

ORDINANCE NO. 591

By Councilman Ballenger

AN ORDINANCE OF THE CITY OF PAYETTE, IDAHO, GRANTING TO INTERMOUNTAIN GAS COMPANY A THIRTY (30) YEAR FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A GAS TRANSMISSION AND DISTRIBUTION SYSTEM; PROVIDING FOR THE USE OF STREETS AND RULES GOVERNING THE SAME; SUBJECTING THE GRANTEE TO ALL POWERS OF THE CITY; SETTING FORTH THE RULES GOVERNING REPAIRS FOR RECONSTRUCTION OF THE STREETS; PROVIDING FOR THE TERM OF THE FRANCHISE AND GRANT; PROVIDING FOR THE RIGHT OF INSPECTION BY THE CITY OF GRANTEE'S PLANS, ACCOUNTS AND BOOKS; REQUIRING GRANTEE TO FURNISH CERTAIN MAPS; SETTING FORTH THE ANNUAL PAYMENT TO THE CITY, AND PROVIDING FOR A RE-NEGOTIATION THEREOF; AND THE FILING OF ANNUAL REPORTS WITH THE CITY; REQUIRING GRANTEE TO INDEMNIFY CITY, AND FILE EVIDENCE OF INSURANCE; REQUIRING COMPLIANCE WITH SAFETY REGULATIONS; SETTING TIME LIMIT IN WHICH TO COMPLY WITH FRANCHISE; SETTING FORTH AN AGREEMENT NOT TO COMPETE, RESERVING POWER OF EMINENT DOMAIN; PROVIDING FOR SURRENDER OF FRANCHISE; GRANTING RIGHT TO SALVAGE AFTER POSTING BOND; REQUIRING WRITTEN ACCEPTANCE; PROVIDING FOR CONSENT TO SALE, ASSIGNMENT, OR LEASE; SETTING FORTH CITY'S RIGHT TO ADDITIONAL PAYMENTS; PROVIDING FOR PAYMENT OF PUBLICATION COSTS; SETTING FORTH PENALTIES AND FORFEITURES, SEPARABILITY, AND REPEAL.

BE IT ORDAINED BY THE MAYOR AND THE COUNCIL OF THE CITY OF PAYETTE, IDAHO:

SECTION I.

GRANT OF AUTHORITY

There is hereby granted to Intermountain Gas Company, a corporation, its successors and assigns (hereinafter collectively referred to as "Grantee"), the right and authority to construct, install, maintain and operate a gas transmission and distribution system including mains, pipes, conduits, services and other necessary structures and appliances appertaining in, under, upon,

over, across and along the streets, alleys, bridges, and public places within the present and future corporate limits of the City of Payette, Idaho (hereinafter referred to as "City") for the furnishing, transmission, distribution and sale of gas, whether artificial, natural, mixed or otherwise, for heating domestic, industrial and other purposes and for transmitting gas into, through and beyond said City. The franchise privileges hereby granted shall not be deemed to be exclusive and said municipality may grant to another or others similar franchise rights.

SECTION II.

USE OF STREETS AND RULES GOVERNING SAME.

Grantee shall secure a permit for any opening it shall make in the streets, alleys, and public places in the City and shall be subject to all applicable ordinances, but no fee shall be required of Grantee for any such permit. The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body of the City may designate for such purpose, but not so as unreasonably to interfere with the proper operation of Grantee's facilities and service. Whenever the City shall pave or repave any street or shall change the grade or line of any street or public place or shall construct or reconstruct any conduit, water main, sewer or water connection or other city public works or utility, it shall be the duty of the Grantee when so ordered by the City to change its mains, services and other property in the streets or public places at its own expense so as to conform to the established grade or line of such street or public place and so as not to interfere with the conduits, sewers and other mains of the City or other existing utility lines as constructed or reconstructed; however, the Grantee shall not be required to relocate pipes, mains and appurtenances when the street, alley or public ground in which they are located is vacated for the convenience of abutting property owners and not as an incident to a public improvement, unless the reasonable cost of such relocation and the loss and expense resulting therefrom is first paid to Grantee.

Whenever the City grants a permit for an excavation in a street, alley, or other public ground and the work contemplated by the permit may expose gas pipes, mains and appurtenances of the Grantee, the City shall promptly furnish a copy of the permit to Grantee.

SECTION III.

GRANTEE SUBJECT TO ALL POWERS OF CITY--RULES GOVERNING REPAIR AND RECONSTRUCTION OF STREETS

The exercise of privileges herein granted shall be subject at all times to all of the powers of the City and all regulatory ordinances adopted pursuant thereto. The Grantee shall not unnecessarily or unreasonably obstruct the use of or injure any street or alley, and shall within a reasonable time and as early as practicable upon the completion of any construction or repair work, restore all City streets and alleys to the same order and condition as they were before the excavation was made insofar as reasonably possible, and shall maintain, repair and keep in good condition for a period of one year all portions of streets and alleys disturbed by it or its agents. The Grantee shall be responsible for any obstruction or any defect in any street, alley, or other public place caused by it in the operation and maintenance of its properties occurring at any time and shall promptly remove any such obstruction or defect. Any such obstruction or defect which, after proper notice to Grantee demanding removal or repair as the case may be, is not promptly removed or repaired by the Grantee, may be taken care of by the City, and the costs thereof shall be charged against Grantee and may be enforced as a lien upon any of its properties or assets.

SECTION IV.

TERM OF FRANCHISE AND GRANT

The right, authority and grant herein and hereby made to said Grantee, its successors and assigns, shall be granted for, and limited in time to, a period of thirty (30) years from the day it takes effect.

SECTION V.

CITY RIGHT TO INSPECTION OF GRANTEE'S PLANS, ACCOUNTS, AND BOOKS--GRANTEE TO FURNISH CERTAIN MAPS

The City shall have access at all reasonable hours to all of the grantee's

plans, contracts and engineering, accounting, finance, statistical, customer and service records relating to the property and operations of Grantee within the City. The Grantee shall furnish the City with a complete set of maps, including plans and profile of the distribution system of the Grantee and any further extensions.

SECTION VI.

PAYMENT TO CITY AND FILING OF ANNUAL WRITTEN REPORT WITH THE CITY

As consideration for this franchise and grant, said Grantee, its successors and assigns, during the life thereof, shall pay to City the following stipulated percentage of the gross annual receipts received from all sales of gas within the corporate limits of the City through use, operation or possession of this franchise and grant;

(1) Three per cent (3%) per each year during the life of this franchise and grant. Provided, however, that at the expiration of the first ten (10) years of the life of this franchise and grant said rate shall be subject to re-negotiation between the grantee and city and shall again be subject to such re-negotiation at the expiration of twenty (20) years of the life of said franchise and grant.

Such annual payments shall be in lieu of any and all other fees, charges, licenses or taxes (other than ad valorem taxes) which the City may impose for the rights and privileges herein granted or for the privilege of doing business within City.

The Grantee shall file by March 31 of each year with the City a written report for the preceding calendar year, verified by the affidavit of the general manager, auditor, or assistant treasurer of said Grantee, which report shall contain a statement, in such form and detail as shall from time to time be prescribed by the City, all of the gross receipts arising from all sales of gas by said Grantee within the City for the calendar year immediately preceding such report, and at the same time the Grantee shall pay to the City the stipulated percentage of the gross annual receipts due for the year for which said report is made and filed. The word "year" as used in this Section VI means the calendar year, except the first year, which will commence on the date when this

franchise and grant is in effect, and ending on the following December 31.

SECTION VII.

GRANTEE-LIABILITY--INDEMNIFICATION

It is expressly understood and agreed by and between the Grantee and the City that the Grantee shall save the City harmless for all loss sustained by the City on account of any suit, judgment, execution, claim, or demand whatsoever, resulting from negligence on the part of the Grantee in the construction, operation or maintenance of its gas system in the City. The City shall notify the Grantee's representative in the City within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of the Grantee.

SECTION VIII.

INSURANCE

Upon acceptance of this franchise by Grantee and before Grantee shall have any rights hereunder, Grantee shall file with the City Clerk a certificate evidencing the insurance of the Grantee against property damage in an amount not less than \$50,000.00 and bodily injury with limits of not less than \$50,000.00 per person and \$500,000.00 total for each occurrence.

SECTION IX.

SAFETY REGULATION COMPLIANCE

Grantee shall comply with and conform to all safety regulations promulgated by the City or any regulatory body having jurisdiction thereof.

SECTION X.

TIME LIMIT IN WHICH TO COMPLY WITH
TERMS OF FRANCHISE PAYMENT BY
GRANTEE OF COSTS OF INSPECTION

Grantee shall have a reasonable time within which to lay gas mains and to otherwise comply with the terms of this franchise, not to exceed 120 days, after gas supply is available to the Grantee from the pipeline source, unless such time is extended by the City.

SECTION XI.

AGREEMENT NOT TO COMPETE
RESERVE TO CITY POWER OF AN EMINENT DOMAIN

In consideration of Grantee's undertakings hereunder as evidenced by its

acceptance hereof, the City agrees not to engage in the business of distributing and selling gas during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns; but nothing herein contained shall be construed or deemed to prevent the City from exercising at any time any power of eminent domain granted to it under the laws of the State of Idaho.

SECTION XII.

SURRENDER OF FRANCHISE--GRANTEE'S RIGHT TO SALVAGE AFTER POSTING BOND

In the event natural gas at any time shall cease to be available to Grantee for the distribution and sale hereunder, Grantee reserves the right to surrender this franchise and in the event of such surrender or any expiration or termination of this franchise, or in any of such events, Grantee reserves the right to salvage all of its plant, works, and facilities, after posting bond satisfactory to the City to insure restoration of City's streets and alleys damaged by such salvage operations.

SECTION XIII.

ACCEPTANCE

The Grantee shall within thirty (30) days after the passage and publication of this Ordinance file with the municipal clerk its acceptance of the same in writing, signed by its proper officers and attested by its corporate seal.

SECTION XIV.

SALE, ASSIGNMENT OR LEASE OF FRANCHISE

No sale, assignment or lease of this franchise shall be effective until it is approved by the City, provided, however, that nothing herein contained shall be construed to require consent or to prevent the Grantee of this franchise and grant from including it in a mortgage or trust deed executed for the purpose of obtaining money for corporate objects.

SECTION XV.

RIGHT TO ADDITIONAL PAYMENTS TO CITY

In the event the Grantee shall pay any other City any greater stipulated percentage than hereinbefore provided, then in such event, the City shall have the right of requiring Grantee to pay for the same period of time such higher percentages so paid to such other City.

SECTION XVI

PUBLICATION COSTS

The Grantee shall assume the cost of publication of this franchise as such publication is required by law plus one additional publication. Bill for publication costs shall be presented to the Grantee by the City Clerk upon the Grantee's filing of acceptance ~~of~~ ^{and} said bill shall be paid at that time.

SECTION XVII.

FORFEITURE

Any violation by the Grantee, its vendee, lessee or successors, of the provisions of this ordinance, franchise and grant or any material portions thereof or the failure promptly to perform any of the provisions thereof shall be cause for the forfeiture of this franchise and grant and all rights hereunder by the City after sixty (60) days' written notice to the Grantee and the continuance of such violation, failure or default; however, this provision shall not prevent the Grantee from submitting such question of forfeiture to proper court determination.

SECTION XVIII.

SEPARABILITY

If any part or parts of this ordinance shall be adjudged by the courts to be unconstitutional or invalid, the same shall not affect the validity of any other part or parts hereof which can be given effect without the part or parts adjudged to be unconstitutional or invalid. The City declares that it would have passed the remaining parts of this ordinance if it had been known that such other part or parts thereof would be declared unconstitutional or invalid.

SECTION XIX

REPEAL

All ordinances and parts of ordinances of the City in conflict herewith shall be, and the same are hereby repealed.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR, this 20th day of March, 1956.

Attest:

Alice Bulmer
City Clerk

J. J. [Signature]
Mayor