

ORDINANCE NO. 112

AN ORDINANCE GRANTING TO PEOPLES NATURAL GAS COMPANY AUTHORITY TO ERECT, MAINTAIN AND OPERATE A GAS DISTRIBUTION SYSTEM UPON, OVER, ACROSS AND ALONG THE STREETS, ALLEYS, BRIDGES, AND PUBLIC PLACES OF THE CITY OF HARMONY, AND FOR THE TRANSMISSION, DISTRIBUTION AND SALE THEREOF, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID COMPANY IS TO OPERATE.

THE COUNCIL OF THE CITY OF HARMONY ORDAINS:

Sec. 1 That Peoples Natural Gas Company, Division of InterNorth, Inc., its lessees, successors and assigns, hereinafter referred to as grantee, be and are hereby granted a non- exclusive authority for a period of twenty-five (25) years, to erect, construct, maintain and operate a gas distribution system and any and all necessary mains, pipes, services and other appurtenances and equipment thereunto appertaining in, upon, over, across and along the streets, alleys, bridges and public places in the City of Harmony, Minnesota for the transmission, distribution and sale of natural and/or mixed gas for lighting, heating, industrial and all other uses and purposes in said City, and for the purpose of transmitting, transporting and conveying such gas into, through or beyond the immediate limits of said City to other cities, towns and customers.

Sec. 2 Whenever the Grantee, in the construction or maintenance of its system or in the installation of any extension thereto, shall cut into or take up any pavement or shall make any excavation in any street, avenue, alley or public place, within the corporate limits of the City of Harmony, Minnesota, the same shall be done in a manner so as not to unreasonably interfere with the use of such thoroughfares by the public. The Grantee shall use such safeguards as may be necessary to prevent injury to persons or property during such construction work and upon its completion, all pavement shall be replaced in as good condition as it was before taken up. All excavations shall be refilled, and all obstructions shall be removed at the expenses of the Grantee and to the satisfaction of the Grantor. In the event that Grantee shall fail to comply with the provisions of this Section after having been given reasonable notice, the Grantor may do such work as may be needed to properly repair said thoroughfare, and the cost thereof shall be repaid to the Grantor by the Grantee.

Sec. 3 The Grantee in constructing and maintaining said gas distribution system, and in entering and using streets, highways, avenues, alleys and public places in the City of Harmony, Minnesota, and in laying and installing its mains, services, piping, and related appurtenances and equipment, shall not in any manner interfere with or injure any improvement which said City now has or may hereafter have upon any of its streets, alleys, highways or public places.

Sec. 4 Grantee agrees for and in behalf of itself, its lessees, successors and assigns, that for and during the term period of this grant, it will maintain in the City an adequate, modern, standard and sufficient gas system and equipment and to maintain and operate the same in a modern and adequate fashion.

Grantee will from time to time during the term of this Ordinance make such enlargements and extensions of its distribution system as the business of the Grantee and the growth of said City justify, in accordance with its Rules and Regulations relating to customer connections and main and service line extensions currently in effect and on file from time to time with the Minnesota Public

Service Commission or other competent authority having jurisdiction in the premises; provided, however, that no obligation shall extend to, or be binding upon Grantee, to construct or extend its mains or furnish natural gas or natural gas service within said City if Grantee is, for any reason, unable to obtain delivery of natural gas at or near the corporate limits of said City or an adequate supply thereof to warrant the construction or extension of its mains, for the furnishing of such natural gas or gas service; provided, further, that when the amount of natural gas supplied to Grantee at or near the City limits of said City is insufficient to meet the additional firm requirements of connected or new consumers, Grantee shall have the right to prescribe reasonable rules and regulations for allocating the available supply of natural gas for such additional firm requirements to residential, commercial and industrial consumers in that order of priority.

Sec. 5 Grantee agrees for and in behalf of itself, its lessees, successors and assigns, that all authority and rights in this Ordinance contained shall at all times be subject to all rights, power and authority now or hereafter possessed by the City of Harmony, Minnesota, to regulate the manner in which grantee shall use the streets, alleys, bridges and public places of said City and concerning the manner in which Grantee shall use and enjoy the franchise herein granted.

Sec. 6 Grantee shall, at all times, maintain an adequate pressure and adequate supply of clean, standard gas of the British Thermal Unit heating value of not less than that prescribed in its Rules and Regulations relating thereto in effect and on file from time to time with the Minnesota Public Service Commission or other competent authority having jurisdiction in the premises. Should the British Thermal Units fall below the limitation set forth in its appropriate Rules and Regulations, the rate then in effect shall be automatically and correspondingly lowered and reduced during any period or periods of time in which such lower British Thermal Unit value shall be furnished. The City shall have the privilege of requesting Grantee to furnish satisfactory proof of British Thermal Unit content of the gas.

Sec. 7 The Grantee shall hold the Grantor harmless from any and all claims and actions, litigations or damage arising out of the passage of this Ordinance or of the construction, erection, installation, maintenance or operation of its properties operated by authority of this Ordinance within the corporate limits of the City of Harmony, Minnesota, or the negligence of its employees in the operation thereof, including the Court costs and reasonable attorney fees in making defense against such claims. A copy of the process served upon the Grantor shall be served by the Grantor upon the Grantee. The Grantee shall have the right to defend in the name of the Grantor and to employ counsel for such purpose.

Sec. 8 If the Grantee shall be in default in the performance of any of the terms and conditions of this Ordinance and shall continue in default for more than thirty (30) days after receiving notice from the City of Harmony, Minnesota, such default, the said City may, by ordinance duly passed and adopted, terminate all rights granted under this Ordinance to the Grantee. The said notice of default shall specify the provision or provisions in the performance of which it is claimed the Grantee is in default. Said notice shall be in writing and served in the manner provided by the laws of the State of Minnesota for the service of original notices in civil actions.

Sec. 9 The right and authority herein granted shall be non- exclusive and shall be and continue for a period of twenty-five (25) years from and after the effective date of this Ordinance.

Sec. 10 Ordinance No. 68 of the City of Harmony, Minnesota, is hereby repealed as of the effective date thereof.

Sec. 11 This Ordinance shall be in full force and effect from and after its passage and publication as required by law, and the acceptance thereof by the Grantee.

If the Grantee does not within sixty (60) days following passage of this Ordinance express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, the Grantee shall be deemed to have accepted this Ordinance and the terms and conditions of the franchise contained therein.

Passed, adopted and approved this 14th day of May, 1984.