

Adopted: August 4, 2003
Effective: September 4, 2003

ORDINANCE NO. MC-1149

AN ORDINANCE OF THE CITY OF SAN BERNARDINO GRANTING TO SOUTHERN CALIFORNIA GAS COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS FOR ANY AND ALL PURPOSES UNDER, ALONG, ACROSS OR UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES, AS THE SAME NOW OR MAY HEREAFTER EXIST, WITHIN SAID MUNICIPALITY.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO DO ORDAIN AS FOLLOWS:

SECTION ONE

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean Southern California Gas Company, and its lawful successors or assigns;

(b) The word "City" shall mean the City of San Bernardino, a Charter City and a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated or reincorporated form;

(c) The word "streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within said City;

(d) The word "Engineer" shall mean the City Engineer;

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8 (e) The word "franchise" shall mean and include any authorization granted
9 hereunder in terms of a franchise, privilege, permit, license or otherwise to lay and use pipes
10 and appurtenances for transmitting and distributing gas for any and all purposes under, along,
11 across or upon the public streets, ways, alleys and places in the City as more fully set forth in
12 Section Two (a) below;

13 (f) The word "gas" shall mean natural or manufactured gas, or a mixture of
14 natural and manufactured gas;

15 (g) The phrase "pipes and appurtenances" shall mean pipe, pipeline, cable,
16 main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance,
17 attachment, adjunct communications line, appurtenance and any other property located or to
18 be located in, upon, along, across, under or over the streets of the City, and used or useful in,
19 or in carrying on the business of, transmitting and distributing gas; and

20 (h) The phrase "lay and use" shall mean to lay construct, erect, install,
21 operate, maintain, use, repair, replace, or remove.

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8 (i) The phrase "adjunct communications line" shall mean any facility such
9 as coaxial cable, optical fiber, wire or other transmission lines or forms of transmission, and
10 associated equipment and devices located in, upon, along, across, under or over the streets of
11 the City, the sole function of which is to monitor or control the operation or safety of the gas
12 system facilities via the distribution of video, audio, voice or data signals. An adjunct
13 communications line shall not include any facility which distributes, through any means, to
14 subscribers or persons other than grantee, the signal of one or more broadcast television or
15 radio stations or other sources of video, audio, voice or data signals for a length in excess of
16 1,000 feet.

17 SECTION TWO

18 (a) That the right, privilege and franchise, subject to each and all of the
19 terms and conditions contained in this ordinance, and pursuant to Chapter 14.04 (Sections
20 14.04.010 – 14.04.030) of the San Bernardino Municipal Code, is hereby granted to Grantee
21 to lay and use pipes and appurtenances for transmitting and distributing gas for any and all
22 purposes, under, along, across or upon the streets of the City. Any proposed
23 telecommunication or other non-gas system uses must be approved by the City under a
24 separate franchise or other applicable City permit.

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(b) The term or period of this franchise shall be twenty (20) years from and after the effective date hereof; that is to say, this franchise shall endure in full force and effect until the same shall, with the consent of the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by its possessor, or until the State of California or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of this franchise, and situated within the territorial limits of the State, municipal or public corporation purchasing or condemning such property, or until this franchise shall be forfeited for noncompliance with its terms by the possessor thereof.

(c) City shall have the right to terminate this Franchise by ordinance, at any time, should any of the following events occur: (i) the Grantee fails to comply with any material provision hereof or (ii) the City purchases (through its power of eminent domain or otherwise) all of the franchise property of Grantee. The Grantee shall be given thirty (30) days written notice prior to the beginning of any termination proceeding.

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SECTION THREE

(a) The Grantee shall pay to the City at the times hereinafter specified, in lawful money of the United States, a total annual Franchise Fee, initially calculated as of January 1, 2003, and paid in the following manner:

(i) Gross Receipts from the Sale of Gas. A fee that is equal to the higher of:

(A) Two percent (2%) of the gross annual receipts of the Grantee derived from the use, operation or possession of this franchise (Broughton Act Formula); or,

(B) 2% of the gross annual receipts of the Grantee derived from the sale, transmission, or distribution of gas within the limits of the City under this franchise.

(C) In the event the legislature amends the Franchise Act of 1937 (Public Utilities Code §6201-6302) or enacts any other state law which increases the franchise payment to cities to a level greater than that provided in this Section 3 (a), then the City shall have the option of prospectively employing the legislative formula, which shall apply for the remaining term of this agreement instead of the payments set forth in Section 3 (a) herein. If the City exercises said option, the legislative formula shall be prospectively applied hereto on the

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later of the effective date of the legislation or January 1 of the calendar year in which the City exercised said option.

(ii) The Municipal Public Lands Use Surcharge as provided by Public Utilities Code Sections 6354 and following, as may be amended from time to time.

(b) The Franchise Fee (as described in subsections (a)(i) and (a)(ii) above) shall be paid in four installments, each installment being equal to the total gross receipts of the preceding calendar quarter employing the gross receipts formula, plus the amount of the In Lieu Fee for the preceding calendar quarter. Each installment shall be paid to the City on or prior to the twenty-fifth (25th) day of the second month following the respective quarter for which payment is made, except for the final quarterly payment for the year, which shall be paid on or prior to March 31st. For example, the installment for the first quarter of the year (January through March) shall be paid to the City on May 25th. Any overpayment shall be recovered by Grantee by setoff against future installments, or, if the franchise has been terminated, such overpayment, or the balance thereof, shall be payable by City to Grantee upon written demand.

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SECTION FOUR

(a) Any notices shall be in writing and be delivered by courier service or by certified mail, return receipt requested, or by telecopy with a confirming copy mailed (first class mail) by the next business day, to the other party at the address shown below or at such other address as the party may designate by written notice delivered in the manner provided for herein:

City of San Bernardino
300 N. "D" Street
San Bernardino, CA 92418
Telecopy: (909) 384-5158
Telephone: (909) 384-5002

Attn: City Clerk

With a copy to City of San Bernardino
300 N. "D" Street
San Bernardino, CA 92418
Telecopy: (909) 384-5138
Telephone: (909) 384-5122

Attn: City Administrator

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9 Southern California Gas Company
10 555 West Fifth Street
11 Los Angeles, CA 90013-1011
12 P.O. Box 3249
13 Los Angeles, CA 90051-1249

14
15 Telecopy number: 213-244-8223
16 Confirmation number: 213-244-5701

17
18 Attn: Senior Vice President, Distribution Operations

19
20 and a copy to:

21
22 Southern California Gas Company
23 555 West Fifth Street
24 Los Angeles, CA 90013-1011
25 P.O. Box 3249
26 Los Angeles, CA 90051-1249

27
28 Telecopy number: 213-244-4997
Confirmation number: 213-244-2528

Attn: Fees and Tax Manager, Regional Public Affairs

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8 (b) This grant is made in lieu of all other franchises owned by the Grantee,
9 or by any successor of the Grantee to any rights under this franchise, for transmitting and
10 distributing gas within the limits of the City, as said limits now or may hereafter exist, and the
11 acceptance of the franchise hereby granted shall operate as an abandonment of all such
12 franchises within the limits of this City, as such limits now or may hereafter exist, in lieu of
13 which this franchise is granted. This grant also supersedes that certain Resolution 2003-37,
14 granting a revocable license to the Southern California Gas Company for its operations in the
15 City of San Bernardino, adopted at the Mayor and Common Council meeting of January 21,
16 2003 and the Revocable License between the parties executed pursuant to said Resolution.

17 (c) The Grantee of this franchise shall file with the Clerk of the City within
18 three (3) months after the expiration of the calendar year, or fractional calendar year,
19 following the date of the grant of this franchise, and within three (3) months after the
20 expiration of each and every calendar year thereafter, a duly verified statement showing in
21 detail the total gross receipts of the Grantee, its successors or assigns, during the preceding
22 calendar year, or such fractional calendar year, from the sale of the utility service within the
23 City for which this franchise is granted, and any other information needed to calculate the
24 Franchise Fee in SECTION THREE. Any neglect, omission or refusal by said Grantee to file
25 such verified statement, or to pay said Franchise Fee, at the times or in the manner
26 hereinbefore provided, shall be grounds for the declaration of a forfeiture of this franchise and
27 of all rights thereunder.
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8 SECTION FIVE

9 The franchise granted hereunder shall not become effective until written
10 acceptance thereof shall have been filed by the Grantee thereof with the Clerk of the City.
11 When so filed, such acceptance shall constitute a continuing agreement of the Grantee that if
12 and when the City shall thereafter annex or consolidate with additional territory, any and all
13 franchise rights and privileges owned by the Grantee therein shall likewise be deemed to be
14 abandoned within the limits of the additional territory.

15 SECTION SIX

16 The franchise granted hereunder shall not in any way or to any extent impair or
17 affect the right of the City to acquire the property of the Grantee hereof either by purchase or
18 through the exercise of the right of eminent domain, and nothing herein contained shall be
19 construed to contract away or to modify or to abridge, either for a term or in perpetuity, the
20 City's right of eminent domain in respect to the Grantee; nor shall this franchise ever be given
21 any value before any court or other public authority in any proceeding of any character in
22 excess of the cost to the Grantee of the necessary publication and any other sum paid by it to
23 the City therefor at the time of the acquisition thereof.

24 SECTION SEVEN

25 The Grantee of this franchise shall:

26 (a) construct, install and maintain all pipes and appurtenances in
27 accordance with and in conformity with all of the ordinances, rules and regulations heretofore,
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8 or hereafter adopted by the legislative body of this City in the exercise of its police powers

9 and not in conflict with the paramount authority of the State of California, and, as to State

10 highways, subject to the provisions of general laws relating to the location and maintenance of

11 such facilities;

12 (b) pay to the City, on demand, the cost of all repairs to public property
13 made necessary by any operations of the Grantee under this franchise;

14 (c) Grantee shall also be liable to the City for all damages proximately
15 resulting from the failure of Grantee to observe and perform the provisions of this Franchise.

16 This subsection (c) shall survive the termination or expiration of this Franchise and shall
17 continue for so long as the franchise property of Grantee is located within the City.

18 (d) Grantee shall indemnify, defend and hold harmless City and its officers
19 from any and all liability for damages proximately resulting from any operations under this
20 franchise; and be liable to the City for all damages proximately resulting from the failure of
21 said Grantee to well and faithfully observe and perform each and every provision of this
22 franchise and each and every provision of Division 3, Chapter 2 of the Public Utilities Code of
23 the State of California. Grantee acknowledges that any claims, demands, losses, damages,
24 costs, expenses, and legal liability that arise out of, result from, or are in any way connected
25 with the release or spill of any legally designated hazardous material or waste as a result of the
26 use or existence of the pipes and appurtenances that are the subject of this Franchise are
27 expressly within the scope of this indemnity, and that the costs, expenses, and legal liability
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8 for environmental investigations, monitoring, containment, abatement, removal, repair,
9 cleanup, restoration, remedial work, penalties, and fines arising from the violation of any
10 local, state, or federal law or regulation, attorney's fees, disbursements, and other response
11 costs are expressly within the scope of this indemnity. This subsection (d) shall survive the
12 termination or expiration of this Franchise and shall continue for so long as the franchise
13 property of Grantee is located within the City.

14 (e) In the event the use of any franchise property is discontinued, Grantee
15 shall promptly notify the Engineer of any material discontinuance and remove from the street
16 all such discontinued property, unless the Engineer permits such property to be abandoned in
17 place in accordance with the requirements of the Engineer (subject to applicable requirements
18 of the California Public Utilities Commission). After abandonment, at the option of City,
19 Grantee shall submit to the Engineer, an instrument, reasonably approved by the City and
20 Grantee, transferring to the City the ownership of such franchise property.

21 (f) City shall have the right to change the grade, width or location of any
22 street, or improve any street in any manner, including but not limited to the laying of any
23 sewer, storm drain, drainage facility, or other pipe, or construct and install any pedestrian
24 tunnel, traffic signal, street lighting facility or other public improvement; provided, however,
25 that nothing herein is intended to expand or limit the duty of Grantee to relocate at its expense
26 under Public Utilities Code Section 6297 or common law, and as such law may change from
27 time to time by judicial interpretation or by statutory enactment. If such work shall require a
28 change in the position or location of any of Grantee's facilities or equipment, Grantee, at its

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8 sole expense, within ninety (90) days after written notice from the Engineer, shall commence
9 the work of doing any and all things to effect such change in position or location in
10 conformity with the Engineer's written instructions.

11 (g) This franchise may not be transferred (voluntarily, involuntarily, or by
12 operation of law), leased, or assigned by Grantee except by consent in writing of the Common
13 Council, which shall not be unreasonably withheld or unreasonably conditioned and unless the
14 transferee or assignees thereof shall covenant and agree to perform and be bound by each and
15 all of the terms hereof; provided, however, that the foregoing shall not apply to Grantee's
16 inclusion of the franchise as security under a mortgage, deed of trust or other security
17 agreement securing the repayment of bonds or notes. Grantee shall file with the City Clerk
18 and City Administrator of the City within thirty (30) days after any sale, transfer, assignment,
19 or lease of this Franchise, or any part hereof, or of any of the rights or privileges granted
20 hereby, written evidence of the same, certified thereto by the Grantee or its duly authorized
21 officers.

22 SECTION EIGHT

23 The City Treasurer, or any certified public accountant, or qualified person
24 designated by the City, at any reasonable time during business hours, may make examination
25 at Grantee's offices of its books, accounts, computerized data, and records, germane to and for
26 the purpose of verifying the data set forth in the statement required by SECTION FOUR
27 hereof.
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8 SECTION NINE

9 (a) Any pipes and appurtenances laid, located or maintained under said
10 franchise shall be so placed as not to interfere with the use of the streets by the traveling
11 public or for public purposes to any greater extent than is reasonably necessary; and in laying
12 said pipes and appurtenances, Grantee shall fill the trench and leave the surface of the streets
13 in as good condition as it was prior to excavating for laying said pipes and appurtenances; and
14 any pipes and appurtenances laid or maintained under said franchise shall be laid, located and
15 maintained in conformity with instructions given by and to the satisfaction of the Engineer;
16 and Grantee, its successors and assigns, shall hold the City harmless from all damage resulting
17 from the laying, use or operation of said pipes and appurtenances.

18 (b) Where it is necessary to lay any underground pipes and appurtenances
19 through, under or across any portion of a paved or macadamized street, the same, where
20 practicable and economically reasonable, as determined by the Engineer, shall be done by a
21 tunnel or bore, so as not to disturb the foundation of such paved or macadamized street; and in
22 the event that the same cannot be so done, such work shall be done under a permit to be
23 granted by the Engineer upon application therefor, and Grantee shall restore such street, or
24 portion of street, to as good a condition as existed before such work was done and such
25 restoration shall be completed to the reasonable satisfaction of the Engineer.
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8 SECTION TEN

9 If any portion of any street shall be damaged by reason of defects in any of the
10 pipes and appurtenances maintained or constructed under this grant, or by reason of any other
11 cause arising from the operation or existence of any pipes and appurtenances constructed or
12 maintained under this grant, Grantee shall, at its own cost and expense, immediately repair
13 any such damage and restore such portion of such damaged street to as good condition as
14 existed before such defect or other cause of damage occurred, such work to be done under the
15 direction of the Engineer, and to his reasonable satisfaction.

16 SECTION ELEVEN

17 (a) If the Grantee of this franchise shall fail, neglect or refuse to comply
18 with any of the provisions or conditions hereof, and shall not, within ten (10) days after written
19 demand for compliance, begin the work of compliance, or after such beginning shall not
20 prosecute the same with due diligence to completion, then the City, by its legislative body, may
21 declare this franchise forfeited.

22 (b) The City may sue in its own name for the forfeiture of this franchise, in
23 the event of noncompliance by the Grantee, its successors or assigns, with any of the
24 conditions thereof. The remedy of forfeiture shall be in addition to any other legal rights,
25 remedies, or causes of action the City may have, including but not limited to, the right to
26 terminate under Section Two (c).
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8 **SECTION TWELVE**

9 The Grantee of this franchise shall pay to the City a sum of money sufficient to
10 reimburse it for all publication expenses incurred by it in connection with the granting of this
11 franchise; such payment to be made within thirty (30) days after the City shall furnish such
12 Grantee with a written statement of such expenses.

13 **SECTION THIRTEEN**

14 After the publication of this ordinance, the Grantee shall file with the City
15 Clerk a written acceptance of the franchise hereby granted, and an agreement to comply with
16 the terms and conditions hereof.

17 **SECTION FOURTEEN**

18 The City Clerk shall certify to the adoption of this ordinance and, within 15
19 days after its adoption, shall cause the same (with a list of the Council members voting for and
20 against) to be published once in The Sun or a newspaper of general circulation in the city of
21 San Bernardino.

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I HEREBY CERTIFY that the foregoing ordinance was duly adopted by the Mayor and Common Council of the City of San Bernardino at a joint regular meeting thereof, held on the 4th day of August, 2003, the following vote, to wit:

<u>COUNCIL MEMBERS:</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
ESTRADA	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
LONGVILLE	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
MCGINNIS	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
DERRY	<u> </u>	<u> </u>	<u>X</u>	<u> </u>
SUAREZ	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
ANDERSON	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
MCCAMMACK	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

Rachel G. Clark
Rachel G. Clark, City Clerk

The foregoing ordinance is hereby approved this 5th day of August, 2003.

Judith Valles
JUDITH VALLES, Mayor
City of San Bernardino

Approved as to
Form and legal content:

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By: James F. Penman