qualified to do business in the State of New Mexico (hereinafter called the "Company"), its legal representatives, successors, lessees and assigns, a non-exclusive franchise and the authority, license, right, power and privilege to maintain, construct, equip, extend, alter, install, remove, change, improve and otherwise establish and operate in the County, works, systems, plants, pipes and all related facilities (including those now in service) as may be necessary or reasonably convenient, to sell, manufacture, store, distribute, convey or otherwise conduct, serve, supply and furnish the inhabitants, of the County, whenever the County or its inhabitants may desire to contract therefor, gas for light, fuel, power, heat and any and all other useful purposes, and the said Company is hereby granted passage and rights-of-way, under, in, upon, along and across, and the right to occupy and use in any lawful way during the life of this franchise any and all streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, paths, bridges and structures of the County, both above and beneath the surface of the same, as said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, paths, bridges and structures of the County now or may hereafter exist, for every and any such service, use, effect and lawful purpose as herein mentioned, provided the Company complies with all federal, state and local laws, ordinances and regulations, pertaining to the conditions and terms of this franchise.

Section II.

The Company is hereby authorized, licensed and empowered to do any and all things as may be necessary or reasonably convenient to be done and performed in executing the powers and utilizing the rights, powers and privileges herein mentioned and granted by this franchise, provided the same do not unreasonably interfere with pre-existing water, sewer and other authorized installations, and provided that all work done in said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, paths, bridges and structures of the County by the Company shall be done diligently and in accordance with good engineering practices and governmental regulations, upon seven (7) days prior notice to the County Road Superintendent or other designee of the County for all scheduled work and, in the case of an emergency, with as much notice to the County as practicable. The County agrees to provide the same notice to Company for County projects involving Company's gas lines. The Company shall, within a reasonable time, restore as nearly as practicable, to the County's reasonable satisfaction, all places excavated by it to the condition existing immediately prior to excavation. When reasonable, the

Company agrees to utilize boring or other comparable methods when crossing County roads composed of chip seal or caliche. Company and County through the County Road Department will use reasonable efforts to coordinate work done by Company or County, as the case may be.

Section III.

The Company shall have the right and privilege of transferring this franchise and all rights and privileges granted herein, and whenever the word "Company" appears herein, it shall be construed as including the Company's successors, assigns and lessees so long as any successors, assigns and lessees continue to serve the County as a public utility. Nothing contained in this section shall be construed to impair the right of the County to appear and object to any such transfer before the New Mexico Public Regulation Commission or successor agency, or any other public authority having lawful jurisdiction over the transfer. In the event of a transfer, County reserves the right to negotiate a new franchise agreement with the succeeding entity, if both parties agree to do so.

Section IV.

The Company shall indemnify and save harmless the County, its governing body officers, agents and employees from and against the pro-rata share of all claims, obligations, judgments, costs and expenses attributable to the negligence of the Company, its officers, agents or employees, contractors or subcontractors in connection with the installation, repair, operation or maintenance of any of the Company's facilities located within the boundaries of the County or in any work done as authorized by this franchise. The County shall give prompt notice to the Company of any claim or suit arising under this indemnity agreement and the Company or its insurer shall have the option to compromise and defend the same to the extent of their own interests. Nothing in this indemnity agreement shall be construed to depart from the present or future law of New Mexico concerning contribution among or between joint tortfeasors.

Section V.

- (a) If after the effective date of this Franchise, any law, regulation or order is enacted that directly affects or changes the Company's or County's rights or obligations under this Franchise, including, but not limited to, the imposition, payment, collection, or treatment of franchise fees, then the County and Company, by providing written notice to the other party, each shall have the right to request that the affected portions of this Franchise be amended. The parties shall commence good-faith negotiations within sixty (60) days of such notice and endeavor to conclude such negotiations within ninety (90) days. Any amendment or addendum agreed to by the parties shall become effective only after appropriate notice, public hearing, Company approval, and adoption by the County.
- (b) In addition to the provisions set forth in Section V, (a) above, each party shall have the right to request a review of any of the terms and conditions of this Franchise by giving written notice to the other party of the terms and conditions to be reviewed to the other party at least thirty (30) days before each of the fifth (5th), tenth (10th), fifteenth (15th) and twentieth (20th) anniversary dates of this Franchise. Within twenty (20) days of receipt of such notice by the other party, the parties shall meet and begin review of the terms and conditions identified in such notice. If the parties agree upon an amendment relating to such terms or conditions, such amendment shall become effective only after appropriate notice, public hearing, Company approval, and adoption by the County.

Section VI.

- (a) The Company shall, within thirty (30) days after the passage and approval of this ordinance, file in the office of the County Clerk of the County of Curry, New Mexico, a written statement of acceptance duly signed and acknowledged by the proper officer of the Company authorized to execute such acceptance.
- (b) In the event such acceptance is not filed within said period, this ordinance and the rights, privileges, powers and obligations contained herein shall be terminated and void; **PROVIDED, HOWEVER,** the County may by resolution extend the time herein for the filing of such acceptance for an additional period.

- (c) This ordinance, if accepted by the Company as hereinbefore provided, shall supersede, cancel and be in lieu of any and all other existing or prior grants of rights, permission and authority to the Company or any predecessor companies or assignors of the Company to construct, operate and maintain any system for the sale, manufacture, storage, distribution, conveyance and supply of pipeline gas for light fuel, power, heat or other purpose within the County.

Section VII.

Except as otherwise provided in paragraph (b) of Section VI, all grants and privileges herein granted and conferred upon the Company, its legal representatives, successors and assigns, shall continue in full force and effect for a period of twenty-five (25) years from the date of acceptance of this franchise by the Company.

Section VIII.

The Company agrees to comply with all lawful ordinances not inconsistent herewith enacted by the County generally applicable to all persons or entities doing business in the County, including, but not limited to ordinances regulating procedures for disturbing and repairing county roads, property and rights-of-way.

Section IX.

If any section, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part of the provisions hereof, other than the part so determined to be invalid or unconstitutional.

Section X.

The County of Curry in granting this franchise surrenders no privileges or rights that it may have of owning or installing any system of light, heat, power, or communication and furnishing the same to the County and its inhabitants thereof.

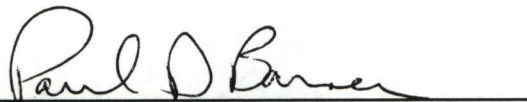
Section XI.

The rights, privileges and franchises herein granted are not exclusive and nothing herein contained shall prevent the County from granting, where proper under the law, like, similar or different rights, privileges and franchises to any other person, firm or corporation.

Section XII.

In the event of breach of this ordinance, the prevailing party shall enjoy all rights and remedies in law or equity and shall recover reasonable attorney fees in any suit arising from the breach or enforcement of this ordinance.

ADOPTED AND PASSED THIS 21st DAY OF March, 2000.



Chairman, Curry County Commissioners

ATTEST:


County Clerk of Curry, New Mexico