

ORDINANCE NO. 381

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, THE RIGHT, PRIVILEGE AND AUTHORITY AND NON-EXCLUSIVE FRANCHISE TO SET, ERECT, CONSTRUCT, SUPPORT, ATTACH, CONNECT AND STRETCH FACILITIES BETWEEN, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY AND NATURAL GAS FOR POWER, HEAT, LIGHT AND ANY OTHER PURPOSE FOR WHICH ELECTRICAL ENERGY AND NATURAL GAS MAY BE USED.

WHEREAS, RCW 35A.11.020 grants the City authority to regulate the use of the public right-of-way; and

WHEREAS, RCW 35.47.040 authorizes the City to “grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for...poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy,...for gas...”, and

WHEREAS, Puget Sound Energy has requested a franchise for purposes of transmission, distribution, and sale of electrical energy and natural gas for power, heat, light, and any other purpose for which electrical energy and natural gas may be used, and

WHEREAS, the City Council adopted Ordinance No. 42, granting an extension of the King County franchises under the same terms and conditions as Washington Natural Gas and Puget Power and Light Company, now collectively known as Puget Sound Energy, and

WHEREAS, the franchise agreements with Puget Sound Energy expired on April 1, 1998, and the City granted an extension of the franchise agreements with Puget Sound Energy while the City developed a Master Right-of-Way ordinance establishing uniform policies and regulations related to the management of public rights-of-way within the City, and

WHEREAS, the City of Woodinville and Puget Sound Energy have negotiated a mutually acceptable franchise agreement, and

WHEREAS, Puget’s natural gas facilities within Woodinville are comprised plastic and coated steel pipe and the steel pipe has a protective coating and is further protected from corrosion by cathodic protection, and

WHEREAS, Puget has reported that there is no ‘bare steel’ pipe in Woodinville, and

WHEREAS, Puget has inspected its natural gas system in Woodinville and concluded that all the cathodic protection systems protecting steel pipe in Woodinville were and are properly configured, and

WHEREAS, the City can not regulate costs of under-grounding electrical power lines, as that power is reserved to the Washington Utilities and Transportation Commission among state approved tariff schedules, and

WHEREAS, the City Council finds that it is in the best interest of the health, safety and welfare of residents of Woodinville to grant a non-exclusive franchise to Puget Sound Energy for the operation of electric distribution, electric transmission, and natural gas distribution systems within the City right-of-way;

NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Definitions

Where used in this franchise (the "Franchise") the following terms shall mean:

- 1.1 "Puget" means Puget Sound Energy, Inc., a Washington corporation, and its respective successors and assigns.
- 1.2 "City" means the City of Woodinville, a municipal corporation of the State of Washington, and its respective successors and assigns. Specifically, the City includes all areas incorporated therein as of the effective date of this Ordinance and any other areas later added thereto by annexation or other means.
- 1.3 "Days" means calendar days.
- 1.4 "Franchise" means the grant of rights, privileges and authority embodied in this Ordinance.
- 1.5 "Franchise Area" means all public rights-of-way including the surface of and space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway and drive within the City as now and as may hereafter be laid out, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be hereafter extended; and all City owned easements used for such rights-of-way and/or dedicated for the placement and location of utilities, provided such easements would allow Puget to fully exercise the rights granted under this Franchise within the area covered by such easements.
- 1.6 "Facilities" means collectively, any and all:
 - 1.6.1 natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures, and communications systems and all necessary facilities and appurtenances thereto, whether the same be located over or under ground;
 - 1.6.2 electrical transmission and distribution systems, including but not limited to poles (with or without cross arms), including Puget-owned street lighting poles and luminaires, wires, lines, conduits, cables, communication and signal lines, braces, guys, anchors, switches, transformers, ducts, vaults and all necessary facilities and appurtenances thereto, whether the same be located over or under ground.
- 1.7 "Ordinance" means this Ordinance No. 381, which sets forth the terms and conditions of this Franchise.
- 1.8 "Permitting Authority" means the head of the City department authorized to process and grant permits required to perform work in the Franchise Area, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise

indicated, all references to Permitting Authority shall include the designee of the department or agency head.

- 1.9 "Public Works Director" means the head of the Public Works Department of his or her designee.
- 1.10 "Tariff" means "tariff" as that term is defined in WAC 480-80-030(3), or such similar definition describing rate schedules, rules and regulations relating to charges and service as may hereinafter be adopted by the regulatory authority with jurisdiction, under the laws of the State of Washington, over public service companies.
- 1.11 "WUTC" means the Washington Utilities and Transportation Commission or such successor regulatory agency having jurisdiction over public service companies.

Section 2. Facilities within the Franchise Area

- 2.1 Pursuant to RCW 35A.47.040, the City hereby grants to Puget the right, privilege, authority and franchise subject to the terms and conditions hereinafter set forth, to install, construct, operate, maintain, repair, replace, and use Facilities for electric distribution, electric transmission and natural gas distribution systems, in, under, on across, over, through, along or below the Franchise Area, for the transmission, distribution and sale of electrical energy and natural gas power, heat and light, and any other purposes for which electrical energy and natural gas may be used, as approved under City permits issued by the Permitting Authority pursuant to this Franchise and City ordinances.
- 2.2 This Franchise specifically does not authorize Puget to install or use Facilities to provide telecommunications, cable television, point-to-point data communications, or similar services either via wire or wireless technologies regardless of whether these services are provided to any person outside Puget's organization. This section does not restrict Puget's ability to utilize telemetric devices to monitor and operate its electric distribution, electric transmission and natural gas distribution systems or to monitor and control the usage of electrical energy and/or natural gas.
- 2.3 Puget acknowledges the City's desire and intent that City rights-of-way be free of encumbrance by rights held by others, including Puget, and that the City requires that rights-of-way dedicated by property owners to the City be free of such encumbrances. All rights-of-way so dedicated during the term of this Franchise shall be Franchise Area and Facilities thereafter installed by Puget therein shall be subject to the terms and conditions of this Franchise.
- 2.4 In the event Puget has within the Franchise Area an prior existing easement or other right not derived from this Franchise or from a prior franchise granted by the City, and Puget desires to install Facilities within and using such prior right, then Puget will provide notice of same to the City prior to such installation. The City may request that Puget instead install its Facilities within the Franchise Area pursuant to rights granted by this Franchise. Puget will consider the facts and conditions that bear upon such request and will respond to the City, including meeting with the City to discuss such request, prior to installation of Puget's Facilities. When reasonably determined by

Puget to be consistent with prudent utility practice, Puget will install its Facilities as so requested by the City.

Section 3. Nonexclusive Franchise

This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any portion of the Franchise Area. Such Franchise shall in no way prevent or prohibit the City from using any portion of the Franchise Area or other City property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make necessary changes, relocations, repairs, maintenance, establishment, and improvement of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of new rights-of-way or other public properties of every type and description.

Section 4. Term of Franchise/Acceptance

This Franchise is and shall remain in full force and effect for a period of fifteen (15) years from the effective date of the Ordinance. This Franchise is granted upon the express condition that Puget, within sixty (60) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same, and when so accepted by Puget, shall constitute a contract between the City and Puget for all the purposes herein set forth. If Puget fails to provide its written acceptance as provided above, this Ordinance and Franchise shall be null and void.

Section 5. Non-Franchise Area City Property

- 5.1 This Franchise shall not convey any right to Puget to install Facilities on or to otherwise use City-owned or leased properties outside the Franchise Area.
- 5.2 Existing Facilities installed or maintained by Puget on public grounds and places within the City in accordance with prior franchise agreements, but which are not within the Franchise Area as defined by this Franchise, may be maintained, operated, repaired and/or replaced in like kind by Puget at the location where such Facilities exist as of the effective date of this Franchise for the term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to applicable ordinances, codes, resolutions, standards, and procedures.

Section 6. Compliance with State and Local Regulations

- 6.1 Puget shall comply with all federal, state, and local laws or regulations applicable to the exercise of Puget's rights and obligations under this Franchise. Upon written inquiry, Puget shall provide a specific reference to either the federal, state, or local law or the WUTC order or action establishing a basis for Puget's actions related to the exercise of such rights and obligations.
- 6.2 In granting this Franchise the City hereby reserves all lawful powers and franchise authority available to it under its general police authority; provided, however, such authority shall be exercised in a manner consistent with and so as not to impair the rights, privileges, authority and franchise conferred to Puget by this Franchise.

Section 7. Noninterference of Facilities

- 7.1 Puget's Facilities shall be located and maintained, within the Franchise Area so as not to interfere with the free and safe passage of pedestrian and/or vehicle traffic therein or with the reasonable ingress or egress to properties abutting thereto. Puget's Facilities shall be maintained in accordance with the laws of the State of Washington, Woodinville Municipal Code, and applicable regulations and standards of the City.
- 7.2 In the event that the Public Works Director reasonably determines, after providing written notice to Puget and a reasonable opportunity for Puget to respond to the Public Works Director's concerns, that any one or more of Puget's Facilities within the Franchise Area interfere with the free and safe passage of pedestrian and vehicular traffic therein or with the reasonable ingress or egress to properties abutting thereto, then Puget shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall fully cooperate with Puget, including, without limitation, allowing changes to or modifications of the Franchise Area (and other City property), at Puget's expense, if such changes or modifications provide the most effective or economical means of eliminating such interference.
- 7.3 In the event such interference requires relocation of Puget's Facilities within the Franchise Area, such relocation shall be accomplished in accordance with Section 13 below (any such interference resulting from new development ingress or egress to properties abutting the Franchise Area in proximity to Puget's Facilities existing within the Franchise Area prior to the development shall be subject to Section 13.6).

Section 8. Dangerous Conditions, Authority for the City to Abate

- 8.1 In the event that Puget's Facilities or operations cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the Franchise Area or public or private property adjacent thereto, the Public Works Director may direct Puget, at no charge or expense to the City, to promptly take such action as may be reasonably necessary to resolve such condition to eliminate such endangerment. Such directive may include compliance within a prescribed period of time.
- 8.2 In the event PSE fails to promptly take action as directed by the City pursuant to Section 8.1, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take actions as it reasonably believes are necessary with respect to Puget's Facilities or operations to protect persons or property and in such event Puget shall be responsible to reimburse the City for its costs incurred in so doing. With respect to Puget's gas facilities, the City's authority to act upon Puget's Facilities hereunder is specifically limited to actions, taken by trained emergency response personnel, to stop the flow of natural gas actively contributing to a dangerous condition by closing the natural gas supply valve at a meter or appliance.

Section 9. Permit Required

- 9.1 Whenever Puget excavates in the Franchise Area for purposes of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with all ordinances and regulations of the City. In

no case shall any such work commence within the Franchise Area without a permit, except as otherwise provided in this Franchise.

- 9.2 Puget shall at all times post and maintain proper barricades and comply with all applicable safety regulations during any period of construction or maintenance activities within the right-of-way as required by City or state regulations, including RCW 39.04.180, for the construction of trench safety systems.
- 9.3 In the event of any emergency where any Facility located in the Franchise Area are broken or damaged, or if Puget's work area within the Franchise Area is in such a condition as to endanger any person or property, Puget shall immediately take any necessary emergency measures to repair or remove its Facilities or otherwise make its work area safe without first applying for and obtaining a permit as required by Section 9.1. This provision shall not relieve Puget from later obtaining any necessary permit for the emergency work. Puget shall apply for the required permit the next business day following the emergency work or, in the case of an extended state of emergency, as soon thereafter as practical.

Section 10. Restoration

- 10.1 Puget shall, after any installation, construction, relocation, maintenance, or repair of Facilities within the Franchise Area, promptly restore the Franchise Area to at least the same condition as existed immediately prior to any such installation, construction, relocation, maintenance or repair in accordance with City standards at its sole cost and expense. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and City standards and specifications. The Public Works Director shall have final approval of the condition of the Franchise Area after restoration.
- 10.2 If it is determined that Puget has failed to restore the Franchise Area in accordance with Section 10, the City shall provide Puget with written notice including a description of actions the City reasonably believes necessary to restore the Franchise Area. If the Franchise Area is not restored in accordance with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the Franchise Area. PSE shall be responsible for all costs and expenses incurred by the City in restoring the Franchise Area in accordance with this section. The remedy granted to the City under this section shall be in addition to those otherwise provided by this Franchise.
- 10.3 All work by Puget pursuant to this Section 10 shall be performed in accordance with the permit issued by the City, together with the laws of the State of Washington, Woodinville Municipal Code and applicable regulations and standards of the City as the same now exists or as may be hereafter amended or superseded.

Section 11. Bonding Requirement

- 11.1 Before undertaking any of the work authorized by this Franchise, Puget shall furnish a bond executed by Puget and a corporate surety authorized to do surety business in the State of Washington, in a sum to be set and approved by the Public Works Director as reasonably sufficient to ensure performance of Puget's obligations under this Franchise. The bond shall be conditioned so that Puget shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this

Franchise, and to restore or replace any defective work or materials discovered in the restoration of the Franchise Area within a period of two (2) years from the final City inspection date of any such restoration. Puget may meet the obligations of this section with one (1) or more bonds acceptable to the City. In the event that a bond furnished pursuant to this section is canceled by the surety, after proper notice and pursuant to the terms of said bond, Puget shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this section.

- 11.2 With respect to undertaking any of the work authorized by this Franchise, in the event Puget fails to perform its obligations under this Franchise and further fails to cure its deficiency within a reasonable period of time after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by Puget pursuant to Section 11.1 to cure such deficiency. Neither the amount of such bond(s) nor the City's use thereof shall limit the City's full recovery from Puget of costs incurred by the City to cure such deficiency.
- 11.3 In the event the City makes use of such bond(s) furnished by Puget pursuant to Section 11.2, the City shall promptly provide written notice of same to Puget. Within thirty (30) days of receipt of such notice, Puget shall replenish or replace such bond(s) as provided in Section 11.1.
- 11.4 The rights reserved to the City by this Section 11 are in addition to other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of right under this Section 11 shall constitute an election or waiver of any rights or other remedies the City may have.

Section 12. Underground Installation of Facilities

- 12.1 Puget acknowledges that the City desires to promote a policy of underground installation of Facilities within the Franchise Area. The City acknowledges that Puget provides electrical and gas service on a non-preferential basis subject to and in accordance with applicable Tariffs on file with the WUTC. Subject to and in accordance with such Tariffs, Puget will cooperate with the City in the formulation of policy and development regulations concerning underground installation of Puget's Facilities within the Franchise Area.
- 12.2 New extensions of electric Facilities that operate at 15,000 volts (15kV) or less constructed by Puget within the Franchise Area during the term of this Franchise shall be located underground subject to and in accordance with applicable Tariffs on file with the WUTC; provided that extensions of existing overhead Facilities of up to five spans or 500 feet (whichever is less) may, subject to the City's prior written consent which shall not be unreasonably withheld, be installed overhead in locations having other existing overhead utilities.
- 12.3 If, during the term of this Franchise, the City shall direct Puget to replace (convert) its overhead electric distribution Facilities (15kV or less) then existing within the Franchise Area with underground Facilities, such underground conversion shall be arranged and accomplished subject to and in accordance with applicable Tariffs on file with the WUTC.
- 12.4 This Section 12 shall govern all matters related to underground installation of Puget's Facilities within the Franchise Area.

Section 13. Relocation of Facilities

13.1 Whenever the City undertakes (or causes to be undertaken at City expense) the construction of any public works improvement within the Franchise Area, or the Public Works Director reasonably determines that Puget's Facilities interfere with the free and safe passage of pedestrian and/or vehicular traffic pursuant to Section 7 above, and such public works improvement or interference necessitates the relocation of Puget's Facilities then existing within the Franchise Area, the City shall:

- (i) provide Puget, within a reasonable time prior to the City's commencement of activities requiring such public works improvement, written notice requesting such relocation; and
- (ii) provide Puget with copies of relevant portions of the City's plans and specifications for such public works improvement.

After receipt of such notice and such plans and specifications, Puget shall relocate such Facilities within the Franchise Area at no charge to the City. If, during the construction of any such public works improvement, an emergency posing a threat to public safety or welfare, or a substantial risk of severe economic consequences to the City, arises requiring the relocation of Puget's Facilities within the Franchise Area, the City shall give Puget notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, Puget shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities at no charge to the City.

13.2 The City shall act in good faith and shall use its best efforts to provide sufficient space within the Franchise Area for the safe and efficient installation, operation, repair and maintenance of the relocated Facilities. Puget shall act in good faith and shall use its best efforts to install relocated Facilities in such space within the Franchise Area, consistent with prudent utility practice. If the City and Puget agree that there is not sufficient space for the relocated Facilities in the existing Franchise Area, then, unless otherwise mutually agreed by the City and Puget, the City shall provide sufficient space for the relocated Facilities by obtaining additional right-of-way or other equivalent rights mutually agreeable to the City and Puget, which shall be Franchise Area, title of which shall be in the City's name.

13.3 Puget may install relocated Facilities on property outside of the Franchise Area, the rights for which shall be obtained by Puget at no expense to the City, if:

- (i) notwithstanding the use of best efforts by the City and Puget as outlined above, the City and Puget do not agree whether there is or will be sufficient space within the Franchise Area for the relocated Facilities, or
- (ii) locating such relocated Facilities within such space within the Franchise Area would be inconsistent with prudent utility practice.

The City and Puget shall each act in good faith and use their respective best efforts to mutually agree on the location of such relocated Facilities outside of the Franchise Area. Absent such mutual agreement, nothing in this Section 13 shall limit the rights of the City or Puget with respect to acquisition or use of property rights outside of the Franchise Area.

13.4 If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to Sections 13.1-13.3, the City shall reimburse Puget for all costs incurred by Puget in connection such subsequent relocation.

- 13.5 Puget shall have the right as a condition of any relocation described in this Section 13.5 to require such person or entity other than the City to make payment to Puget, at a time and upon terms acceptable to Puget, for any and all costs and expenses incurred by Puget in the relocation of Puget's Facilities whenever:
- (i) any person or entity, other than the City, requires the relocation of Puget's Facilities to accommodate the work of such person or entity within the Franchise Area, including but not limited to, activities relating to development, roadway frontage improvements or mitigation of impacts; or
 - (ii) the City requires any person or entity to undertake work (other than work undertaken at the City's cost and expense) within the Franchise Area and such work requires the relocation of Puget's Facilities within the Franchise Area.
- 13.6 Any condition or requirement imposed by the City upon any other person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of Puget's Facilities within the Franchise Area shall be a condition or requirement causing relocation of Puget's Facilities to occur subject to the provisions of Section 13.5 above. Provided, however:
- (i) in the event the City reasonably determines and notifies Puget that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a public works improvement within a segment of the Franchise Area on the City's behalf, and
 - (ii) such public works improvement is otherwise reflected in the City's adopted Six-Year Capital Improvement Program; Transportation Improvement Program; or Transportation Facilities Program:
- then only those costs and expenses incurred by Puget in connecting such relocated Facilities with Puget's other Facilities shall be paid to Puget by such person or entity, and Puget shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Sections 13.1-13.3.
- 13.7 As to any relocation of Puget's Facilities whereby the cost and expense thereof is to be borne by Puget in accordance with Sections 13.1-13.3, Puget may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from Puget of such written alternatives, the City shall evaluate such alternatives and shall advise Puget in writing if one or more of such alternatives is suitable to accommodate the work which would otherwise necessitate relocation of Puget's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by Puget full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. No alternatives proposed by Puget shall be evaluated by the City in an arbitrary or capricious manner. In the event the City determines that such alternatives are not appropriate, Puget shall relocate its Facilities as otherwise provided in Sections 13.1-13.3.
- 13.8 Nothing in this Section 13 shall require Puget to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or, except for the rights described in Section 5.2, other prior rights.

Section 14. Coordination/ Shared Excavations

- 14.1 Puget and the City shall each exercise best reasonable efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to inform the other party and other utilities within the Franchise Area of its intent to undertake such construction work. Puget and the City shall further exercise best reasonable efforts to minimize delay or hindrance to construction work undertaken by themselves and other utilities within the Franchise Area.
- 14.2 If, at any time or from time to time, either Puget or the City shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:
- (i) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and
 - (ii) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.

Section 15. City Use of Facilities

- 15.1 During the term of this Franchise, and with respect to poles which are Facilities and which are (a) wholly owned by Puget and (b) within the Franchise Area, the City, subject to Puget's prior written consent which shall not be unreasonably withheld, may install and maintain City-owned overhead wires upon such poles for police, fire, traffic control and other noncommercial municipal communications purposes. The foregoing rights of the City to install and maintain such wires and cable are further subject to the following:
- (i) Such installation and maintenance shall be done by the City at its sole risk and expense, in accordance with all applicable laws, and subject to such reasonable requirements as Puget may specify from time to time (including, without limitation, requirements accommodating Puget's Facilities or the facilities of other parties having the right to use Puget's Facilities);
 - (ii) Puget shall have no obligation arising under the indemnity and insurance provisions of this Franchise as to any circumstances directly or indirectly caused by or related to such City-owned wires or the installation or maintenance thereof; and
 - (iii) The City shall indemnify, defend and hold harmless Puget in connection with the City's use of Puget's Facilities; and
 - (iv) Puget shall not charge the City a fee for the use of such poles in accordance with this Section 15; as a means of deriving revenue there from (such as rental or lease fees); provided, however, nothing herein shall require Puget to bear any cost or expense in connection with such installation and maintenance by the City.

Section 16. Moving Buildings Within the Franchise Area

- 16.1 If any person or entity other than the City obtains permission in the form of a permit from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Puget for the temporary adjustment of Puget's wires to accommodate the moving or removal of such building or other object. Such necessary arrangements with Puget shall be made, to Puget's satisfaction, not less than fourteen (14) days prior to the moving or removal of said building or other object. In such event, Puget shall, at the expense of the person or entity desiring to move or remove such building or other object, adjust any of its wires which may obstruct the moving or removal of such building or other object, provided that:
- (i) the moving or removal of such building or other object which necessitates the adjustment of wires shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with Puget's business; and
 - (ii) the person or entity other than the City obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and hold Puget harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person or entity moving or removing such building or other object or the negligence of the agents, servants or employees of the person or entity moving or removing such building or other object.

Section 17. Records of Installation and Planning

- 17.1 Upon the City's reasonable request, Puget shall provide to the City copies of available plans of improvements, relocations and conversions to its Facilities within the Franchise Area; provided, however, any such plans so submitted shall be for informational purposes only and shall not obligate Puget to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.
- 17.2 Upon the City's reasonable request, Puget shall provide to the City copies of available drawings in use by Puget showing the approximate location of Puget's Facilities at specified locations within the Franchise Area. Puget shall further provide, upon the City's reasonable request in connection with the City's design of new streets and intersections and major renovations of existing streets and intersections, field marking of Puget's underground Facilities within the Franchise Area, if such Facilities can be so field marked with reasonable accuracy using devices designed to respond to the presence of Puget's underground Facilities. Notwithstanding the foregoing, however, Puget does not warrant the accuracy or sufficiency of any such drawings or field markings or other information provided by Puget, and Puget shall not be liable to the City or others for any errors or defects in the same.
- 17.3 In addition, whenever Puget and the City agree that it is mutually beneficial to both parties in connection with the design of new streets and intersections and major renovations of existing streets and intersections, Puget shall verify the actual location of its underground Facilities within the Franchise Area by excavating, including pot holing, at no expense to the City.

- 17.4 Notwithstanding the foregoing, nothing in this Section 17 is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

Section 18. Vegetation Management

- 18.1 Puget shall, on an annual basis, provide the City a list of locations within the Franchise Area at which Puget anticipates performing vegetation management activities; provided that such list shall not limit Puget's right under this Franchise to cut, trim or otherwise remove vegetation at any time within the Franchise Area which, due to proximity to Puget's facilities, pose an imminent threat to public safety or the reliable operation of Puget's facilities.
- 18.2 Puget shall, in coordination with the City, identify vegetation species appropriate for location in proximity to Puget's facilities and shall cooperatively act with the City to promote use of such identified species within and adjacent to the Franchise Area.

Section 19. Indemnification

- 19.1 Puget shall indemnify, defend and hold the City, its agents, officers or employees harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees, made against the City, its agents, officers or employees on account of injury, harm, death or damage to persons or property which is caused by, in whole or in part to the extent of, the willfully tortious, or negligent acts, or negligent omissions of Puget or its agents, servants, employees, contractors, or subcontractors in the exercise of the rights granted to Puget by this Franchise. Provided, however, such indemnification shall not extend to any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees caused by the negligence of the City, its agents, employees, officers, contractors or subcontractors.
- 19.2 Puget's indemnification obligations pursuant to Subsection 19.1 shall include assuming potential liability for actions brought by Puget's own employees and the employees of Puget's agents, representatives, contractors, and subcontractors even though Puget might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of Puget's exercise of the rights set forth in this Franchise. The obligations of Puget under this Subsection 19.2 have been mutually negotiated by the parties hereto, and Puget acknowledges that the City would not enter into this Franchise without Puget's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Puget waives its immunity under Title 51 RCW as provided in RCW 4.24.115.
- 19.3 In the event any matter (for which the City intends to assert its rights under this Section 19) is presented to or filed with the City, the City shall promptly notify Puget thereof and Puget shall have the right, at its election and at its sole cost and expense, to settle and compromise such matter as it pertains to Puget's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees. In the event any suit or action be started against the City based upon any such matter, the City shall

likewise promptly notify Puget thereof, and Puget shall have the right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to Puget's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees.

Section 20. Insurance

- 20.1 Puget shall procure and maintain for the duration of the Franchise, insurance, or in lieu thereof provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Puget, its agents, representatives or employees. Puget shall provide certificate(s) of insurance (Form CG2010 ISO or equivalent) and/or evidence of self-insurance, together with an endorsement naming the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers as additional insureds, to the City for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this Franchise. Such certificate(s) of insurance and/or evidence of self-insurance shall evidence the following minimum coverages:
- (i) Commercial general liability insurance or excess liability insurance, including coverage for premises-operations, explosions and collapse hazard, underground hazard and products completed hazard, written on an occurrence basis, with limits not less than:
 - A. \$2,000,000 for bodily injury or death to each person; and
 - B. \$2,000,000 for property damage resulting from any one accident.
 - (ii) Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000 for each person and \$2,000,000 for each accident.
 - (iii) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$2,000,000.
- 20.2 Puget shall maintain the liability insurance policies required by this Section 20 throughout the term of this Franchise. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of Puget.
- 20.3 Puget's insurance shall be primary insurance with respect to the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers. Any insurance maintained by the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers shall be in excess of Puget's insurance and shall not contribute with it.
- 20.4 The cancellation clause of any certificate(s) of insurance (ACORD Form 25 or equivalent) provided to the City pursuant to Section 20.1 shall include the following provision:
- "Should any of the policies described by this certificate be canceled before the expiration date thereof, the issuing company will provide at least thirty (30) days written notice thereof to the certificate holder."
- 20.5 In the event any of the insurance required by this Section 20 is canceled or otherwise not renewed during the term of this Franchise, Puget shall promptly acquire

replacement insurance or shall utilize self insurance to restore and maintain the amount of coverage required by this Section 20 and shall promptly provide to the City certificate(s) of insurance or evidence of self insurance as provided in this Section 20 as may be applicable.

Section 21. Default

- 21.1 If Puget shall fail to materially comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon Puget a written order to so comply within thirty (30) days from the date such order is received by Puget. If Puget is not in material compliance with this Franchise after expiration of said thirty (30) day period, the City may declare an immediate forfeiture of this Franchise, provided, however, if any failure to materially comply with this Franchise by Puget cannot be corrected with due diligence within said thirty (30) day period then the time within which Puget may so comply may be extended for a period of time as may be reasonably necessary and as agreed upon by the parties, so long as Puget commences promptly and diligently to effect such material compliance.
- 21.2 Notwithstanding Puget's obligation to comply and to proceed with due diligence to correct any default, the City recognizes that unavoidable delays and events beyond Puget's control may occur. In such event the parties agree that Puget shall make a good faith effort to expeditiously remedy the default. In the event of a declaration of forfeiture, should either party commence litigation against the other to appeal (in the case of Puget) or enforce (in the case of the City) such declaration of forfeiture, the prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorneys fees.

Section 22. Recovery of Franchise Costs

- 22.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon Puget, except, as provided in RCW 35.21.860,
- 22.2 Promptly following adoption of this Ordinance, the City shall provide to Puget a statement of the actual administrative expenses incurred by the City that are directly related to approval of this Franchise, and thereafter Puget shall promptly reimburse the City for such expenses. Notwithstanding any other provision of this Franchise, no acceptance by Puget of this Franchise shall be effective in the absence of such reimbursement. Subsequent to such reimbursement, any fees and/or charges imposed by the City upon Puget shall be as specified above. Nothing in this section shall preclude the City from collecting from Puget fees lawfully imposed by the City (related to this Franchise or otherwise) such as permits and inspections.

Section 23. Utility Tax

Puget acknowledges that the City is authorized under the laws of Washington State to impose certain taxes upon Puget. Nothing in this Franchise shall exempt (nor shall be construed to exempt) Puget from payment of any and all such taxes lawfully imposed by Woodinville Municipal Code, as may hereafter be lawfully amended or superseded, and due from Puget; provided, nothing in this Section 23 shall be construed in any way as a waiver of Puget's rights to contest the validity of any such tax or the amount of any tax due. If payment of such

taxes is not made by Puget in a timely manner, the City reserves the right, at its sole option, to inter alia suspend the rights granted to Puget by this Franchise until such time that Puget pays such taxes or Puget and the City otherwise resolve any matter concerning payment thereof.

Section 24. Assignment of Franchise

All of the provisions, conditions and requirements herein contained shall be binding upon Puget and the City. Puget may not assign or otherwise transfer its rights, privileges, authority and franchise herein conferred without the prior written authorization and approval of the City, which such authorization and approval shall not be unreasonably withheld. The City hereby authorizes and approves Puget to mortgage its rights, privileges, authority and franchise in and under this Franchise to the Trustee for its bondholders.

Section 25. Severability and Survival

- 25.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of the sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.
- 25.2 All provisions, conditions and requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive the termination or expiration of the Franchise. Subject to Section 6 above, the parties' respective rights and interests under this Franchise shall inure to the benefit of their respective successors and assigns.

Section 26. Amendments to Franchise

- 26.1 This Franchise may be amended only by mutual agreement thereto, set forth in writing in the form of a City ordinance, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington and the City of Woodinville. Without limiting the generality of the foregoing, this Franchise (including, without limitation the Sections addressing indemnification and insurance) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by Puget of any and all of its rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:
- (i) references this Franchise; and
 - (ii) states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.
- 26.2 This Franchise is subject to the provisions of any applicable Tariff on file with and accepted by the WUTC. In the event of any conflict or any inconsistency between the provisions of this Franchise and such Tariff, the provisions of such Tariff shall control.

Section 27. No Third Party Beneficiary

Nothing in this Franchise shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy upon any person other than the parties. No action may be commenced or prosecuted against any party by any third party claiming as a third party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any third party to either party.

Section 28. Notice of Tariff Changes

Puget shall, when making application for any changes in Tariffs affecting the provisions of the Franchise, notify the City in writing of the application and provide the Public Works Director with a copy of the submitted application within five (5) days of filing with the WUTC. Puget shall further provide the Public Works Director with a copy of any approved Tariff change affecting the provisions of this Franchise.

Section 29. Repealer

Upon the effective date of this Ordinance and acceptance of such Ordinance and Franchise by Puget, City ordinances 42 and 214 shall be deemed repealed.

Section 30. Effective Date

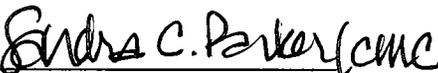
This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

ADOPTED BY THE CITY COUNCIL AND SIGNED IN AUTHENTICATION OF
ITS PASSAGE THIS 11th DAY OF APRIL 2004.



Don Brocha, Mayor

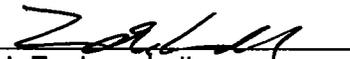
ATTEST/AUTHENTICATED:

By: 

Sandra Parker/CMC
City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: 

J. Zachary Lell
City Attorney

PASSED BY THE CITY COUNCIL: 4-11-2005
PUBLISHED: 4-18-2005
EFFECTIVE DATE: 4-23-2005
ORDINANCE NO. 381



Puget Sound Energy, Inc.
P.O. Box 90868
Bellevue, WA 98009-0868

RECEIVED
APR 19 2005
City of Woodinville

April 18, 2005

Sandra Parker, City Clerk
City of Woodinville
17301 133rd Avenue NE
Woodinville, WA 98072

RE: Acceptance of Franchise Ordinance 381

Dear: Ms. Parker

Enclosed find two original signature copies of PSE's signed Acceptance of Franchise Ordinance 381. Please indicate your receipt of our Acceptance and return one of the copies to me for our records.

Also enclosed find PSE's written commitment of our self-insurance program to the City of Woodinville dated April 15, 2005 in compliance with Section 20 of the Franchise.

Section 11 of the Franchise calls for PSE to provide a performance bond in connection with the Franchise. I have written to Public Works Director Mick Monken concerning this requirement.

Thank you for your assistance. Please contact me at (425)462-3852 or e-mail andy.swayne@pse.com with any questions you may have concerning this matter.

Sincerely,

A handwritten signature in cursive script that reads 'Andy Swayne'.

Andy Swayne
Municipal Liaison Manager

cc: Karl Kim, Puget Sound Energy
Mike Main, Puget Sound Energy

Enclosures

HONORABLE MAYOR AND CITY COUNCIL
CITY OF WOODINVILLE, WASHINGTON

In the matter of the application :
of Puget Sound Energy, Inc., a : Franchise Ordinance No. 381
Washington corporation, for a :
franchise to construct, operate :
and maintain facilities in, upon, :
over under, along, across and :
through the franchise area of the : ACCEPTANCE
City of Woodinville, Washington :

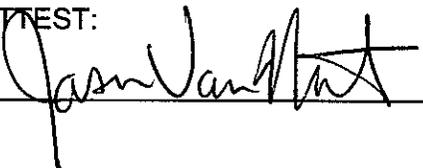
WHEREAS, the City Council of the City of Woodinville, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. 381, bearing the date of April 11, 2005; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on April 15, 2005, from said City of Woodinville, King County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Woodinville, King County County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned Director Community Services thereunto duly authorized on this 15th day of April, 2005.

ATTEST:



PUGET SOUND ENERGY, INC.

By: 

Copy received for City of Woodinville
on April 19th, 2005

By: 

City Clerk



Puget Sound Energy, Inc.
P.O. Box 97034
Bellevue, WA 98009-9734

April 15, 2005

Mr. Pete Rose, City Manager
City of Woodinville
17301 133rd Avenue N.E.
Woodinville, Wa. 98072

**Re: City of Woodinville Ordinance 381
Puget Sound Energy Franchise - Self-Insurance**

Gentlemen/Ladies:

Puget Sound Energy, Inc. maintains a comprehensive program of risk retention and insurance. Our casualty program for Auto and General Liability, Workers' Compensation and Completed Operations has very substantial limits in place. Our self-insured retention, which is currently \$2,000,000 per occurrence, may fluctuate from year to year; however, it will always be consistent with our net worth and cash flows. Excess insurance protection is purchased which is consistent with that of other corporations our size and substantially exceeds the insurance requirements set forth in the referenced Franchise Ordinance.

Puget Sound Energy, Inc. hereby commits its self-insurance program to The City of Woodinville to guarantee compliance with the commitments and obligations set forth in the referenced Ordinance.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. H. Main', is written over a horizontal line.

N. H. Main
Manager, Risk Management