ORDINANCE

AN ORDINANCE GRANTING TO PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INCORPORATED, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO USE AND OCCUPY THE PUBLIC WAYS OF THE TOWN OF BLACK MOUNTAIN 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 30 YEARS.

WHEREAS, Public Service Company of North Carolina, Incorporated proposes to continue to construct, operate and maintain a Gas Utility System and all necessary means for transmission and distribution of gas within the Town of Black Mountain North Carolina, (the "Town") and

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Black Mountain 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) **(CITY/TOWN COUNCIL, TOWN BOARD, VILLAGE COUNCIL, BOARD OF COMMISSIONERS)** shall mean the governing body of the Town of Black Mountain North Carolina, as now or hereafter constituted.

(b) **COMPANY** shall mean Public Service Company of North Carolina, Incorporated, its successors, and assigns.

(c) **(CITY, TOWN, VILLAGE)** shall mean the Town of Black Mountain, North Carolina, including its present and future boundaries.

(d) **DEPARTMENT OF TRANSPORTATION** shall mean the North Carolina Department of Transportation or its successor.

(e) **GAS** shall mean natural gas, mixed gas and substitute fuels carried over the Company's facilities as authorized by the North Carolina Utilities Commission.

(f) **GAS UTILITY SYSTEM** shall mean all facilities of the Company in the Town used for the transmission or distribution of Gas within the Town.

(g) **FERC** shall mean any reference made to the Federal Energy Regulatory Commission or its successor.

(h) **COMMISSION** shall mean the North Carolina Utilities Commission, or any successor body lawfully constituted.

(i) **PUBLIC WAY OR WAYS** shall mean any public street, avenue, road, alley, lane, bridge, or other public right-of-way within the Town over which the Town has jurisdiction ~~or~~ and exercises control.

(j) **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.

SECTION 2. Grant of Authority

The right, power and authority is hereby granted to and vested in the Company to construct, install, replace, repair, maintain and operate transmission mains, gas mains, pipes, equipment, service lines, communications lines, facilities and other appurtenant apparatus of the gas system, for the purpose of operating a natural gas system along, across, and under the streets, alleys, bridges, rights-of-way, and other public places of the Town together with any necessary rights of access thereto; and to use that natural gas system to conduct a gas business. This granting of authority is provided that the Town as of the applicable time, has jurisdiction ~~or~~ and exercises control of the public ways. ~~This Franchise~~

~~Agreement shall also permit the Company to exercise the rights granted herein without the need for additional permit(s) from the Town.~~

SECTION 3. Conditions on Use of Public Ways

(a) No street, alley, bridge, right-of-way, or other public place used by the Company shall be obstructed longer than reasonably necessary during its work of construction, installation, replacement or repair and shall be restored to the same good order and condition as when said work was commenced; ~~.~~ provided, ~~H~~however, in the Town's sole discretion, should such work by the Company be located in a Public Way appropriate for future construction of a sidewalk, then the Company shall restore such area with appropriate material, including an aggregate base, to allow for such future sidewalk. S~~s~~hould any such damage occur due to the Company's failure to use due care during its work of construction, installation, replacement or repair, the Company shall repair the same as promptly as possible, and, in default thereof, the Town, after written notice and opportunity for the Company to repair, may make such repairs and charge the reasonable cost thereof and collect the same from the Company.

(b) To ensure compliance with this Ordinance by the Company, a~~A~~ll work upon the streets and public places of the Town shall be done subject to reasonable inspection of the Town Manager or designee (or other legally constituted governing body) of the Town. ~~,~~ A~~a~~ll sidewalks or street pavements or street surfaces which may be displaced by reason of such work shall be properly replaced by the Company, its successors and assigns, to the reasonable requirements of the Town.

(c) The Company shall construct and locate its Gas Utility Systems so as not to interfere with any existing sewer or water connection and/or sewer lines, water mains and other utility infrastructure. The Company shall take reasonable steps necessary to protect the facilities of the Town and other utilities during its work.

~~(b)~~(d) The Company shall coordinate with other utilities and their providers which use or are located or will be located in the Public Way so as to allow any such additional infrastructure to be properly constructed or installed. Upon request of the Town, the Company shall provide information identifying the location of its Gas Utility System.

SECTION 4. Annexation Notification

The Town shall mail to the Company areas annexed into the Town. Said notices shall include pertinent maps and/or tax map numbers, so that newly annexed customers may be identified. Any written notice to the Company shall be sent to Public Service Company of North Carolina, GIS Services-Annexations, 800-A Gaston Road, Gastonia, NC 28056.

SECTION 5. Service

(a) 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 reasonably obtain an adequate supply of such gas hereunder, provided, however, that in the supply

of such gas the customers within the Town shall enjoy equal rights with respect to other similar customers served by the Company consistent with Commission rules and regulations.

(b) The Company shall, as with all other conditions and elements of service not fixed herein, be and remain subject to the rules and regulations of the Commission, Department of Transportation, and FERC or its successors, applicable to gas service in 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 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 of the authority of the Town to enact any ordinance or policy that does not diminish, conflict, or impair the rights and authority granted to the Company in this franchise or otherwise impose additional obligations on the Company in order to exercise the rights granted herein.

SECTION 8. Regulations, Safety and Customer Service

(a) Gas utility service is not guaranteed to be free from interruptions, supply failure or outages.

(b) The Company will restore gas utility service using Good Utility P~~p~~ractices.

(c) The Company shall maintain and operate its Gas Utility System in compliance with applicable State and Federal maintenance and safety regulations.

(d) Company vehicles responding to natural gas emergencies may park in a Public Way as close to the location of the emergency as is practicable.

SECTION 9. Commission Rules and Rates

The 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. The 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 Utility System

The Company shall maintain maps or plats of its Gas Utility System within the area covered by this franchise. Such maps or plats shall be maintained in the Company's offices, and the Town may review 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, 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. Revocation

In the event the Company fails to comply with the provisions of this Ordinance and, within thirty (30) days after receipt of written notice from the Town, the Company fails to cure or remedy such default, or to have begun reasonable measures to do so, then the Town may cause the Company to appear at a hearing before the Town Council or its designee upon thirty (30) days prior written notice. Any written notice to the Company shall be sent to Public Service Company of North Carolina, 800 Gaston Road Gastonia, NC 28053-1398, Attention: Local Government and Economic Development Manager. If at such hearing ~~the Town~~it should determine that the Company's failure or default has been substantial, repeated or flagrant, then upon such determination the Town may revoke and terminate this franchise; provided, however, that the Company may file with the Town within ten (10) days after such determination the Company's election to appeal to the proper North Carolina court, during the pendency of which the Ordinance shall remain in full force and effect. In that event the Town and Company agree that such court shall hear and determine *de novo* whether there has been substantial, repeated, or flagrant failure or default by the Company of the terms, conditions, or obligations of this Ordinance. Failure or default which cannot be corrected by the Company shall not be grounds for revocation or termination unless such failure or default shall be determined to be material and continuing.

SECTION 13. Indemnification:

The Company shall indemnify and hold harmless the Town, its governing board, officers, agents and employees from any losses, costs, expenses, claims, judgments, suits, or demands resulting or in any manner arising from the action or inaction of the Company in constructing, operating, or maintaining a ~~g~~Gas Utility ~~s~~System, in carrying on the business of selling, transmitting or distributing gas, or in exercising or failure to exercise any right or privilege granted by this franchise and save and except for any such losses, costs, expenses, claims, judgments, suits, or demands resulting or in any manner arising from, or contributed to, by the negligent action or inaction of the Town or any of its officers, agents, or

employees. Provided, however, the Company's indemnification at any time is conditioned on the Town having notified the Company in writing of any such claim, demand, or suit within such time as

to give the Company reasonable opportunity to resolve or defend the same on behalf of the Town. In the event of such notification, the Company shall have the sole and full responsibility for the resolution and defense of any such claim, demand, or suit on behalf of the Town, and the Town shall cooperate fully with the Company in any such undertaking. If after proper notification, the Company fails to undertake any such responsibility, the Town shall have the right to resolve or defend any such claim, demand, or suit at the expense of the Company.

SECTION 14. Severability, Third Party Rights

(a) If any provision in this contract is determined to be invalid, void, or unenforceable by any court or regulatory body having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement, or covenant of this Contract. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders, and regulations of any governmental authority having jurisdiction over the parties, their facilities, or gas supply, this Contract or transaction or any provisions thereof.

(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 15. Effective Date, Term, Adoption, and Ratification

(a) This Ordinance shall be effective from and after the _____ day of_____, 2025 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 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.

(b) All other Ordinances and clauses of Ordinances in conflict herewith are hereby repealed.

Adopted by the Town of Black Mountain the _____ day of_____, 2025, and hereby ratified.

_____
C. Michael Sobol, Mayor

ATTEST:

_____
Wesley Barker, Clerk

APPROVED AS TO FORM:

_____
Attorney

ACCEPTANCE BY COMPANY

Public Service Company of North Carolina, Incorporated, does hereby accept and acknowledge the foregoing Ordinance, and in consideration of the benefits and privileges granted to it does hereby agree to the terms and conditions therein provided.

This is the _____ day of _____, 2025.

PUBLIC SERVICE COMPANY
OF NORTH CAROLINA, INCORPORATED

By: D. Russell Harris
Vice President and General Manager

ATTEST:

Its: Assistant Corporate Secretary

Kelly Gray
(Corporate Seal)