

ORDINANCE NO. 71

AN ORDINANCE GRANTING TO IRON RANGES NATURAL GAS COMPANY, ITS LESSEES, SUCCESSORS AND ASSIGNS, THE RIGHT TO MANUFACTURE, IMPORT, TRANSPORT, SELL AND DISTRIBUTE GAS FOR HEATING, ILLUMINATING AND OTHER PURPOSES IN THE VILLAGE OF CARLTON, AND TO USE THE STREETS, AVENUES AND ALLEYS THEREOF FOR THAT PURPOSE.

The Village Council of Carlton, Minnesota do ordain as follows:

- Sec. I GRANT OF AUTHORITY. There is hereby granted to Iron Ranges Natural Gas Company, hereinafter called the "Company", its lessees, successors and assigns, for a period of twenty-two (22) years after the adoption hereof, the right to manufacture, import, transport, sell and distribute gas for heating, illuminating and other purposes within the limits of this village, hereinafter called the "Village", as the same now exist or as they may be extended in the future, and for that purpose to establish the necessary facilities and equipment, and to maintain a manufacturing plant, gas mains, service pipes, and any other appurtenances necessary to the manufacture, distribution and sale of gas, whether natural, artificial or mixed, in and along the streets, alleys, avenues and other public places of said municipality, and to do all things which are reasonable, necessary or customary in the accomplishment of this objective, subject, however, to the further provisions of this franchise, provided, however, that before the said Company shall establish any plant in said Village^{City} for the manufacture or production of gas, the approval of the Village Council of the location thereof, in the exercise of a reasonable discretion by said Council, shall be first obtained by said Company.
- Sec. II OBSTRUCTING STREETS. The Company shall exercise its privileges hereunder subject at all times to the police power of the Village^{City} and shall not unnecessarily or unreasonably obstruct the use of or injure any street, avenue or alley and shall, upon the completion of any construction or repair, restore all streets, avenues and alleys of the municipality which shall be opened by it or its agents or employees for the purpose of laying, placing or repairing its aforesaid gas mains or service pipes to as nearly the same order and condition as they were before the excavation was made as is reasonably possible, and shall maintain, repair and keep in good condition for a period of six (6) months all portions of said streets, avenues and alleys disturbed by it or its agents; provided that the six-month period shall be computed from the time of closing the excavation, but in case of frost before the six-month period has expired the same shall continue for the stated period after the frost leaves the ground. Any obstruction of any street, alley, park, boulevard, bridge or other public place, or any failure properly to fill and maintain a street after excavation, after proper notice demanding removal or repair, as the case may be, shall be taken care of by the Village^{City} and the costs thereof shall be charged against the Company.
- Sec. III PLATS. The Company, prior to the laying or relaying of any mains under this franchise, shall present to the Council for approval, a complete plat showing the location and size of all proposed mains and upon such approval such plat shall be filed with the Village^{City} Clerk. Failure of the Village^{City} to insist upon this provision shall not be deemed a waiver thereof.
- Sec. IV DAMAGE CLAIMS. The Company shall indemnify, keep and hold the Village^{City} free and harmless from liability on account of injury or damage to persons or property growing out of the construction, maintenance, repair or operation of its property and in the event suit shall be brought against the Village^{City}, either independently or jointly with the Company, on account thereof, the Company may elect to assume and undertake the defense of any such suit, and, upon notice to it by the Village^{City}, shall assume and take over the defense of any such suit, all at the cost and expense of the Company, and in the event of a final judgement being obtained against the Village^{City}, whether the latter be sued independently or jointly with the Company, the Company shall pay such judgement together with all costs and expenses occasioned thereby, and hold the Village^{City} free and harmless therefrom.

Sec. V STANDARDS OF SERVICE. ^{Subdivision 1. Supply of Service} The Company shall at all times provide and furnish an adequate, safe and continuous supply of gas to the ^{CITY} Village and its inhabitants, subject, however, to the further provisions of this section. The natural gas distributed by the Company is to be furnished by a pipe line system owned and operated by "a natural gas company", under the Federal Natural Gas Act, which subjects said natural gas company to the jurisdiction of the Federal Power Commission.

^{Subd. 2. City Liability} The Company shall not be liable to the ^{CITY} Village or its inhabitants, by reason of the failure of the Company to deliver, or of the ^{CITY} Village or a customer to receive, natural gas as a result of acts of God, or the public enemy, inability of pipe line supplier to furnish an adequate supply due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the party affected.

^{Subd. 3. Adoption of Regulations} Whenever any of the occurrences named above take place, the Company shall have the right and authority and it shall be its duty to adopt reasonable rules and regulations in connection with limiting, curtailing or allocating extensions of service or supplying of gas to any customers or prospective customers, and withholding the supplying of gas to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Company.

^{Subd. 4. Industrial Use} The Company shall have the right to contract for the sale of gas for industrial use on an interruptible basis, requiring the customer to have standby equipment for use upon notice by the Company. The Company's rules, regulations, schedules or contracts for curtailing interruptible gas service shall be uniform as applied to each class of interruptible customers.

^{Subd. 5. Interruption of Service} If service is temporarily suspended because of any of the reasons set forth above, occurring through no fault or negligent act on the part of the Company, such suspension shall not be made the basis of any action or proceeding to terminate this franchise. The quality of gas sold in the ^{CITY} Village when supplied by the pipe line shall be the same as that sold to the Company by the natural gas company supplying such gas.

^{Subd. 6. Supply of artificial gas} If for any reason the pipe line company is restricted or prevented from constructing or extending its proposed pipe line to supply natural gas to the Company, the latter shall have the right to supply artificial gas under the terms of this franchise.

Sec. VI EXTENSIONS OF SERVICE. The Company, its lessess, successors and assigns shall make such reasonable extensions of its mains from time to time as may be necessary thereto, provided, however, the Company, its lessess, successors and assigns shall not be required to make any extension of its mains for the purpose of serving any new consumer or consumers which shall necessitate the installation of more than one hundred (100) feet of main for each consumer to be served, nor where the estimated revenue to be dereived from serving such new consumer or consumers is insufficient to show an adequate return upon the total investment required to serve such new consumer or consumers.

Sec. VII RATES. The Company agrees for and in behalf of itself, its lessess, successors and assigns that all authority and rights in this ordinance contained shall at all times be subject to all right, power and authority now or hereafter possessed by said ^{CITY} Village or any other regulatory tribunal having jurisdiction thereover to regulate, fix, and control just, reasonable and compensatory gas rates. That on or before ^{CITY} sixty (60) days prior to commencement of laying of gas mains with the ^{CITY} Village, the Company shall cause to be filed with the Clerk of the ^{CITY} Village, a written statement of the rate schedules proposed to be charged for gas by the Company, its lessees, successors and assigns. The rate schedule thus filed shall apply to all services other than those covered by separate contracts with industrial and commercial consumers. All rates charged under this ordinance shall at all times be fair, just and reasonable. However, any disagreement involving rates shall be subject to review by the District Courts of Minnesota, or such tribunal having power to fix or establish just and reasonable rates in such cases.

- Sec. VIII REPORTS. The Company agrees, on or before July 1 of each year, to file with the Village Clerk a copy of its annual report to its security holders for the preceding calendar year, including its balance sheet and income statement.
- Sec. IX FORFEITURE. If the Company shall be in default in the performance of any of the material terms and conditions of this ordinance and shall continue in default for more than ninety (90) days after receiving notice from the Village of such default, the Village Council may, by ordinance duly passed and adopted, terminate all rights granted under this ordinance to the Company. The said notice of default shall be in writing and shall specify the provisions of this ordinance in the performance of which it is claimed that the Company is in default. Such notice shall be served in the manner provided by the laws of Minnesota for the service of original notices in civil actions. The reasonableness of any ordinance so passed declaring a forfeiture of the rights and privileges granted by this franchise ordinance shall be subject to review by the United States District Court, District of Minnesota.
- Sec. X CANCELLATION. On ninety (90) days prior written notice to the Company, its lessees, successors and assigns, of its intention so to do, the said Village after not less than thirty (30) months from the effective date hereof, may cancel and terminate this franchise, unless before such cancellation and termination the Company, its lessees, successors and assigns shall have actually begun construction within the said Village; provided, however, there shall be added to such thirty-month's period any time reasonably lost due to litigation instituted by others; or due to action of the said Village, its officials or governing body; or of any other governmental body or authority or due to strikes; or during any period in which a state of war exists between the United States and any foreign power, both the Company, its lessees, successors and assigns shall recognize that the national defense is paramount to any contractual obligations then existing between them, and notwithstanding the provisions of any such contract, neither shall assert nor be required to assume, any obligation which is inconsistent with or contrary to any governmental policy, rule, regulation or order made, issued or promulgated in the promotion thereof; or other causes beyond the control of the Company.
- Sec. XI NON-EXCLUSIVE. The rights and privileges hereby granted are not exclusive, and the Village expressly reserves the right to grant rights and privileges to other persons or corporations.
- Sec. XII ACCEPTANCE. This ordinance and the franchise hereby granted shall automatically terminate and end and be of no further force or effect unless the Company within sixty (60) days after the legal enactment hereof shall file with the Village Clerk of said Village a written statement of acceptance hereof, also, if and when after such acceptance and within (30) months from the passage and publication of the said ordinance, the Company, its lessees, successors and assigns, shall make and file with the Clerk of the said Village a surrender thereof in writing.
- Sec. XIII EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and publication as required by law.

Adopted this 4th day of October, 1950.

Vern Brower
President

Attest:

Charles Bellingham
Village Clerk