ORDINANCE

AN ORDINANCE GRANTING A GAS FRANCHISE TO PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INCORPORATED, ITS SUCCESSORS AND ASSIGNS, FOR THE TOWN OF BLACK MOUNTAIN, NORTH CAROLINA, FOR A PERIOD OF THIRTY (30) YEARS

BE IT ORDAINED by the Board of Aldermen of the Town of Black Mountain, North Carolina:

SECTION 1. Definitions.

Whenever and wherever used in this Ordinance the following words and names shall have the following respective meanings:

(a) **BOARD OF ALDERMEN** shall mean the Board of Aldermen 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) **TOWN** shall mean the Town of Black Mountain, North Carolina, including its present and future Town limits.

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

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

(g) **COMMISSION** shall mean the North Carolina Utilities Commission or any

successor body lawfully constituted.

(h) FERC shall mean the Federal Energy Regulatory Commission or its successor.

(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 as of the applicable time has jurisdiction or exercises control.

SECTION 2. Grant of Authority.

The Town hereby grants to the Company the right and privilege to construct, operate and maintain a gas utility system within the Town for the transmission, distribution and sale of Gas to customers or users of the Company. The Company shall have the right, authority and privilege to construct, install, operate, maintain, lay, re-lay, renew, replace and repair gas pipes, mains, pipelines and necessary appurtenances thereto in, through, across, along and under the Public Ways within the Town for the pumping, handling, transmission, distribution and sale of Gas for any and all purposes, and for such objects and purposes to take up the pavement in Public Ways, and to make such excavation and changes therein as may be necessary therefor.

SECTION 3. Nonexclusive Grant.

This franchise is not exclusive. The Town may grant the same or similar rights and privileges to other persons 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.

SECTION 4. Franchise Not Waiver of Law.

This franchise is not a waiver of any present or future law or regulation. This franchise is not a limitation upon the authority of the Town to adopt any law or regulation.

SECTION 5. Conflict with Other Regulations.

In the event any provision of this franchise is in conflict with any rule of the Commission or FERC, so that the Company cannot reasonably comply both with the provisions of this franchise and any rule of the Commission or FERC, then the Company shall comply with such Commission or FERC rule instead of the conflicting provision of this franchise.

SECTION 6. Service Standards.

(a) The Company shall maintain and operate its Gas System in a reasonably efficient manner in order to supply adequate gas service to its customers in the Town.

(b) The Company shall comply with all applicable ordinances and regulations of the Town not in conflict with the rules of the Commission of FERC or with this franchise.

(c) In the event of any interruption or impairment of service or failure of supply of Gas by reasons of force majeure, act of God, strike, breakdown, accident or other happening beyond the reasonable control of the Company, the Company shall use due diligence to restore such service within a reasonable time. Such interruption or failure shall not constitute a breach of this Ordinance.

SECTION 7. Conditions on Use of Public Ways.

(a) The Company shall construct, operate and maintain its Gas System so as to cause the minimum reasonable interference with the public use of any Public Ways, or with any abutting property owner's access thereto.

(b) The Company shall place the gas mains and pipes of its Gas System in the Public Ways at such location as the Town may prescribe. The Company shall construct and locate its gas mains and pipes so as not to interfere with existing sewer or water connections or sewer lines or water mains. The Company will take reasonable steps necessary to protect the facilities of the Town and other utilities during the work.

(c) The Company shall coordinate with other utilities which use the Public

Way. Upon request of the Town, the Company shall provide information identifying the location of Company facilities.

SECTION 8. Excavation in Public Ways; Restoration; Damage.

(a) Whenever the Company excavates in any of the Public Ways pursuant to this franchise, such excavation shall be made by the Company in compliance with the laws and regulations of the Town in effect at the time.

(b) Upon installation by the Company of gas mains or pipes, the Company shall, without delay, refill the trenches in which the mains and pipes are located according to standards established by the Town. The Company shall promptly restore and replace the pavement, sidewalk, curbs or gutters in any Public Way destroyed, disturbed or damaged by such work.

SECTION 9. Inspection.

The Town shall have the right to inspect all construction and installation work performed by the Company pursuant to this Ordinance and to make such other inspections as it shall deem necessary to ensure compliance with this Ordinance by the Company.

SECTION 10. Indemnification.

The Company shall indemnify and hold harmless the Town, its officers and employees from any cost, expenses, claims, judgments, suits or demands resulting or arising from the action or inaction of the Company in constructing, operating or maintaining its Gas System, in carrying on the business of selling, transmitting or distributing Gas, or in exercising or failing to exercise any right or privilege granted by this Ordinance, 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. However, nothing herein shall be construed to be a waiver of the legal immunities of the Town or its officials, employees, or agents performing their official governmental functions. The Company's obligation to indemnify the Town and such persons at any time is conditioned, however, on the Town having notified the Company in writing of any such claim, demand or suit in sufficient time 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 11. Rules and Regulations.

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.

SECTION 12. Rates.

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 13. Plat of Gas System.

The Company shall maintain maps or plats of its Gas System within the area covered by this franchise. Such maps or plats shall be maintained in the Company's offices, and the Town shall have access to the same during any regular business hours of the Company.

SECTION 14. Bankruptcy.

In the event (a) the Company is adjudged bankrupt or (b) its assets are placed in the hands of a receiver or other court officer, either voluntarily or involuntarily, or (c) the Company reorganizes, merges or consolidates with any other Company, or (d) the properties and business of the Company are foreclosed or sold to satisfy

any lien or indebtedness or obligation of the Company, 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.

SECTION 15. Revocation.

In the Event the Company violates or fails to perform any of the provisions of this Ordinance and within sixty days after receipt of written notice of the same from the Town has failed to cure or remedy, or to have begun reasonable steps to cure or remedy, any such violation, failure or default, then the Board of Aldermen may give at least thirty (30) days written notice to the Company specifying the violation or failure constituting the grounds for revocation and notifying the Company to appear at a hearing before the Board of Aldermen to show cause why this franchise should not be revoked. If at such hearing the Board of Aldermen should determine that the Company's violation, failure or default has been substantial, repeated or flagrant, then upon such determination the Board of Aldermen may revoke and terminate this franchise; provided, however, that the Company may file with the Town within ten (10) days after any such determination the Company's election to appeal such determination to the proper North Carolina court, and in that event the Town and the

Company agree that such court shall hear and determine de novo whether there has been a substantial, repeated or flagrant violation, failure or default by the Company of the terms, conditions or obligations of this ordinance. A violation or default which cannot be cured by the Company shall not be grounds for revocation and termination, unless such violation or default shall be determined to be material and continuing.

SECTION 16. Severability.

Should any court of competent jurisdiction declare any part, term or provision of this Ordinance illegal, unauthorized or in conflict with any law of the United States or the State of North Carolina, or to be in conflict with any valid rule or regulation duly promulgated by any agency or regulatory body of the United States or the State of North Carolina, the remaining portions or provisions of this Ordinance shall not be affected thereby.

SECTION 17. Certified Copy to Company.

The Town Clerk shall deliver to the Company an executed or conformed copy of this Ordinance and the Company's written acceptance thereof, certified as follows:

"Certified to be a true and exact copy of an ordinance duly adopted by the Board of Aldermen of the Town of Black Mountain, North Carolina, on the 10 day of July, 1995, and the acceptance thereof by Public Service Company of North Carolina, Incorporated. The 10 day of July, 1995."

(Town's Seal)

Town Clerk, Town of Black Mountain, North Carolina

SECTION 18. Effective Date; Acceptance by Company; Term.

This Ordinance shall be effective from and after the 10th day of July, 1995, provided the Company shall have executed the written acceptance hereof at the end of this Ordinance, and shall exist and continue for a period of thirty (30) years hereafter. Adopted by the Board of Aldermen the 10th day of July, 1995.

Carl R. Buttitt
Mayor

Attest:

Joanne S. Turner
Town Clerk

APPROVED AS TO FORM

Richard E. Shmaefsky
Town Attorney

Acknowledgement

NORTH CAROLINA

BUNCOMBE COUNTY

This is to certify that on the 10th day of July, 1995, before me personally came Suzanne S. Turner, with whom I am personally acquainted, who, being by me duly sworn, says that he/she is the Town Clerk and Carl R. Bartlett is the Mayor of the Town of Black Mountain, the municipal corporation described in and which executed the foregoing; that he/she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by the Town Clerk and that the said corporate seal was affixed, all by order of the governing body of said municipal corporation, and that the said instrument is the act and deed of said municipal corporation.

Witness my hand and official seal this the 10th day of July, 1995.

Debra B Wilson
Notary Public

(SEAL)

My Commission Expires: 4/2/98

Acceptance of Franchise

Public Service Company of North Carolina, Incorporated does hereby accept and approve the foregoing Ordinance and all its terms and conditions, and in consideration of the benefits and privileges granted to it does hereby agree to abide by, carry out, observe and perform all the obligations and undertakings therein provided to be carried out and performed by it.

This the 27th day of September, 1995.

PUBLIC SERVICE COMPANY
OF NORTH CAROLINA, INCORPORATED

ATTEST:

J. Paul Douglas
Corporate Secretary

By: Charles E. Zeigler, Jr.
Charles E. Zeigler, Sr.
Chairman, President and
Chief Executive Officer

Acknowledgement

NORTH CAROLINA

GASTON COUNTY

This is to certify that on the 27TH day of September, 1995, before me personally came **J. Paul Douglas**, with whom I am personally acquainted, who, being by me duly sworn, says that he is the Corporate Secretary, and **Charles E. Zeigler, Jr.** is the Chairman, President and Chief Executive Officer of Public Service Company of North Carolina, Incorporated, the corporation described in the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said Secretary and that the said Secretary and Chairman subscribed their names thereto, and said seal was affixed, all by order of the Board of Directors of said corporation.

Witness my hand and official seal this the 27TH day of September, 1995.

Notary Public

(SEAL)

My Commission Expires: 12-6-95