

CITY OF DALTON GARDENS, STATE OF IDAHO

In the Matter of the)
Application of)
)
THE WASHINGTON WATER POWER)
COMPANY for a franchise to)
locate, construct, operate and)
maintain plants and works, and)
all necessary or desirable)
appurtenances thereto for the)
manufacture, purchase,)
transmission and distribution)
of gas along and across)
rights of way and present and)
future public properties.)

Ordinance No. 119

GRANTING A FRANCHISE TO
THE WASHINGTON WATER POWER
COMPANY FOR THE
CONSTRUCTION, OPERATION AND
MAINTENANCE OF NATURAL GAS
FACILITIES WITHIN THE
CITY OF DALTON GARDENS

An Ordinance granting to The Washington Water Power Company, a Washington corporation, qualified to do business in the State of Idaho, its successors and assigns, a franchise for the purpose of furnishing the City of Dalton Gardens, Idaho, and its inhabitants with natural, manufactured, and/or mixed gas.

The Trustees of the City of Dalton Gardens, do ordain as follows:

I.

DEFINITIONS

The following definitions are provided for the sole purpose of proper interpretation and administration of this Ordinance.

1. 'Public Properties' shall mean and include streets, alleys, sidewalks, curbs, roads, highways, avenues, thoroughfares, parkways, bridges, viaducts, public grounds, public improvements, and other public places within the corporate limits of the City of Dalton Gardens.

2. 'Distribution System', 'System' and 'Lines' used either in the singular or plural mean and include the gas pipes, pipe lines, mains, laterals, conduits, feeders, regulators, meters, fixtures, connections, and all attachments and appurtenances, necessary incidental thereto or in any way appertaining to the distribution of gas.

3. 'Maintenance,' 'Maintaining', or 'Maintain' means and shall include relaying, repairing, replacing, examining, testing, inspecting, removing, digging and excavating, and restoring operations incidental thereto.

4. 'Consumer' means any person, persons, firm, association, municipal corporation, and/or corporation, that uses gas for residential, commercial and industrial purposes.

5. 'Gas' means natural, manufactured, and/or mixed gases.

II.

GRANT

The City of Dalton Gardens, Idaho, grants to The Washington Water Power Company, a Washington corporation, qualified to do business in Idaho, hereinafter called the "Grantee," and its successors and assigns, the right, privilege, authority and franchise to construct, or otherwise acquire, and to own, maintain, equip and operate plants and works and all necessary or desirable appurtenances thereto, for the manufacture, purchase, transmission and distribution of gas, including the right to construct, lay, maintain, operate, extend, renew, remove, replace, repair, use and operate a gas distribution system, in, under, upon, over, across and along the present and future public properties within the present or any future corporate limits of the City for the purpose of transporting, distributing and selling gas (with the right and privilege to make such connections with said pipes as will enable the Grantee to supply gas) for heating, lighting, power and any and all domestic, commercial and industrial purposes, and other reasons and purposes in the City, and to the City and its inhabitants, and persons, firms, associations, municipal corporations and corporations therein.

III.

TERM

The rights, privileges and franchise hereby granted to, and conferred upon, the Grantee shall, unless this Franchise be sooner terminated as herein provided, extend for a term of twenty-five (25) years from the date of written acceptance hereof by the Grantee.

IV.

CONSTRUCTION

Grantee shall comply with all valid ordinances of the City relating to construction, excavation, and the breaking, opening and closing of ground in public streets and properties. The City shall have prior right to the use of its streets and alleys for the installation and maintenance of City owned utility facilities.

Whenever the Grantee shall make or cause to be made excavations or shall place obstructions in public property of the City, Grantee shall exercise reasonable precaution to protect the public therefrom; provided, however, that Grantee shall be amenable to the general and special laws of the state as are in such cases made and provided. The Grantee shall repair and restore to as good or better condition all public and private properties disturbed during the construction, maintenance, repairing or removal of its gas system. Whenever deemed necessary by the proper City authorities, the City shall have the right to appoint its engineer or a competent and experienced person to be superintendent and supervise the refilling of excavations made, and the expense of replacing and repairing of the portion of the public properties disturbed in the construction, laying, operation and the maintenance of Grantee's electric system shall be at the expense of the Grantee. Should Grantee fail or refuse to restore and replace the same to as good or better condition of such public and private properties within a reasonable period after completion of Grantee's construction, laying, removal, operating and maintaining work, the same may be restored by the City at the expense of the Grantee.

V.

PUBLIC PROPERTIES and STATE HIGHWAYS

If public properties other than highways within the corporate limits of the City form a part of the route of a state highway, the Grantee shall determine the requirements of the State and take them into account with respect to the use thereof by the Grantee.

VI.

RIGHT OF INGRESS and EGRESS BY GRANTEE TO CONSUMER

The Grantee, its agents, servants, and employees shall have the right and power to require of every consumer a contractual right to ingress and egress upon, and from, any and all gas consumer's properties for the purpose of installing, servicing, moving, changing, and reading meters, inspecting, maintaining, or repairing meters, and for the purpose of testing, examining, or inspecting the connecting pipes, pipe lines, or laterals, and appliances of the consumer, if, as and when the Grantee chooses.

VII.

RULES AND REGULATIONS OF GRANTEE

The Grantee shall have the right and authority to make and establish from time to time as the Grantee shall elect, reasonable rules and regulations for the conduct of the Grantee's business, and with reference to furnishing, supplying and the sale of gas to any and all consumers within the City and to prescribe the forms of application and contracts to be executed by applicants and/or consumers before they shall be entitled to receive gas or gas service from the Grantee. Provided, that the Grantee shall file with the Clerk of the City, if requested by the City, a copy of such rules and regulations and any amendments thereto as filed with the Idaho Public Utilities Commission.

VIII.

RECORDS OF LOCATION OF FACILITIES

The Grantee shall at all times keep full and complete records showing the location of all gas mains and service connections laid in the City. Such records shall be available to the City at all reasonable times upon request therefor.

IX.

MOVING OF PIPES AND FACILITIES BY GRANTEE

If the City should pave or otherwise improve public properties, including drainage facilities, relocate the same, or change the grade thereof, and such work should require the relocation or moving of any portion of the distribution system of the Grantee, the same, including relocating or readjusting the elevation of its lines and facilities to conform to such new grades as may be established, shall be done expeditiously by the Grantee and its successors and assigns at its own expense. All work to be performed by the Grantee under this section shall be performed as may be required by the terms of this Franchise with reference to construction.

X.

SERVICE TO BE FURNISHED

At all times during the term of this Franchise, the Grantee, subject to its rules and regulations as filed with the Idaho Public Utilities Commission, and subject to available natural gas supplies, shall promptly and without discrimination furnish an adequate supply of natural gas to the Grantor and its successors and to its inhabitants and persons and corporations thereof who request the same, and shall require, construct, maintain, equip and operate all necessary facilities for the purchase, transmission and distribution of natural gas for the benefit and convenience of the City and its inhabitants.

XI.

GRANTEE TO SAVE CITY HARMLESS

The Grantee agrees to protect and save harmless the City from all claims, actions, or damages of every kind and description which may occur to, or be suffered by, any person or persons, corporations, or property by reason of the construction, operation and maintenance of the Grantee's gas distribution system, lines and facilities, except such as may result from the fault or negligence of the City or its employees. In case suit or action is brought against the City for damages arising out of, or by reason of, the above-mentioned causes, the Grantee will,

upon notice of the commencement of said action, defend the same at its sole cost and expense, and in case judgment shall be rendered against the City in suit or action, the Grantee will fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined if determined adversely to the City. Upon the Grantee's failure to satisfy said judgment within the ninety (90) day period, this Franchise shall at once cease and terminate.

The Grantee, by its acceptance of this ordinance, for itself, its successors or assigns, covenants and agrees to and with the City at all times to protect and save harmless the said City, from all claims, actions, suits, liability loss, expense or damage of every kind and description, which may accrue to or be suffered by a person or persons arising out of the ownership, construction or operation of said gas system.

XII.

RESERVATIONS

The City reserves the right to adopt and enforce all necessary ordinances to control the performance of the conditions of this Franchise, including reasonable ordinances of a police nature in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have access at all reasonable times to any part of the plant or plants, facilities, operations and premises, of the Grantee to make inspections and tests that may be required in supervising the fulfillment by the Grantee of the terms of this Franchise.

XIII.

FORFEITURE

In case of failure by reason of negligence or willful act on the part of the Grantee, its successors and assigns to comply with any of the provisions of this ordinance, or if the Grantee, its successors and assigns negligently or willfully do or cause to be done any act or thing prohibited by, or in violation of the terms of this Franchise ordinance, the Grantee, its successors and assigns shall forfeit all rights and privileges granted by this ordinance and all rights thereunder shall cease unless such

noncompliance or prohibited act or thing is corrected within thirty (30) days after receipt of written notice of forfeiture directed to the Grantee, at its Spokane, Washington office by United States mail. In the event the rights and privileges hereby granted are not diligently exercised in the public interest or in the event the Grantee shall fail for a period of one (1) month to operate its gas distribution system, except in case of strikes or the destruction of the same by fire or the elements or for any other reasons beyond the control of the Grantee, this Franchise shall terminate and all of the rights and privileges granted hereunder shall cease and determine. Provided, that the Grantee shall have the right temporarily to discontinue distribution of gas through said distribution system or any part thereof for the purpose of making repairs or extensions, and shall not be liable to a forfeiture therefor if such repairs and extensions are made with reasonable diligence. When the Grantee may reasonably do so, it shall give notice of the discontinuance of gas either in writing, properly addressed to the consumer or by notice in the official newspaper of the City, or by telephone or other communications.

XIV.

REMEDIES TO ENFORCE COMPLIANCE

In addition to other remedies provided herein, the Grantor reserves and has the right to pursue any remedy to compel or enforce the Grantee, its successors and assigns to comply with the terms hereof and to furnish the service herein called for, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture for any reason herein stated.

XV.

REMOVAL OF FACILITIES

In the event the City declares this Franchise to be forfeited or upon its termination and if it is not renewed, the City may require the Grantee or its successors and assigns to remove such of its facilities from the public properties at its own expense as may interfere with use of the City streets, alleys

or other public properties, and if it becomes necessary for the City to do so, the City shall be paid for the reasonable cost of such removal by the Grantor.

XVI.

BINDING UPON SUCCESSORS AND ASSIGNS

All rights and privileges granted and duties imposed by this ordinance upon the Grantee shall extend to, and be binding upon, its successors, receivers, liquidators and/or assigns.

XVII.

NOT EXCLUSIVE

This ordinance shall not be construed to be an exclusive franchise.

XVIII.

ASSIGNMENT

The Grantee and its successors and assigns may not assign or sublet this Franchise without the written consent of the City, and then only in its entirety and such assignment and subletting shall be binding upon the Grantee's successors and assigns and independent contractors of the Grantee, and a copy of said assignment or subletting shall be filed with the City.

IXX.

ACCEPTANCE

After the passage and legal publication of this ordinance, and if accepted within thirty (30) days after such publication, the Grantee shall indicate such acceptance by its filing with the City an unconditional written acceptance thereof, to be executed according to law, and a failure of the Grantee so to accept this ordinance within the said period of time shall be deemed a rejection thereof by the Grantee, and the rights and privileges herein granted shall, after the expiration of said period of thirty (30) days, if not so accepted, absolutely cease and determine unless said period of time shall be extended by the City by ordinance duly passed for that purpose.

XX.

VALIDITY

If any section, subsection, paragraph, sentence, clause or

phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

XXI.

EFFECTIVE DATE

This ordinance shall be in full force and effect five (5) days from, and after, its passage, approval and legal publication (all at the cost of the Grantee herein) as provided by law, provided it is duly accepted as hereinbefore provided.

PASSED AND APPROVED on this 23rd day of May, 1991.

City of Dalton Gardens, Idaho

By Joe Work
Title: Mayor

ATTEST:

By Gayle H. Claycer
Title: City Clerk

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,
County of Kootenai,

} ss.

Julie Jacob

..... being first duly sworn
upon oath deposes and says:

1. I am now and at all times hereinafter mentioned was a citizen of the United States, resident of the State of Idaho, over the age of twenty-one years and not a party of the above entitled action.

2. I am now and at all times hereinafter mentioned was the printer (principal clerk) of the "Coeur d'Alene Press," a newspaper printed and published daily except Sunday in Coeur d'Alene, Kootenai County, Idaho, and having a general circulation in said county.

3. The

Legal Notice

.....
.....
of which the annexed is a printed copy, was published in the regular *Wed*
issue of said newspaper for *1* consecutive *day*
commencing on the *29th* day of *May* 19*91*, and
ending on the *29th* day of *May* 19*91*, and such
publication was made as often during said period as said *Daily*
newspaper was regularly issued.

4. That said newspaper has been continuously and uninterruptedly published in said Kootenai County, during a period of more than seventy-eight consecutive weeks immediately prior to the first publication of said notice

Julie Jacob

Subscribed and sworn to before me this

29th day of *May*

19*91*.

Roberta Manley

Notary Public for the State of Idaho,
residing at Coeur d'Alene, Idaho.

ROBERTA MANLEY

My commission expires 2-3-93