

LEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: County Executive			<div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">RECEIVED</div> <div style="font-size: 1.5em; font-weight: bold; margin-top: 10px;">APR 10 1996</div> <div style="font-weight: bold; margin-top: 10px;">WHATCOM COUNTY COUNCIL</div>	April 16	Full Council Introduction
Division Head:				5/14/96	Council
Dept. Head:					
Prosecutor:	Retw	4/5/96			
Purchasing/Budget:					
Executive: Pete Kremen	PK	4-9			

**SUBJECT:**

**Ordinance Granting a 25 Year Franchise to Cascade Natural Gas**

**ATTACHMENTS:**

Ordinance  
Letter of request

**SUMMARY STATEMENT:**

*Requesting Council introduction of this ordinance*

*Please complete sections of box as appropriate & explain the item below.*

Related County contract #:	Should Clerk schedule a hearing? NO / / YES /X / Requested date: May 14
Amount budgeted for this item/project:\$	Is it (or will it be) within budget? YES /X / NO / / (Please explain below)
Budget line item number(s):	

**ORIGINATOR'S RECOMMENDED ACTION:**

Council set a date for a public hearing.

**COMMITTEE ACTION TAKEN:**

**COUNCIL ACTION TAKEN:**

1996 - 158 4/16/96: Introduction  
5/14/96: Amended and adopted 7 - 0.

*nance or Resolution Number (this item only):*

096-19

1 SPONSORED BY: Consent

2 PROPOSED BY: Public Works

3 INTRODUCTION DATE: 4/16/96

1 ORDINANCE NO. 96-019

2 AN ORDINANCE IN THE MATTER OF GRANTING A NON-  
3 EXCLUSIVE FRANCHISE TO CASCADE NATURAL GAS  
4 CORPORATION FOR A PERIOD OF 25 YEARS PURSUANT TO  
5 STATE LAW AND SECTION 9.30 OF THE WHATCOM  
6 COUNTY HOME RULE CHARTER, TO OPERATE AND  
7 MAINTAIN A NATURAL GAS DISTRIBUTION LINE ALONG  
8 ROADS AND OTHER COUNTY PROPERTY WITHIN THE  
9 UNINCORPORATED AREAS OF WHATCOM COUNTY  
10

11 WHEREAS, the Home Rule Charter for Whatcom County authorizes the County  
12 Council to grant non-exclusive franchises for a fixed term not to exceed 25 years for the use of  
13 any street, road or public place; and

14 WHEREAS, R.C.W. Chapter 36.55 and Section 36.55.010 provides that the County  
15 Council may grant franchises to persons or private or municipal corporations to use that right-  
16 of-way of County roads in their respective counties for the construction and maintenance of  
17 water works, gas pipes, telephones, telegraph and electrical light lines, sewers and other such  
18 facilities and including cable television wires and other cable television facilities; and

19 WHEREAS, Cascade Natural Gas Corporation has applied for a 25-year nonexclusive  
20 franchise for installation, operation, maintenance and repair of natural gas distribution lines in  
21 and along certain roads in Whatcom County, Washington, and notice of this hearing having  
22 been duly published on the 27 day of April 1996, in the Bellingham Herald, and 6 day  
23 of May, 1996, in the Bellingham Herald, the official newspaper for Whatcom County, and  
24 that it appearing to the County Council that notice of said hearing having been given as  
25 required by law and that it is in the public interest to grant the franchise for a period of 25  
26 years; and  
27

28 WHEREAS, Cascade Natural Gas Corporation has agreed to the addition of certain  
29 administrative provisions to the franchise as provided herein; and

30 WHEREAS, Cascade Natural Gas Corporation has requested consolidation of twelve  
31 (12) existing franchise agreements into one non-exclusive franchise agreement;

1           NOW, THEREFORE, BE IT ORDAINED by the Council of Whatcom County,  
2 Washington:

3           Section 1. Franchise Granted.

4           (a) A non-exclusive franchise for Cascade Natural Gas Corporation, located in the  
5 County of Whatcom, its successors and assignees, referred to as the grantee, is hereby granted  
6 for a period of 25 years, the non-exclusive rights and privilege to construct, erect, operate,  
7 maintain, and repair Natural Gas Distribution Lines and all necessary appurtenances in, along  
8 and across county roads or portions thereof as named herein.

9           (b) The rights and privileges granted herein shall apply to all roads and public ways  
10 and county property in Whatcom County, Washington.

11           Section 2. Acceptance of Franchise.

12           (a) No franchise hereunder shall become effective for any purpose unless and until  
13 written acceptance therefore shall have been filed with the Whatcom County Council and the  
14 Director of Public Works and such written acceptance shall be in form and substance as shall  
15 be prescribed and approved by the County Prosecuting Attorney and operate as an acceptance  
16 of each and every term and condition and limitation contained in this ordinance, and in such  
17 franchise;

18           (b) Such written acceptance shall be filed by Grantee not later than the thirtieth day  
19 following the effective date of the ordinance granting such franchise; and in default of the  
20 filing of such acceptance as herein required, Grantee shall be deemed to have rejected the  
21 same.

22           Section 3. Entering Rights of Way.

23           The Grantee, its successors and assignees, shall have the right and authority to enter  
24 upon the above-mentioned county roads, rights-of-way and other county property as designated  
25 hereinbefore, for the purposes of constructing, operating, maintaining and repairing Natural  
26 Gas Distribution lines and facilities and operating and maintaining such lines and facilities.

27           Section 4. Construction Standards.

28           All construction and installation work along and under county roads or rights-of-way or  
29 other County property outside the corporate limits of any incorporated town shall be subject to

1 the approval and pass the inspection of the Director of Public Works or designee and shall  
2 conform to all applicable County and State codes or regulations, and the County expressly  
3 reserves the right to prescribe how and where gas distribution lines shall be installed and may  
4 from time to time, upon reasonable notice, require the removal and replacement thereof in the  
5 public interest, at the expense of the franchise holder.

6  
7 Section 5. Maintenance and Restoration

8 (a) Restoration. In case of disturbance of any road, public way, paved area or public  
9 improvement, the Grantee shall, at its own cost and expense and in accordance with the  
10 requirements of local law, restore such road, public way, paved area or public improvement to  
11 substantially the same condition as existed before the work involving such disturbance took  
12 place.

13 (b) Maintenance. The Grantee shall maintain all above ground improvements that it  
14 places on County right-of-way pursuant to this franchise. In order to avoid interference with  
15 the County's ability to maintain the right-of-way, the Grantee shall provide a clear zone of five  
16 (5) feet on all sides of such improvements.

17 If the Grantee fails to comply with this provision, and by its failure, property is  
18 damaged, then the Grantee shall be responsible for all damages caused thereby.

19 (c) Disputes. In any dispute over the adequacy of restoration or maintenance relative to  
20 this Section, final determination shall be the prerogative of the Public Works Department of  
21 Whatcom County.

22 Section 6. Construction Application.

23 (a) Prior to commencement of construction of said natural gas distribution lines,  
24 Grantee shall first file with the Director of Public Works its application for permit to do such  
25 work, together with plans and specifications in duplicate showing the position and location of  
26 all such lines and facilities sought to be constructed, laid, installed or erected at that time,  
27 showing their relative position to existing county roads, rights-of-way or other county property  
28 upon plans drawn to scale, hereinafter collectively referred to as the "map of definite  
29 location."

30 (b) The gas lines and appurtenant facilities shall be laid in exact conformity with said  
31 map of definite location, except in instances in which deviation may be allowed thereafter in

1 writing by the Director of Public Works pursuant to application by Grantee. The plans and  
2 specifications shall specify the class and type of material and equipment to be used, manner of  
3 excavation, construction, installation, backfill, erection of temporary structures, erection of  
4 permanent structures, traffic control, traffic turn-outs and road obstruction, etc. No such  
5 construction shall be commenced without the Grantee first securing a written permit from the  
6 Director of Public Works, including approval endorsed on one set of plans and specifications  
7 returned to the Grantee. All such work shall be subject to the approval of and shall pass the  
8 inspection of the Director of Public Works or designee. The Grantee shall pay all actual and  
9 necessary costs of and expenses incurred in the examination, inspection and approval of such  
10 work on account of granting said permits.

11 Section 7. Construction on Roadways/Other County Property.

12 (a) In any work which requires breaking of soil of the county roads, rights-of-way or  
13 other county property subject to this franchise for the purpose of laying, relaying, connecting,  
14 disconnecting and repairing the said transmission lines and facilities, and making connections  
15 between the same to structures and buildings of consumers or making connections to other  
16 facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be  
17 governed by and conform to the general rules adopted by the officers charged with the  
18 supervision and care of such county roads, rights-of-way, and other county property; and the  
19 Grantee at its own expense and with all convenient speed shall complete the work for which  
20 the soil has been broken and forthwith replace the work and make good the county road,  
21 rights-of-way or other county property and leave the same in as good condition as before the  
22 work was commenced.

23 (b) Applications for permits referred to in Section 5 above shall be accompanied by  
24 specifications for the restoration of the county road, rights-of-way or other county property  
25 and to the same condition it was prior to such breaking, and such specifications must be  
26 approved by the Director of Public Works before such breaking of the soil is commenced.  
27 Provided, that the Director of Public Works may require a performance bond in the sum  
28 sufficient to guarantee that such county roads, rights-of-way or other county property shall be  
29 restored to the same condition as they were prior to the breaking of the soil. Said bond shall  
30 be in addition to any other such requirements contained herein.

31 © The Director of Public Works may at any time order, or have done, any and all  
32 work that it considers necessary to restore to a safe condition any such county road, rights-of-  
33 way or other county property left by the Grantee or his agents in a condition dangerous to life  
34 or property, and the Grantee upon demand shall pay the County all costs of such work.

1            8. Construction - Other Lines and Facilities.

2            (a) All construction or installation of such gas lines or distribution systems, service,  
3 repair or relocation of same, performed above, along or within the county rights-of-way or  
4 other county property subject to this franchise shall be done in such a manner as not to  
5 interfere with the construction and maintenance of other utilities' lines, public or private,  
6 drains, drainage ditches and structure, irrigation ditches and structures located therein, nor  
7 with the grading or improvement of such county roads, rights-of-way or other county  
8 property.

9            (b) The owners of all utilities, public or private, installed prior in time to the line and  
10 facilities of the Grantee shall have preference as to the positioning and location of such utilities  
11 so installed with respect to the Grantee. Such preference shall continue in the event of the  
12 necessity of relocating or changing the grade of any such county road or right-of-way. A  
13 relocating utility shall not necessitate the relocation of another utility that otherwise would not  
14 require relocation.

15            Section 9. Construction - Public Safety and Inconvenience.

16            All work done under this franchise shall be done in a thorough and workmanlike  
17 manner. In the laying of transmission lines and the construction of rights-of-way or other  
18 county property, the Grantee shall leave such trenches, ditches and tunnels in such a way as to  
19 interfere as little as possible with public travel and shall take all due and necessary precautions  
20 to guard the same, so that damage or injury shall not occur or arise by reason of such work;  
21 and where any of such trenches, ditches, or tunnels are left open at night, the Grantee shall  
22 place warning lights and barricades at such a position as to give adequate warning of such  
23 work. The Grantee shall be liable for any injury to person or persons or damage to property  
24 sustained through its carelessness or neglect, or through any failure or neglect to properly  
25 guard or give warning of any trenches, ditches or tunnels dug or maintained by the Grantee.

26            Section 10. County Rights Reserved.

27            The County of Whatcom in granting this franchise, does not waive any rights which it  
28 has now or may hereafter acquire with respect to county roads, rights-of-way or other county  
29 property and this franchise shall not be construed to deprive the County of any powers, rights  
30 or privileges which it now has or may hereafter acquire to regulate the use of and to control  
31 the county roads, rights-of-way or other County property covered by this franchise. This  
32 franchise shall be subject to the power of eminent domain, and in any proceeding under  
33 eminent domain, the franchise itself shall have no value.

1                   Section 11. Relocation of Lines and Facilities.

2                   (a) If at any time the County of Whatcom shall improve or change any county road,  
3 right-of-way or other county property subject to this franchise by grading or regrading,  
4 planking or paving the same, changing the grade, altering, changing, repairing or relocating  
5 the same or by constructing drainage facilities, or in the event that such county road, right-of-  
6 of way or other county property subject to this franchise shall become a Primary State  
7 Highway as provided by law, the Grantee upon written notice from the Director of Public  
8 Works or the Director of Highways, shall at its sole expense, immediately change the location  
9 or readjust the elevation of its transmission lines and other facilities so that the same shall not  
10 interfere with such County work and so that such lines and facilities shall conform to such new  
11 grades or routes as may be established. The County of Whatcom shall in no way be held  
12 liable for any damage to said Grantee that may occur by reason of any of the County's  
13 improvements, changes or works above enumerated.

14                   (b) All work to be performed by the Grantee under this section shall be under the  
15 direction and approval, and shall pass the inspection of the Director of Public Works or  
16 designee. The Grantee shall pay all actual and necessary costs and expenses incurred in the  
17 examination, inspection and approval of such work.

18                   Section 12. County Road Work Permitted.

19                   The laying, construction, operation and maintenance of the Grantee's transmission lines  
20 and facilities authorized by this franchise shall not preclude the County of Whatcom, its agents  
21 or its contractors from blasting, grading, excavating or doing other necessary road work  
22 contiguous to the said lines and facilities of the Grantee provided that the Grantee shall be  
23 given forty-eight (48) hours notice of said blasting or other work in order that the Grantee may  
24 protect its lines and facilities.

25                   Section 13. Monuments and Survey Markers.

26                   (a) Before any work is performed under this franchise which may affect any existing  
27 monuments or markers of any nature relating to subdivisions, plats, roads and all other  
28 surveys, the Grantee shall reference all such monuments and markers. The reference points  
29 shall be so located that they will not be disturbed during the Grantee's operations under this  
30 franchise. The method of referencing these monuments or other points to be referenced shall  
31 be approved by the Director of Public Works. The replacement of all such monuments or  
32 other points to be referenced shall be approved by the Director of Public Works. The  
33 replacement of all such monuments or markers disturbed during construction shall be made as

1 expeditiously as conditions permit, and as directed by the Director of Public Works. The cost  
2 of monuments or other markers lost, destroyed or disturbed, and the expense of replacement  
3 by approved monuments shall be borne by the Grantee.

4 (b) A complete set of reference notes for monuments and other ties shall be filed with  
5 the Whatcom County Director of Public Works.

6 Section 14. Vacations.

7 If at any time the County of Whatcom shall vacate any county road, right-of-way or  
8 other county property which is subject to the rights granted by this franchise and said vacation  
9 shall be for the purpose of acquiring the fee of other property interest in said road, rights-of-  
10 way or other county property for the use of Whatcom County, in either its propriety or  
11 governmental capacity, then the Council of Whatcom County may at its option and by giving  
12 thirty (30) days written notice to the Grantee, terminate this franchise with reference to such  
13 county road, right-of-way or other county property so vacated, and the County of Whatcom  
14 shall not be liable for any damages or loss to the Grantee by reason of such termination. Prior  
15 to vacation, Grantee shall be granted a minimum of a ten (10) foot wide permanent easement  
16 for any existing utility line.

17 Section 15. Indemnification.

18 (a) The Grantee by acceptance of the privileges granted hereunder, does hereby agree  
19 and covenant to indemnify, defend, and save harmless Whatcom County and those persons  
20 who were, are now, or shall be duly elected or appointed officials or members or employees  
21 thereof, against and from any loss, damage, costs, charges, expenses, liability, claims,  
22 demands or judgments whatsoever kind or nature whether to persons or property, arising  
23 wholly or partially out of any act, action, neglect, omissions or default on the part of the  
24 Grantee, his sub-contractors and/or employees which may occur by reason of construction,  
25 operation and maintenance of the Grantee's said distribution lines and facilities. In case that  
26 suit or action is brought against the County of Whatcom for damages arising out of or by  
27 reason of the above-mentioned causes, the Grantee will upon notice of the filing of a claim or  
28 the commencement of said action, appear and defend the same at its sole cost and expense, and  
29 in case judgment shall be rendered against the County of Whatcom in suit or action, the  
30 Grantee will fully satisfy said judgment within ninety (90) days after said suit or action shall  
31 have finally been determined, if determined adversely to Whatcom County. Upon the  
32 Grantee's failure to satisfy said judgment within a ninety (90) day period, this franchise shall  
33 at once cease and terminate and the County of Whatcom shall have a lien upon the distribution  
34 lines and all other facilities used in its construction, operation and maintenance of the

1 Grantee's transmission system which may be enforced against the property for the full amount  
2 of any such judgment so taken against Whatcom County.

3 (b) Acceptance by the County of any work performed by the Grantee at the time of  
4 completion shall not be grounds for avoidance of this covenant.

5 Section 16. Non-Exclusive Franchise.

6 This franchise shall not be deemed to be an exclusive franchise. It shall in no manner  
7 prohibit the County of Whatcom from granting other franchises of a like nature or franchises  
8 for other public or private utilities under, along, across, over and upon any of the county  
9 roads, rights-of-way, or other County property subject to franchise, and shall in no way  
10 prevent or prohibit the County of Whatcom from construction, altering, maintaining, using or  
11 vacating any of said roads, rights-of-way, drainage structures or facilities, irrigation structure  
12 or facilities, or any other County property or affect its jurisdiction over them with full power  
13 to make all necessary changes, relocations, repairs, maintenance as the County may deem fit.

14 Section 17. Successors and Assignees.

15 All the provisions, conditions, regulations and requirements herein contained shall be  
16 binding upon the successors and assignees of the Grantee, and all privileges, as well as all  
17 obligations and liabilities of the Grantee shall inure to its successors and assignees equally as if  
18 they were specifically mentioned wherever the Grantee is mentioned herein.

19 Section 18. Transferability.

20 Neither this franchise nor any interest therein shall be sold, transferred or assigned  
21 without the previous consent in writing of the Council of Whatcom County, such consent not  
22 be unreasonably withheld.

23 Section 19. Incorporation.

24 Whenever any of the county roads, rights-of-way or other county property as  
25 designated in this franchise, by reason of the subsequent incorporation of any town or city, or  
26 extension of the limits of any town or city shall fall within the city or town limits this franchise  
27 shall continue in force and affect as to all county roads, rights-of-way or other county property  
28 not so included in city or town limits.

1           Section 20. Enforcement/Remedies.

2           If the Grantee shall willfully violate, or fail to comply with any of the provisions of this  
3 franchise through willful or unreasonable neglect, or fail to heed or comply with any notice  
4 given the Grantee under the provisions of this franchise, then the said Grantee shall forfeit all  
5 rights conferred hereunder, and this franchise may be revoked or annulled by the Council of  
6 Whatcom County. In addition to any rights implied or set out elsewhere in this ordinance, the  
7 Council reserves the right to require the Grantee to specifically comply with the terms and  
8 conditions of the franchise ordinance, and this franchise may be terminated at any time if the  
9 Grantee's lines and facilities are not operated or maintained in accordance with such statute,  
10 order or regulation.

11           Section 21. Reservation of Home Rule Charter Rights.

12           This franchise is subject to the provisions of the Home Rule Charter for Whatcom  
13 County and, in particular, Section 9.30 thereof which provides as follows: All franchises  
14 granted by the County Council shall be for a fixed term not to exceed twenty-five (25) years  
15 and no exclusive franchise shall be granted for the use of any street, road, or public place. All  
16 franchises shall be subject to the power of eminent domain and the right of the Council or the  
17 people acting for themselves through the initiative or referendum to repeal, amend or modify  
18 the franchise in the interest of the public; and every ordinance granting a franchise shall  
19 contain a reservation of these rights. In any proceeding under eminent domain the franchise  
20 itself shall have no value.

21           Section 22. Compliance with Laws and Regulations.

22           This franchise is subject to, and the Grantee shall comply with all applicable Federal,  
23 State, County or municipal laws, regulations and policies affecting performance under this  
24 franchise.

25           Section 23. Insurance.

26           (a) Upon acceptance of such franchise, the Grantee shall file with the Whatcom County  
27 Council, and shall thereafter, during the entire term of such franchise, maintain in full force  
28 and effect, a corporate insurance policy or other adequate surety agreement in the amount of  
29 THREE MILLION DOLLARS (\$3,000,000.00) for the property damage coverage, and ONE  
30 MILLION DOLLARS (\$1,000,000.00) for public liability coverage, so as to protect the  
31 County against damages or costs as set forth in Section 15 above, and there shall be  
32 recoverable, jointly and separately from the principal and surety, any such damages or costs  
33 suffered or incurred by the County, including attorneys' fees and costs of any action, or

1 proceedings, and including the full amount of any compensation, indemnification, cost of  
2 removal of any property or other costs which may be incurred up to the full principal amount  
3 of such insurance policy; and said condition shall be a continuing obligation during the entire  
4 term of such franchise and thereafter until Grantee shall have satisfied in full any and all  
5 obligations to the County and any user which arise out of or pertain to said franchise. Neither  
6 the provisions of this section, nor any insurance policy accepted by the County pursuant  
7 hereto, nor any damages recovered by the County thereunder, shall be construed to excuse  
8 faithful performance by the Grantee, or limit the liability of the Grantee under any franchise  
9 issued pursuant to this ordinance.

10 (b) The County reserves the right to have its legislative body review the dollar amount  
11 of said insurance policy and adjust the amount of coverage as deemed appropriate upon an  
12 annual basis.

13 Section 24. License, Tax and Other Charges.

14 No privileges or rights granted hereunder shall exempt Grantee from any future  
15 uniform rent, license, tax charge or impost which may hereafter be required by the Grantor,  
16 for revenue or as reimbursement for use and occupancy of public ways, and failure to timely  
17 remit any sums properly due thereby, shall be cause for forfeiture of rights hereunder.

18 Section 25. Severability.

19 If any portion of the ordinance is deemed invalid the remainder will remain in effect.

20 Section 26. Titles.

21 The section titles used herein are for reference only and should not be used for the  
22 purpose of interpreting this ordinance.

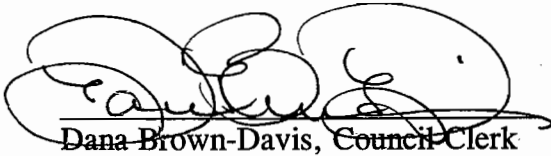
1            Section 27. Previous Franchises.

2            As a result of this franchise, all previously granted franchises by and between  
3            Whatcom County and Cascade Natural Gas Corporation shall be considered null and void.

4            ADOPTED this   14   day of   May  , 199  6  .

5            ATTEST :

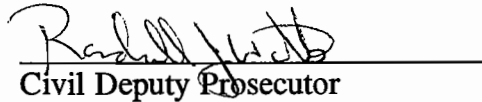
6            WHATCOM COUNTY COUNCIL  
              WHATCOM COUNTY, WASHINGTON

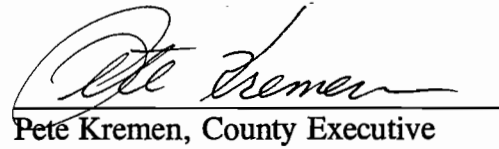
7              
8            Dana Brown-Davis, Council Clerk

  
              Ward Nelson, Council Chair,

9            APPROVED AS TO FORM:

( ) Approved ( ) Denied

10              
11            Civil Deputy Prosecutor

  
              Pete Kremen, County Executive

Date:   5-17-96