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ORDINANCE NO. 117

AN ORDINANCE GRANTING TO WASHINGTON NATURAL GAS COMPANY, A DELAWARE CORPORATION AND A PUBLIC UTILITY SELLING AND DISTRIBUTING GAS WITHIN THE STATE OF WASHINGTON THE RIGHT AND FRANCHISE TO USE AND OCCUPY THE STREETS, AVENUES, ROADS, ALLEYS, LANES AND OTHER PUBLIC PLACES AND WAYS OF THE TOWN OF GIG HARBOR, WASHINGTON, FOR CONSTRUCTING, MAINTAINING, REPAIRING, RENEWING AND OPERATING A GAS DISTRIBUTION SYSTEM AND ACCESSORIES WITHIN AND THROUGH THE TOWN OF GIG HARBOR, WASHINGTON.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GIG HARBOR:

Section 1: The right ¹⁵ hereby granted to WASHINGTON NATURAL GAS COMPANY, hereinafter referred to as the Grantee, to lay, construct, extend, maintain, repair, renew and replace gas pipes and gas mains and accessories under, along and/or across any and all streets, avenues, roads, alleys, lanes and other public places and ways in the Town of Gig Harbor, Washington, and all territory hereafter lawfully annexed, and to use and occupy said streets, avenues, roads, alleys, lanes and other public places and ways for the purpose of therein laying, constructing, extending, maintaining, renewing, replacing and repairing mains, pipes and all appurtenances thereto and accessories used and/or useful for the transmission, sale and distribution of gas within and through the present or future territorial limits of the Town of Gig Harbor, Washington, shall extend for the term of twenty-five years from and after the effective date of this Ordinance, except as hereinafter provided.

Section 2: The Town 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 Town 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 as may be required in supervising the fulfillment by the Grantee of the terms of this franchise. This Ordinance shall not be construed as a limitation or restriction upon any taxing power of the Town.

Section 3: The location of all mains, laterals and appurtenances, their depth below the surface of the ground or grade of any such streets, avenues, roads, alleys, lanes and other public places and ways shall be determined and fixed by the Town Engineer, and before any work is done by the Grantee under this franchise, it shall first file with the Town Clerk an application for a permit to do such work, accompanied by drawings showing the position and location of all such mains

and/or laterals and meter boxes, valves, etc., sought to be constructed, laid, installed or erected at that time and their relative positions to existing streets, avenues, roads, alleys, lanes and other public places or ways. No such work shall be commenced by the Grantee until such permit has been granted. Except that service lines may be installed from existing mains with a confirming permit and without the requirement of a drawing.

4 Section 4: The Grantee shall at all times keep full
5 and complete plans, plat or plats, specifications, ~~property~~
6 and records showing the exact location, depth and size of all
7 gas mains and lines heretofore laid in the Town, and showing
8 the location of all gates, gauges, and other service
9 construction, and such plans, plat or plats, specifications,
10 and records shall be kept current semi-annually by the Grantee
to show thereon the exact location of all additional mains and
lines hereafter installed by the Grantee, and its successors
and assigns, and these records shall be subject to inspection
at all reasonable times by the Town by the proper officials
and agents of the Town. ~~by the proper officials and agents of the Town~~.

11 Section 5: The Grantee in such application shall
12 specify the class and type of material to be used and the
13 equipment to be used and the mode of safeguarding and
14 facilitating public traffic during construction. All such
15 material and equipment shall be first class and shall meet
16 with the approval and pass all requirements of said Engineer,
and the Grantee shall pay to the Town of Gig Harbor all costs
of and expenses incurred in the examination, inspection and
supervision of such work on account of the granting of said
permit, including that work described in Section 3 hereof.

17 Section 6: The Grantee shall leave all streets,
18 avenues, roads, alleys, lanes, public places and ways, after
19 laying and installing mains and doing construction work,
20 making repairs to equipment, etc., in as good and safe condi-
21 tion in all respects as they were before the commencement of
22 such work by the Grantee, its agents or contractors. In case
23 of any damage to said streets, avenues, roads, alleys, lanes,
24 public places and ways, to the pavement, turnouts, gutters,
25 ditches, walks, drain pipes, rails, bridges, trestles,
26 wharves or landings by the Grantee, said Grantee shall imme-
27 diately repair said damage at its sole cost and expense. The
28 Council may at any time do, order and have done any and all
29 work considered necessary to restore to a safe condition any
30 such streets, avenues, roads, alleys, lanes, public places
31 and ways, or pavement, turnouts, gutters, ditches, walks,
32 drain pipes, rails, bridges, trestles, wharves or landings
33 left by the Grantee or its agents in a condition dangerous to
34 life or property, and the Grantee, upon demand, shall pay to
35 the Town of Gig Harbor all costs of such construction or re-
36 pair and of doing such work.

1 as sufficient to insure performance of the Grantee's obliga-
2 tions under this franchise, conditioned that the Grantee shall
3 well and truly keep and observe all of the covenants, terms
4 and conditions and faithfully perform all of the Grantee's
5 obligations under said franchise; shall correct or replace
6 forthwith, on receipt of notice thereof, any defective work
7 or materials used in the replacement of the city streets or
8 property discovered within a two-year period of the date of
the replacement and acceptance of such repaired streets by
the Town; and shall restore the streets or property to the
condition in which they existed prior to any commencement of
work thereon by the Grantee, where the change was occasioned
by the work being performed thereon by the Grantee, within
the period of time specified by the permit issued for such
work.

9 Section 8: The Grantee, by the acceptance of this
10 franchise, hereby agrees, for itself, its successors and
11 assigns, to protect and save harmless the Town of Gig Harbor
12 from all claims, actions or damages of every kind and des-
13 cription which may accrue to or be suffered by any person or
14 persons, corporation or property by reason of any faulty
15 construction, defective material or equipment or maintenance,
16 or by the improper occupation of said streets, avenues, roads,
17 alleys, lanes, public places and ways by the Grantee, or by
18 reason of the negligent, improper or faulty manner of safe-
19 guarding any excavation, temporary turnouts or inefficient
20 operation by the Grantee of its said pipe lines as herein-
21 before designated; and in case suit or action is brought
22 against said Town for damages arising out of or by reason of
23 any of the above-mentioned causes, the Grantee, its successors
24 and assigns, will, upon notice to it or them of the commence-
25 ment of said action, defend the same at its or their sole cost
and expense; and in case judgment shall be rendered against
the Town in such suit or action, the Grantee will fully
satisfy said judgment within ninety (90) days after said suit
or action shall have finally been determined adversely to the
Town, provided the Grantee herein, its successors and assigns,
shall have the right to employ its or their own Counsel in
any cause or action or be given the management of the defense
thereof.

26 The Grantee shall, before commencing operations
27 within the Town of Gig Harbor, furnish evidence of liability
28 insurance covering its operations within the Town, in such
29 amount as may be required by the Town Council.

30 Section 9: If at any time the Town of Gig Harbor
31 deems it advisable to improve any street or public place in
32 which Grantee's facilities are installed by grading, regrading
33 or draining, or installing or relocating municipally owned
34 sewers, drains or water mains, the Grantee, upon written
35 notice by the Town of Gig Harbor shall at its own expense, so
raise, lower or move its line of pipes to conform to such new
36 grades as may be established, or place said pipes in such
37 location or position as shall cause the least interference
38 with any such improvement and said Town of Gig Harbor shall in
39 nowise be held liable for such damages to the Grantee that may

1 occur by reason of such improvements; provided, the Grantee
2 shall be required to relocate its facilities only if they
3 interfere with such improvement and no alternative plan for the
4 improvement is reasonably feasible. An alternative plan shall be con-
5 sidered reasonably feasible if it would involve no additional cost or
6 inconvenience to the Grantor.

7 If the Town of Gig Harbor shall improve such street
8 or public place, the Grantee shall, on written notice by said
9 Town, and at the sole expense of the Grantee, replace said
10 pipe or pipes as may be in or through the improved grade of
11 such improvement with pipe or pipes of such material as
12 shall conform to the specifications for the improvement of
such street or public place.

13 Section 10: This grant shall not be exclusive and
14 shall in no manner prohibit the Town of Gig Harbor from
15 granting other franchises of a like nature or franchises for
16 other public or private utilities over, along, across, under
17 and upon any of such streets, avenues, roads, alleys, lanes,
18 public places and ways, and shall in nowise prohibit or pre-
19 vent the Town of Gig Harbor from using any of said streets,
20 avenues, roads, alleys, lanes, public places and ways, with
21 full power to make all necessary changes, relocations, re-
22 pairs, maintenance, etc., of the same as the Town of Gig
23 Harbor may deem fit.

24 Section 11: The Grantee, and its successors and
25 assigns, may not assign this franchise without the written
26 consent of the Town Council and until the Town Council has
27 approved the terms of the assignment, but if such consent is
28 given and the franchise is assigned, such assignment shall be
29 binding upon the Grantee's successors and assigns and inde-
30 pendent contractors of the Grantee, and a copy of the
assignment shall be filed with the Town Clerk.

Nothing in this Section shall be construed to re-
quire consent by the Town Council to this franchise being
subjected to the lien of any existing or future mortgage of
the Grantee's utility properties given to secure bonds
issued or to be issued by Grantee.

31 Section 12: If the Grantee, its successors or
32 assigns, shall wilfully violate or fail to comply with any
33 of the provisions of this Ordinance, or through wilful or
34 unreasonable negligence fail to heed to any notice given to
35 the Grantee under the provisions of this Ordinance, then the
36 said Grantee, its successors or assigns, shall at the
37 election of the Council of the Town of Gig Harbor forfeit
38 all rights conferred hereunder and this franchise may be
39 revoked or annulled by the Town of Gig Harbor.

40 Section 13: After the passage and legal publication
41 of this Ordinance, and if accepted within thirty (30) days
42 after such publication, the Grantee shall indicate such
43 acceptance by its filing with the Town Clerk an unconditional
44 written acceptance thereof, and a failure of the Grantee so
45 to accept this Ordinance within said period of time shall be
46 deemed a rejection thereof by the Grantee, and the rights
47 and privileges herein granted shall, after the expiration
48 of said period of time, if not so accepted, absolutely cease
49 and determine unless said period of time shall be extended

1 by the Town by ordinance passed for that purpose.

2 Section 14: If any section, subsection, paragraph,
3 sentence, clause, or phrase of this Ordinance is declared
4 unconstitutional or invalid for any reason, such decision
shall not affect the validity of the remaining portions of
this Ordinance.

5 .. Section 15: This Ordinance shall be in full force
6 and effect from and after its passage and publication and its
acceptance by the Grantee as hereinbefore provided.

7 PASSED at a regular meeting of the Town Council of
8 the Town of Gig Harbor held on the 24 day of April,
1969.

MA YOR

Attest:

TOWN CLERK

DATED this _____ day of _____, 1969.

WASHINGTON NATURAL GAS COMPANY

By _____ **PRESIDENT**

