

AN ORDINANCE GRANTING TO PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INCORPORATED, A SUBSIDIARY OF SCANA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO USE AND OCCUPY THE PUBLIC WAYS OF THE TOWN OF CARRBORO, NORTH CAROLINA, FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A GAS UTILITY SYSTEM AND ALL NECESSARY MEANS FOR TRANSMITTING AND DISTRIBUTING GAS WITHIN SAID TOWN FOR A PERIOD OF THIRTY YEARS

WHEREAS, Public Service Company of North Carolina, Incorporated ("PSNC") proposes to continue to construct, operate and maintain a Gas Utility System and all necessary means for transmitting and distributing gas within the Town of Carrboro, North Carolina (the "Town"); and

WHEREAS, the Town of Carrboro is authorized by G.S. 160A-319 to grant franchises to public enterprises to operate within the corporate limits of the Town;

NOW, THEREFORE, BE IT ORDAINED by the Board of Alderman of the Town of Carrboro, North Carolina as follows:

SECTION 1. DEFINITIONS.

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

- (a) **BOARD OF ALDERMAN** shall mean the Board of Alderman of the Town of Carrboro, North Carolina, as now or hereafter constituted.
- (b) **COMMISSION** shall mean the North Carolina Utilities Commission or any successor body lawfully constituted.
- (c) **COMPANY** shall mean Public Service Company of North Carolina, Incorporated, a subsidiary of SCANA Corporation, its successors and assigns.

- (d) **DEPARTMENT OF TRANSPORTATION** shall mean the North Carolina Department of Transportation or its successors.
- (e) **FERC** shall mean the Federal Energy Regulatory Commission or its successor.
- (f) **GAS** shall mean natural gas, mixed gas and substitute fuels carried over the Company's facilities as authorized by the North Carolina Utilities Commission.
- (g) **GAS SYSTEM** shall mean all facilities or the Company in the Town used for the transmission or distribution of Gas within the Town.
- (h) **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 judgment 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.
- (i) **PUBLIC WAY OR WAYS** shall mean any public street, avenue, road, alley, lane, bridge or other public right-of-way within the Town

- (j) **PUBLIC WORKS DIRECTOR** shall mean the Carrboro Public Works Director or any other person designated by the Carrboro Town manager to perform the duties of the Public Works Director under this Franchise.
- (k) **TOWN** shall mean the Town of Carrboro, North Carolina, including its present and future Town limits.

SECTION 2. GRANT OF AUTHORITY.

Subject to the provisions of the laws of North Carolina and the charter and ordinances of the Town, and subject to the authority of the Department of Transportation to exercise control over State maintained streets within the Town, the Town hereby grants to the Company the franchise, right, power and authority 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 ways of the Town, and to use those facilities to conduct a gas business.

SECTION 3. SERVICE.

(a) The Company shall provide service to existing customers, and shall extend it gas mains and pipes for furnishing natural gas to new customers (including new subdivisions and other developments) in accordance with the applicable rules and regulations of the Commission.

(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 Town shall enjoy equal rights with respect to other areas served by the Company.

(c) 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, and FERC or its successors, applicable to gas service in the Town.

SECTION 4. CONDITIONS ON USE OF PUBLIC WAYS.

(a) Except in emergencies, the Company shall obtain a permit from the Public Works Director before beginning any work in, upon, or under the streets, alleys, bridges, or rights-of-way of the Town for the purpose of constructing, installing, or repairing any mains, pipes or other apparatus of the gas system. The Public Works Director may require that, prior to issuance of such a permit, the Company file a sufficient plan and specification showing the nature, timeframe and extent of the proposed construction, installation, or repair work.

(b) All work upon the streets and public places of the Town shall be done under the general supervision of the Public Works Director, and in accordance with the requirements imposed by the Town. Without limiting the generality of the foregoing, the Company shall construct and locate its gas mains and pipes so as not to interfere with the construction, location, and maintenance of water or sewer or other utility lines.

(c) All streets, sidewalks, curbs, gutters, bridges, or other improvements located on or within any of the public ways of the Town that are displaced or damaged by reason of work performed by or on behalf of the Company shall be properly replaced or repaired by the Company to the reasonable satisfaction of the Public Works Director.

Should the Company fail to comply with this requirement, the Town may, after written notice, make such repairs and collect the reasonable cost thereof from the Company.

(d) 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.

(e) Whenever the Town or the Department of Transportation shall grade, regrade, or relocate any public street, alley, sidewalk, highway, or other public way, or perform any other work therein or thereon, and as a result of or in the course of such work it shall become necessary in the opinion of the Public Works Director for the Company to temporarily or permanently relocate its gas mains, pipes, or other apparatus, then it shall be the duty of the Company, upon the Town's request, and at the Company's expense, promptly to relocate its mains, pipes, or other apparatus to accommodate such changes in the public streets or rights-of-way. If the Town receives funds from any source to cover all or part of the cost of the relocation of utilities in connection with the work described in this section, then the Company shall be entitled to benefit from the receipt of such funds in a manner that is fair and proportional in relationship to any benefit received by other utilities.

SECTION 5. INDEMNIFICATION.

The Company, by the acceptance of this franchise, agrees to indemnify and hold the Town of Carrboro and its officers, agents, and employees free and harmless from all costs of whatever nature (including without limitation judgments and defense costs) incurred by the Town or its officers, agents, or employees, as a result of claims brought against the Town or its officers, agents, or employees arising out of the installation,

operation, repair, maintenance, removal, or relocation of the Company's gas lines, pipes, or apparatus within the Town.

SECTION 6. NONEXCLUSIVE GRANT AND TERM.

(a) The gas franchise granted by this ordinance is not exclusive. The Town 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.

(b) Upon ratification and acceptance, this franchise shall constitute a contract between the Town 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 one (1) year before the proposed date of termination.

SECTION 7. FRANCHISE NOT WAIVER OF LAW.

This 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 Town to adopt any law or regulation.

SECTION 8. 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 Town.

(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 9. COMMISSION RULES AND RATES.

(a) 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 Town.

(b) 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 10. 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 Town shall have access to the same during any regular business hours of the Company.

SECTION 11. 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 Town 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 Town is bound by this Ordinance.

SECTION 12. SEVERABILITY, THIRD PARTY RIGHTS.

(a) Should a court of competent jurisdiction declare any part, term or provisions 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.

(b) 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 _____ day of _____, 20__, provided the Company shall have executed the written acceptance hereof at the end of this Ordinance, and shall exist in force for a period of thirty (30) years hereafter, and continue in force year to year thereafter until cancelled upon written notice of either party at least one year in advance.

All other Ordinances and clauses of Ordinances in conflict herewith are hereby repealed. Adopted by the Board of Aldermen the _____ day of _____, 20__.

SECTION 14. ACCEPTANCE BY COMPANY

Public Service Company of North Carolina, Incorporated does hereby accept and approve the foregoing Ordinance and all its terms and conditions, and in consideration of the benefits and privileges granted to it does hereby agree to abide by, carry out, observe and perform all the obligations and undertakings therein provided to be carried out and performed by it.

This the _____ day of _____, 2004.

PUBLIC SERVICE COMPANY
OF NORTH CAROLINA, INCORPORATED

By: _____
Jerry W. Richardson, President & COO

ATTEST:

Judy S. Czerwinski Its: Assistant Secretary

(Corporate Seal)

SECTION 15. CERTIFIED COPY TO COMPANY

The Town 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 enacted by the Board of Aldermen of the Town of Carrboro, North Carolina, on the ____ day of _____, 2004, and the acceptance thereof by Public Service Company of North Carolina, Incorporated the ____ day of _____, 2004."

(Town Seal)

Town Clerk
Town of Carrboro, North Carolina