

CHAPTER 5

Franchises and Communication Systems

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ARTICLE I

Reserved

Secs. 5-1—5-40. Reserved.

ARTICLE II

Electric and Gas Franchise

Sec. 5-41. Definitions.

Whenever the word Town is hereinafter employed it shall designate the Town of Nederland, Boulder 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. (Ord. 249 Art. I, 1983)

Sec. 5-42. Grant of authority.

There is hereby granted to the Company the franchise right, privilege and authority to locate, build, construct, acquire, purchase, extend, maintain and operate into, within and through the Town a plant or plants, substations and works for the purchase, generation, manufacture, storage, exchange, transmission and distribution of electrical energy and gaseous fuel, for light, heat and power or other purposes, with the rights and privileges for the period and upon the terms and conditions hereinafter specified to furnish and sell said electrical energy and gaseous fuel to the Town and the inhabitants thereof, by means of pipes, mains, conduits, cables, poles with wires strung thereon, or otherwise, on, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, lanes and other public ways and places in the Town and on, over, under, along, across and through any extension, connection with or continuation of the same and/or on, 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 the Town. (Ord. 249 Art. II §1, 1983)

Sec. 5-43. Manner of use; repair.

(a) 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 and other public ways and places, under the supervision of properly constituted authority, for the purpose of bringing gaseous fuel and electrical energy into, within and through the Town and supplying gaseous fuel and electrical energy to the Town and the inhabitants thereof and in the territory adjacent thereto. The Company shall so locate its plants, substations, works and transmission structures, lines, equipment and conduits within the Town so 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 said streets, alleys or other public ways and places. Should it become necessary for the Company, in exercising its right and performing its duties hereunder, to interfere with any sidewalk, gravel or paved street or any other public place, public improvement or private improvement, the Company shall, at its own cost and expense, promptly

repair in a workmanlike manner such sidewalk, graveled or paved street, road, alley or other public improvement after the installation of its poles, conduits or other structures.

(b) If such repairs are not made within a reasonable period of time and upon not less than ten (10) days' notice to the Company (which notice shall not be required in case of an emergency causing serious risk to the safety of persons or property), the Town at its option may make the same and bill the Company the amount paid by the Town for such repairs. The Company shall be liable for damages caused by failure to make such repairs and shall use due care not to interfere with or damage any water mains, sewers or other structures now or which may hereafter be placed in said streets, alleys or other public places.

(c) The Company agrees to comply with any requirements furnished in writing to the Company, which the Town may impose through the Board of Trustees or its duly delegated authority, from time to time, with respect to digging or making a cut or other opening in a sidewalk, street or public way of the Town. (Ord. 249 Art. II §2, 1983)

Sec. 5-44. Town held harmless.

The Company shall save the Town harmless from all liability or damages and all reasonable expenses, including attorney fees, accruing against the Town arising out of the exercise by the Company of the rights and privileges hereby granted. The Company shall be given notice of the pendency of any action against the Town arising out of such exercise by the Company of said rights and privileges and shall be permitted at its own expense to appear and defend or assist in the defense of the same. (Ord. 249 Art. II §3, 1983)

Sec. 5-45. Changes at Company expense.

If at any time it shall be necessary for the Company to relocate any facility lying within, on, over, across or above any street, public way or public property to permit the Town to make any public improvement or build any public project, such relocations or changes shall be made by the Company at its own expense. Such relocation shall be accomplished by the Company in accordance with a schedule established by the Town after consultation with the Company and shall be done in a manner as provided in Section 5-43 above. (Ord. 249 Art. II §4, 1983)

Sec. 5-46. Use of facilities by Town.

The Town shall have the right without cost to use all poles and suitable overhead structures and underground trenches of the Company within the Town for the purpose of installing traffic control devices and wires or for any reasonable Town use, provided that this use of said facilities by the Town shall not interfere in any unreasonable manner with the Company's use of same and the Town saves the Company harmless from any claims or expense resulting from the Town's use. In addition, the Town shall have the right to use any other underground facilities of the Company that are mutually agreeable. (Ord. 249 Art. II §5, 1983)

Sec. 5-47. General standards of service.

The Company shall maintain an adequate source of supply in a quality to meet generally accepted standards of performance in the furnishing of electricity and gaseous fuel to the customers in the

Town. Continued efforts shall be maintained to furnish the same in an efficient manner and at the lowest practicable cost. (Ord. 249 Art. II §6, 1983)

Sec. 5-48. Rates; regulations.

The Company shall furnish gaseous fuel and electrical energy within the corporate limits of the Town or any addition thereto, to the Town and to the inhabitants thereof, and to any person doing business in the Town or any addition thereto, at the applicable and effective 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, as are effective from time to time with the State Public Utilities Commission, all of which collectively are hereinafter referred to as "Company tariffs." (Ord. 249 Art. III §1, 1983)

Sec. 5-49. No discrimination.

The Company shall not, as to rates, charges, services, facilities, rules, regulations or in any other respect make or grant any preference or advantage to any person or subject any 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 from within an established classification would be entitled. (Ord. 249 Art. III §2, 1983)

Sec. 5-50. Extensions.

The Company will from time to time during the term of this franchise make such enlargements and extensions of its distribution systems as the business of the Company and the growth of the Town justify, in accordance with Company's tariffs. (Ord. 249 Art. III §3, 1983)

Sec. 5-51. Rules and regulations.

The Company from time to time may, so long as not inconsistent with any of the terms hereof, promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of electrical energy and gaseous fuel, 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 ensure 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 Boulder office, available to the public, copies of its rate schedules, standards for service, rules and regulations and service connection and extension policies currently in effect and as are effective from time to time with the State Public Utilities Commission. (Ord. 249 Art. III §4, 1983)

Sec. 5-52. Municipal service.

The Company shall during the term of this franchise furnish upon order by the Town, at the various sites of consumption by the Town, gas and electricity in accordance with the Company's tariffs. (Ord. 249 Art. III §5, 1983)

Sec. 5-53. Street lights and traffic signals.

(a) The Company, when providing street lighting service and electrical energy for traffic signals within the Town, shall charge the Town at rates not in excess of those now or hereafter prevailing in the Boulder Division for the same or similar service, unless otherwise directed by the Public Utilities Commission.

(b) The Company agrees to replace or install street lights and poles as requested by the Town, in accordance with Company tariffs. (Ord. 249 Art. III §6, 1983)

Sec. 5-54. Construction and design of facilities.

The Company, prior to constructing any transmission lines or any generating plant, building, substation, regulator station or similar structure within the Town, shall furnish to the Town plans for such facility and the landscaping thereof. Such plans shall be reviewed by the Town to ensure that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with and further that aesthetic and good planning principles have been given due consideration. (Ord. 249 Art. IV §1, 1983)

Sec. 5-55. Underground distribution lines in new areas.

If required by the Town with respect to a particular development, the Company will place underground newly constructed electric distribution lines within newly developed areas in the Town in accordance with the Company's tariffs. (Ord. 249 Art. IV §2, 1983)

Sec. 5-56. Overhead conversion.

The Company will cooperate with the Town in undertaking and developing a program of converting to underground existing overhead electric distribution lines in the Town where economically feasible to do so and according to Company tariffs. (Ord. 249 Art. IV §3, 1983)

Sec. 5-57. Technological improvements.

The Company will introduce technological advances in its equipment and service in the Town when such advances are technically and economically feasible, and of benefit to the Town and its residents, with payment in accordance with approved Company tariffs. (Ord. 249 Art. IV §4, 1983)

Sec. 5-58. Compliance with air and water pollution laws.

The Company will so operate its plants and works located in the Town as to comply with applicable air pollution and water pollution laws. (Ord. 249 Art. IV §5, 1983)

Sec. 5-59. Cooperation with other utilities.

The Company shall, when undertaking a project of undergrounding, work with other utilities or companies which have their lines overhead to have all lines undergrounded as a part of the same project. The Company will also cooperate with other utilities or companies when they are placing their lines underground. In addition, with respect to overhead utilities, the Company agrees to cooperate in all reasonable respects with other utility companies, to provide access to poles for use by

such other companies, provided that the Company may make provisions to assure that such other companies' use of poles will not interfere with the Company's use of such poles or put the Company to any expense (which is not reimbursed by such other companies) and may require such other companies to hold the Company harmless from any claims or expenses resulting from the joint use of poles. The Company may charge a reasonable maintenance charge consistent with the Company's actual maintenance expenses. (Ord. 249 Art. IV §6, 1983; Ord. 435 §1, 1996)

Sec. 5-60. 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 the first five thousand dollars (\$5,000.00) of the total annual gross revenue derived from the sale of electrical energy within the corporate limits of the Town, and a sum equal to two percent (2%) of the annual gross revenue derived from the sale of electric energy in excess of five thousand dollars (\$5,000.00) to each customer for service used at any one (1) location; and three percent (3%) of the first five thousand dollars (\$5,000.00) of the total annual gross revenue derived from the sale of gaseous fuel within the corporate limits of the Town, and a sum equal to two percent (2%) of the annual gross revenue derived from the sale of gaseous fuel in excess of five thousand dollars (\$5,000.00) to each customer for service used at any one (1) location. The term gross revenue as used herein shall be construed to mean any revenue derived within the Town for the sale of electrical energy and gaseous fuel after the net write-off of uncollectible accounts and correction 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 of 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 on or before January 31, April 30, July 31 and October 31 of each year for the immediately preceding three-month calendar periods ending December 31, March 31, June 30 and September 30, respectively. If payment is not received within ten (10) days of the franchise due date, a percentage late fee equal to the current Company's late fee to its customers within the Town shall be assessed against the amount due. Payments for the portions of the initial and terminal years of this franchise shall be made on the basis of revenue as above derived for the months and portions of months in which this franchise is in effect. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this paragraph, the Town Treasurer and/or any committee appointed by the Board of Trustees shall have access to the books of said Company for the purpose of checking the gross revenue received from operations within the Town. (Ord. 249 Art. V §1, 1983)

Sec. 5-61. Term; effective date.

This Article shall become effective, as provided by law, thirty (30) 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 to and including March 11, 2004. (Ord. 249 Art. VI §1, 1983; Ord. 577 §1, 2003)

Sec. 5-62. Removal.

Upon the expiration of this franchise, if the Company shall not have acquired an extension or renewal thereof and accepted the same, it is hereby granted the right to enter upon the streets, alleys, bridges, viaducts, roads, lanes, public ways or other public places of the Town, for the purpose of removing therefrom any or all of its plants, structures, pipes, mains, conduits, cables, poles and wire, 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, conduits, cables, poles, wire and equipment, 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, public ways and other public places after the removal of mains, pipes, conduits, poles or other structures. (Ord. 249 Art. VI §2, 1983)

Sec. 5-63. Police power reserved.

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, or with orders of other authorities having jurisdiction in the premises. (Ord. 249 Art. VI §3, 1983)

Sec. 5-64. Forfeiture.

It is agreed that in case of the failure of the Company to perform and carry out any of the stipulations, terms, conditions and agreements herein set forth in any substantial particular, and with respect to which redress is not otherwise provided, the Town acting by and through the Board of Trustees may, after hearing, determine such substantial failure; and thereupon, after notice given the Company of such determination, the Company shall have a reasonable time not to exceed six (6) months in which to remedy the conditions respecting which such determinations shall have been made. After the expiration of such time and failure to correct such conditions, the Board of Trustees may declare this franchise forfeited, and thereupon the Company shall have no further right, privilege or authority hereunder. (Ord. 249 Art. VI §4, 1983)

Sec. 5-65. Consent to assignment.

The franchise and rights herein contained shall not be leased, assigned or otherwise alienated by the Company without the express consent of the Town to be declared by ordinance. (Ord. 249 Art. VI §5, 1983)

Secs. 5-66—5-80. Reserved.

ARTICLE III

Emergency Telephone Service

Sec. 5-81. Charge imposed.

There is hereby imposed, pursuant to Section 29-11-101, et seq., C.R.S., upon all telephone exchange access facilities within the Town an emergency telephone charge in an amount not to exceed two percent (2%) of the tariff rates as approved by the Public Utilities Commission or fifty cents (\$.50), whichever is less, the proceeds from which shall be collected and administered according to the terms of the Intergovernmental Agreement and the Act as amended. The Board of Trustees further authorizes the Authority Board to set such lesser charges as the Authority Board may from time to time determine are appropriate in the course of the Authority Board's exercise of its functions under the Intergovernmental Agreement. (Ord. 315 §2, 1989)

Sec. 5-82. Collection of charge.

Telephone service supplies providing telephone service in the Town are hereby authorized to collect the emergency telephone charge imposed by this Article in accordance with Section 29-11-101, et seq., C.R.S. (Ord. 315 §3, 1989)

Secs. 5-83—5-100. Reserved.