

ORDINANCE No. 34

AN ORDINANCE GRANTING A GAS FRANCHISE TO PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INCORPORATED, ITS SUCCESSORS AND ASSIGNS, FOR THE VILLAGE OF FLAT ROCK, NORTH CAROLINA, FOR A PERIOD OF THIRTY (30) YEARS

BE IT ORDAINED by the Village Council of the Village of Flat Rock, North Carolina

SECTION 1. DEFINITIONS.

Whenever and wherever used in this Ordinance the following words and names shall have the following meanings:

- (a) **VILLAGE COUNCIL** shall mean the Village Council of the Village of Flat Rock, North Carolina, as now or hereafter constituted.
- (b) **COMPANY** shall mean Public Service Company of North Carolina, Incorporated, a subsidiary of SCANA Corporation, its successors and assigns.
- (c) **VILLAGE** shall mean the Village of Flat Rock, North Carolina, including its present and future Village limits.
- (d) **DEPARTMENT OF TRANSPORTATION** shall mean the North Carolina Department of Transportation or its successors.
- (e) **GAS** shall mean natural gas, mixed gas and substitute fuels carried over the Company's facilities as authorized by the North Carolina Utilities Commission.
- (f) **GAS SYSTEM** shall mean all facilities or the Company in the Village used for the transmission or distribution of Gas within the Village.
- (g) **FERC** shall mean any reference made to the Federal Energy Regulatory Commission or its successor.
- (h) **COMMISSION** shall mean the North Carolina Utilities Commission or any successor body lawfully constituted.

- (i) **PUBLIC WAY OR WAYS** shall mean any public street, avenue, road, alley, lane, bridge or other public right-of-way within the Village over which the Village as of the application time has jurisdiction or exercises control.
- (j) **GOOD UTILITY PRACTICES** shall mean the practices, methods and acts engaged in or approved by a significant portion of the gas industry during the relevant time period or other practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with reliability, safety, expedition, requirements of governmental agencies having jurisdiction, and at the lowest reasonable cost; the term Good Utility Practices is not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to constitute a spectrum of acceptable practices, methods or acts.

SECTION 2. Grant of Authority

The right, power and authority is hereby granted and vested in the Company to lay, maintain and operate gas mains, pipes and services on, along, across, and under the streets, alleys, bridges, rights-of-way, and other public places of the Village; and to use those facilities to conduct a gas business. This granting of authority is providing the Village, as of the applicable time has jurisdiction or exercises control of the public ways.

SECTION 3. Conditions on Use of Public Ways

No street, alley, bridge, right-of-way or other public place used by the Company shall be obstructed longer than necessary during its work of construction or repair, and shall be restored to the same good order and condition as when said work was commenced. No part of any street, alley, bridge, right-of-way, or other public place of the Village, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be injured. However, should any such damage occur due to the Company's failure to use due care, the Company shall repair the same as promptly as possible, and, in default thereof, the Village, after written notice, may make such repairs and charge the reasonable cost thereof and collect the same from the Company. The Company shall save the Village harmless from all liability or damage (including judgment, decrees, and legal court costs) resulting from its failure to use due care in the exercise of the privileges hereby granted or of its rights under this Section.

SECTION 4. Service

- (a) The Company shall, before entering upon any street, alley, highway, right-of-way or other public place for the purpose of construction or installing any mains, pipes or other apparatus of the gas system, notify Village Hall,

in writing or other acceptable means, of the proposed construction or installation and shall, if the Village Council so requires, file a sufficient plan and specification showing the nature, timeframe and extent of the proposed construction or installation.

- (b) The Company may supply any form of gas containing approximately one thousand (1,000) BTU's per cubic foot, and its obligation in respect thereto shall continue only so long as it is able to obtain an adequate supply of such gas satisfactory for service hereunder, provided, however, that in the supply of such gas the Village shall enjoy equal rights with respect to other areas served by the Company.
- (c) All work upon the streets and public places of the Village shall be done under the general supervision of the Mayor and Council (or other legally constituted governing body) of the Village, and that all sidewalks or streets pavements or street surface which may be displaced by reason of such work shall be properly replaced by the Company, its successors and assigns, to the reasonable requirements of the Mayor and Council (or other legally constituted governing body) of the Village.
- (d) The Company shall, as to all other conditions and elements of services not fixed herein, be and remain subject to the rules and regulations of the Commission, Department of Transportation and FERC or its successors, applicable to gas service in the Village.

SECTION 5. Nonexclusive Grant and Term

The gas franchise granted by this ordinance is not exclusive. The Village may grant the same or similar rights and privileges to other certified persons or companies at any time, provided that any such grants shall be made under terms and conditions which do not materially impair the exercise of the rights and privileges granted to the Company under this franchise.

Upon ratification and acceptance this franchise shall constitute a contract between the Village and the Company, and shall be in force and effect for an initial term of thirty (30) years, and shall continue in force and effect year-to-year thereafter until properly terminated by either party. Either party may terminate the contract at the end of its initial term or its anniversary date any year thereafter, by giving written notice of its intention to do so no less than two (2) years before the proposed date of termination.

SECTION 6. Franchise Not Waiver of Law

The franchise is subject to the constitution and laws of the State of North Carolina, and is not a waiver of any present or future law or regulation. This franchise is not a limitation upon the authority of the Village to adopt any law or regulation.

SECTION 7. Regulations, Safety and Customer Service

- (a) In the event any provision of this franchise is in conflict with any rule of the Commission or FERC, so that the Company cannot reasonably comply both with the provisions of this franchise and any rule of the Commission or FERC, then the Company is required to comply with such Commission or FERC rule instead of the conflicting provision of this franchise.
- (b) Otherwise, the Company shall comply with all applicable ordinances and regulations of the Village.
- (c) Gas utility service is not guaranteed free from interruptions, supply failure or outages by reasons of force majeure, act of God, strike, vandalism, terrorism, breakdown, accident or other happening beyond the control of the Company. The Company will restore service using all applications of Good Utility Practices.
- (d) The Company shall maintain and operate its Gas System in compliance with both State and Federal maintenance and safety regulations.

SECTION 8. Commission Rules and Rates

The Company may from time to time declare, make and enforce such rules and regulations as shall have been fixed or allowed by the Commission as to the sale or distribution of Gas to any of its customers in the Village.

The rates to be charged for Gas at all times shall be such rates as are fixed or allowed by the Commission, including such rates as shall be negotiated by the Company with certain industrial or commercial customers pursuant to authority granted by the Commission.

SECTION 9. Plat of Gas System

The Company shall maintain maps or plats of its Gas System within the area covered by this franchise. Such maps or plats shall be maintained in the Company's offices, and the Village shall have access to the same during any regular business hours of the Company.

SECTION 10. Bankruptcy, Successors, Assigns

In the event the Company is adjudged bankrupt or its assets are placed in the hands of a receiver or other court officer, either voluntarily or involuntarily, or the Company reorganizes, merges or consolidates with any other Company, or the properties and business of the Company are foreclosed or sold to satisfy any lien or indebtedness or obligation of the Company, then the interest, rights and remedies of the City in respect to said properties and operations shall not be affected or prejudiced, and any receiver, assignee, trustee, purchaser or successor, whether by operation of law or otherwise, so succeeding to or representing the interest or position of the Company, shall be bound by this Ordinance and the terms and provisions hereof and shall be bound to carry out and perform the obligations and duties imposed upon the Company by this Ordinance. Likewise, if the Company reorganizes, merges or consolidates with any other Company, then the City is bound by this Ordinance.

SECTION 11. Revocation

In the event the Company violates or fails to comply with the provisions of this Ordinance and within thirty (30) days after receipt of written notice from the City, the Company failed to cure or remedy, or to have begun reasonable measures to cure or remedy any such violation, failure or default, then City Council may cause the Company to appear at a hearing before City Council in thirty (30) days. If at such hearing the City Council should determine that the Company's violation, failure or default has been substantial, repeated or flagrant, then upon such determination City Council may revoke and terminate this franchise; provided, however, that the Company may file with the City within ten (10) days after such determination the Company's election to appeal to the proper North Carolina court, and in that event the City and Company agree that such court shall hear and determine de novo whether there has been substantial, repeated or flagrant violation, failure or default by the Company of the terms, conditions or obligations of this Ordinance. Violation or default which cannot be corrected by the Company shall not be grounds for revocation and termination, unless such violation or default shall be determined to be material and continuing.

SECTION 12. Severability, Third Party Rights

Should a court of competent jurisdiction declare any part, term or provision of this Ordinance illegal, unauthorized or in conflict with any law of the United States or the State of North Carolina, or to be in conflict with any valid rule or regulation duly promulgated by any agency or regulatory body of the United States or the State of North Carolina, the remaining portions or provisions of this Ordinance shall not be affected thereby.

The rights hereunder in this Ordinance accrue exclusively to the parties, their successors and assigns. It is the express intent of the parties that this franchise shall not create any rights in third parties.

SECTION 13. Effective Date, Term, Adoption

This Ordinance shall be effective from and after the 8th day of August, 2002, provided the Company shall have executed the written acceptance hereof at the end of this Ordinance, and shall exist and continue for a period of thirty (30) years hereafter. Adopted by the Village Council the 8th day of August, 2002, and hereby ratified.

Terry A. Hicks
Mayor

ATTEST:

APPROVED AS TO FORM

Rowena M. Sweezy, CMC
Village Clerk

Sharon Alexander
Village Attorney

SECTION 14. Acceptance by Company

The Public Service Company of North Carolina, Incorporated does hereby accept and acknowledge the foregoing Ordinance, and in consideration of the benefits and privileges granted to it does hereby agree to the terms and conditions therein provided.

This the ____ day of _____, 2002

PUBLIC SERVICE COMPANY
OF NORTH CAROLINA, INCORPORATED

By: _____
Kevin B. Marsh
President and Chief Operating Officer

ATTEST:

Judy Czerwinski

Its: Assistant Secretary

(Corporate Seal)

SECTION 15. Certified Copy to Company

The Village Clerk shall deliver to the Company an executed or conformed copy of this Ordinance and the Company's written acceptance of the agreement thereof, certified as follows:

"Certified to be a true and exact copy of an ordinance duly adopted by the Village Council of the Village of Flat Rock, North Carolina, on the 8th day of August, 2002, and the acceptance thereof by Public Service Company of North Carolina, Incorporated. The 8th day of August, 2002.

(Village Seal)

Rowena M. Sweezy, CMC
Village Clerk
Village of Flat Rock, North Carolina