



# City of Tukwila

Washington

Ordinance No. 2483

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, TO CONSTRUCT, INSTALL, REPLACE, MAINTAIN, REPAIR, AND OPERATE ELECTRIC LIGHT, POWER, AND NATURAL GAS SYSTEMS IN, UPON, OVER, UNDER, ALONG, ACROSS, AND THROUGH THE FRANCHISE AREA; REPEALING ORDINANCE NOS. 471 AND 1178; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, Puget Sound Energy, Inc., hereinafter referred to as "PSE," is an investor-owned utility that, among other things, provides gas and electrical service to residential and commercial customers in the Puget Sound region; and

**WHEREAS**, PSE's desired route through the City of Tukwila, hereinafter referred to as "City," requires the use of certain portions of City rights-of-way for the installation, operation, and maintenance of its electrical, power and natural gas systems; and

**WHEREAS**, the City Council has determined that the use of portions of the City's rights-of-way is appropriate from the standpoint of the benefits to be derived by local business and the region as a result of such services; and

**WHEREAS**, the City Council also recognizes that the use of public rights-of-way must be restricted to allow for the construction of amenities necessary to serve the future needs of the citizens of Tukwila and that the coordination, planning, and management of the City's rights-of-way is necessary to ensure that the burden of costs for the operations of non-municipal interests are not borne by the citizenry; and

**WHEREAS**, the Revised Code of Washington (RCW) authorizes the City to grant and regulate non-exclusive franchises for the use of public streets, right-of-ways, and other public property for transmission of natural gas and electrical power;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:**

**Section 1. Definitions.** The following terms contained herein, unless otherwise indicated, shall be defined as follows:

1. *City*: The City of Tukwila, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.

2. *Facilities*: Any and all:

a. natural gas distribution systems including, but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, meters, meter-reading devices and (subject to Section 2, paragraph B) communication systems;

b. electric transmission and distribution systems including, but not limited to, poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices, and (subject to Section 2, paragraph B) communication systems; and

c. any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

3. *Force Majeure Event*: Any event, occurrence or circumstance (or combination thereof) beyond the reasonable control of the affected party including, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, acts of nature, natural disasters, floods, tornadoes, earthquakes, unusually severe weather conditions, unforeseen labor conditions, acts or omissions of third parties, and/or acts or omissions of the other party.

4. *Franchise Area*: Any, every and all of the roads, streets, avenues, alleys, highways and public rights-of-way of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, highways and public rights-of-way that may hereafter be laid out, platted, dedicated or improved within the present limits of the City as such limits may be hereafter extended.

5. *Person*: An entity or natural person.

6. *PSE*: Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.

7. *Public Improvement*: Any construction, alteration, repair, realignment, widening or other improvement (collectively "Improvement") of the right-of-way within the Franchise Area for purposes of public welfare, health, or safety, that is undertaken by or on behalf of the City and is funded by the City (either directly with its own funds or any other public monies obtained by the City). The term "Public Improvement" shall include any such improvement or repair undertaken by the City that requires the relocation of PSE's Facilities within the Franchise Area even if the improvement or repair entails, in part, related work performed for a third party municipality under a valid interlocal agreement between the City and such municipality (except to the extent the

relocation of PSE's Facilities is caused by the work done for such third party), but shall not include, without limitation, any other improvements or repairs undertaken by or for the benefit of third party entities.

8. *Ordinance:* This ordinance, which sets forth the terms and conditions of this Franchise.

## **Section 2. Non-exclusive Franchise Granted.**

A. The City hereby grants to PSE, subject to the terms and conditions prescribed in this ordinance (this "Franchise"), the franchise, right, privilege and authority to set, erect, lay, construct, extend, support, attach, connect, enlarge, replace, repair, monitor, maintain, use and operate Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of natural gas and energy for power, heat and light, and any other purposes for which natural gas and electrical energy may be used. Except as expressly provided above in this paragraph (Section 2, paragraph A), PSE shall not by this Franchise obtain any vested rights to use any portion of the Franchise Area other than in the locations approved by the City and then only subject to the terms and conditions of this Franchise.

B. This Franchise specifically does not authorize PSE to place Facilities or to otherwise use Facilities within the Franchise Area for the purpose of offering to provide telecommunications, cable television, point-to-point data communications, or similar services to the public either via wire or wireless technologies regardless whether these services are provided to any person outside PSE's organization, unless approved by a separate agreement; provided that this paragraph does not restrict PSE's ability to:

1. Use telemetric devices, meters or other Facilities to monitor and operate its electrical or natural gas systems or the usage of electrical or gas energy; or

2. Permit third parties to attach wires and equipment to PSE Facilities within the Franchise Area if PSE is obligated to do so under applicable laws or regulatory requirements and/or PSE contractually obligates the third party to have sufficient rights independent of this Franchise to use and operate within the relevant portion of the Franchise Area.

C. This Franchise shall not be deemed to be an exclusive franchise and shall in no way prohibit or limit the City's ability to grant other franchises, permits, or rights along, over, through or under the Franchise Area that do not unreasonably interfere with PSE's rights under this Franchise. This Franchise shall in no way interfere with existing utilities or in any way limit, prohibit, or prevent the City from using the Franchise Area or affect the City's jurisdiction over the Franchise Area so long as the City undertakes such use and exercises such jurisdiction in a manner consistent with the terms of this Franchise.

D. This Franchise shall not limit any right available to the City under applicable law to acquire, construct, own, operate, and maintain a municipal electric or gas utility at any time within the Franchise Area, and in all respects to exercise such right in accordance with applicable laws.

E. Upon acceptance by PSE, this Franchise shall supersede the existing Franchise entered between the City and PSE on March 17, 1967, authorized by Tukwila Ordinance No. 471. Accordingly, the existing Franchise shall have no further force or effect as of the effective date of this Franchise except as to those terms and conditions that survive termination.

F. This Franchise shall not convey any right to PSE to install Facilities on or to otherwise use City-owned or leased properties or easements outside of the Franchise Area; provided, however, this Franchise shall convey the right to PSE, subject to the terms and conditions herein, to maintain, repair and operate Facilities lawfully installed pursuant to and in conformance with any prior franchise agreements with the City regardless of whether said Facilities are outside the Franchise Area; provided that existing Facilities installed or maintained by PSE on public grounds and places within the City in accordance with prior franchise agreements (but which such Facilities are not within the Franchise Area as defined in this Franchise) may continue to be maintained, repaired and operated by PSE at the location such Facilities exist as of the effective date of this Franchise for the term of this Franchise, but no such Facilities may be enlarged, improved or expanded without the prior approval of the City pursuant to applicable ordinances, codes, resolutions, standards and procedures.

G. This Franchise shall not govern or apply to Facilities located on PSE-owned or leased properties or easements (whether inside or outside of the Franchise Area, whether granted by a private or public entity, and whether now existing or hereafter acquired) and such Facilities are not, and will not be deemed to be, located pursuant to rights derived from this Franchise or pursuant to rights otherwise granted by the City.

**Section 3. Franchise Term.** The initial term of this Franchise shall be 15 years from the effective date of this Franchise. This Franchise shall not take effect and PSE shall not have rights under this Franchise unless a written acceptance with the City is received pursuant to Section 5 of this Franchise.

**Section 4. Franchise Extension.** Upon PSE's written request for an extension, the City may, at its discretion, extend this Franchise for up to one 5-year extension pursuant to Section 19 provided that: (a) PSE is not in material breach of the terms and conditions of this Franchise; and (b) the terms and conditions of this Franchise conform to then-existing state laws or, if such terms and conditions do not conform to then-existing state laws, PSE is willing to amend this Franchise to bring it to compliance with such state laws. Subject to conditions set forth above, the additional term shall be on the same terms and conditions as set forth in this Franchise, except as reflected in any written amendment(s) signed by both parties. PSE shall give notice to renew this Franchise for the additional term at least 90 days, but no more than 6 months, prior to the expiration of this Franchise.

**Section 5. Acceptance of Terms and Conditions.** The full acceptance of this Franchise and all the terms and conditions, substantially in the form attached hereto as Exhibit A, shall be filed with the City Clerk within 30 days of the effective date of this ordinance. Failure on the part of PSE to file said acceptance within 30 days of the effective date of this ordinance shall void and nullify any and all rights granted under this Franchise.

**Section 6. Authority.** The Director of Public Works or his or her designee is hereby granted by the City the authority to administer and enforce the terms and provisions of this Franchise on behalf of the City.

**Section 7. Right-of-Way Management.** During the term of this Franchise, PSE shall comply with the provisions of Title 11 of the Tukwila Municipal Code, known as the "Right-of-Way Use Code;" provided, however, in the event of any conflict or inconsistency of such provisions with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded PSE by City codes and ordinances.

**Section 8. Restoration of Franchise Area.**

A. Except as may be otherwise provided in a warranty or maintenance bond, at any time during the term of this Franchise, if a PSE Facility or trench within the Franchise Area causes a street to crack, settle, or otherwise fail, the City will notify PSE of the deficiency and PSE agrees to restore the deficiency and repair the damage within 30 days of written notice by the City, unless the City determines that a shorter time period is necessary to protect the property or the life, health, or safety of any individual.

B. For purposes of this section, "street" shall mean all City-owned improvements within a Franchise Area right-of-way including, but not limited to, the following: pavement, sidewalks, curbing, above- and below-ground utility facilities, and traffic control devices.

C. In the event that PSE should fail in its restoration responsibilities set forth in Section 8, paragraph A above, and such failure continues for a period of 10 days after PSE receives written notice from the City regarding such failure, the City may, but in no event is obligated to, perform or contract for such work and, thereafter, PSE shall, upon the City's written request, reimburse the City for the reasonable costs incurred by the City in having such work performed.

**Section 9. City Use of PSE Poles.**

A. During the term of this Franchise, and with respect to poles which are Facilities and which are (a) wholly owned by PSE and (b) within the Franchise Area, the City, subject to PSE'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 non-commercial municipal communications purposes. The foregoing rights of the City to install and maintain such wires are further subject to the following:

1. 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 PSE may specify from time to time (including, without limitation, requirements accommodating PSE's Facilities or the facilities of other parties having the right to use PSE's Facilities).

2. PSE 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.

3. PSE shall not charge the City a fee for the use of such poles in accordance with this section as a means of deriving revenue therefrom; provided, however, nothing herein shall require PSE to bear any cost or expense in connection with such installation and maintenance by the City.

B. During the term of this Franchise, the City shall have the right, subject to PSE's prior written consent which shall not be unreasonably withheld, and subject to such reasonable rules and regulations as may be prescribed by PSE from time to time, and subject to the limitations prescribed by RCW 70.54.090 or any other applicable law, to post City signs on PSE's utility poles which are Facilities within the Franchise Area.

## **Section 10. Construction Provisions and Standards.**

A. **Conformance with Law and Regulations.** All activities in the Franchise Area performed by or on behalf of Franchisee shall be governed by applicable City codes, ordinance, rules, regulations and standards in effect at the time a completed application is filed for any required permits, and if no permits are required, at the time the activities are conducted within the Franchise Area; provided, however, in the event of any conflict or inconsistency of such ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded PSE by City codes and ordinances.

B. **Coordination.** All work and inspection shall be coordinated with the Engineering Division of the Public Works Department to ensure consistency with City infrastructure, future City capital improvement projects, all developer improvements, and pertinent City codes and ordinances; provided, however, in the event of any conflict or inconsistency of such codes or ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded PSE by City codes and ordinances.

C. **No Interference.** Any construction, installation, maintenance, and restoration activities performed by or for PSE within the Franchise Area shall be constructed and located so as to not unreasonably interfere with the free passage of pedestrian and vehicular traffic.

D. **"One-Call" Location and Liability.** Nothing in this Franchise is intended (nor shall be construed) to relieve the parties of their respective obligations arising under applicable state law with respect to determining the location of utility facilities, and each party will comply with all such state laws in the performance of this Franchise.

E. **Relocation.**

1. Whenever the City causes or authorizes a Public Improvement to be constructed within the Franchise Area, and such Public Improvement requires the relocation of PSE's then-existing Facilities within the Franchise Area (for purposes other than those described in Section 10, paragraph E.3. below), the City shall provide PSE, within a reasonable time prior to commencement of such Public Improvement, with written notice requesting such relocation along with plans for the Public Improvement that are sufficiently complete to allow for the initial evaluation, coordination and the development of a relocation plan. The City and PSE shall cooperate and coordinate in good faith in connection with the planning and completion of the relocation work required to accommodate the Public Improvement and shall meet at a time and location reasonably determined by the City to discuss the project requirements, including critical timelines, schedules, construction standards, utility conflicts, as-built requirements, and other pertinent relocation plan details. In connection with the planning and scheduling of such relocation work:

a. PSE shall provide to the City, at PSE's expense, reasonable information then available to PSE relating to the relocation work, including a detailed schedule of relocation activities, identification of affected Facilities of PSE, identification of critical path and long lead time items, relocation procedures and other design, technical and/or operational requirements for the relocation work; and

b. the City shall consult with PSE and consider the extent of the Facilities to be located, the service requirements, the construction sequence for relocation and other information furnished by PSE in developing a mutually acceptable relocation plan.

2. After PSE's receipt of the City's notice and plans described in Section 10, paragraph E.1. above, PSE shall relocate the affected PSE Facilities within the Franchise Area at no charge to the City in accordance with the schedule set forth in the relocation plan, if such plan is mutually agreed upon, or the City's order to relocate. In calculating the date that relocation must be completed, the City shall consult with PSE and consider the extent of Facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the city's overall project construction sequence and constraints, to safely complete the relocation. Except as a result of a Force Majeure Event, and except for temporary relocations of Facilities needed to accommodate a Public Improvement, if the City requires the subsequent and unplanned relocation of any Facilities within 5 years from the date of relocation of such Facilities pursuant to Section 10, paragraph E, the City shall bear the entire cost of such subsequent relocation.

3. Whenever (a) any public or private development within the Franchise Area, other than a Public Improvement, requires the relocation of PSE's Facilities within the Franchise Area to accommodate such development; or (b) the City requires the relocation of PSE's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then in such event, PSE shall have the right as a condition of such relocation, to require such developer, person or entity to make payment to PSE, at a time and upon terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE's Facilities.

4. Any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of PSE's Facilities shall be a required relocation for purposes of Section 10, paragraph E.3 above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development); provided, however, in the event (a) the City reasonably determines (and promptly notifies PSE in writing of such determination) that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a Public Improvement to be undertaken within a segment of the Franchise Area on the City's behalf, and (b) such Public Improvement is reflected in and consistent with the City's then-current six-year Capital Improvement Program, then only those costs and expenses incurred by PSE in integrating and reconnecting such relocated Facilities with PSE's other Facilities shall be paid to PSE by such other person or entity, and Franchisee shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with the provisions of Section 10, paragraphs E.1 and E.2.

5. PSE may, after receipt of written notice requesting a relocation of its Facilities pursuant to Section 10, paragraph E, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise PSE in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If requested by the City, PSE shall submit additional information to assist the City in making such evaluation. In the event the City ultimately determines, in its sole discretion, that there is no other reasonable alternative, PSE shall relocate its Facilities as otherwise specified in Section 10, paragraph E.

6. Nothing in Section 10, paragraph E, "Relocation," shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or other rights not derived from this Franchise, regardless of whether such easement or other rights are on public or private property and regardless of whether this Franchise co-exists with such easement or other rights.

#### **F. Removal or Decommissioning In Place.**

1. Whenever PSE permanently discontinues use of any above ground or at grade Facilities within the Franchise Area, PSE shall comply with all applicable standards and requirements prescribed by the City of Tukwila Public Works Department for the removal or decommissioning in place of such Facilities, so long as such



standards and requirements are not inconsistent with the provisions of this Franchise or with any regulatory obligations of PSE to third party users of such Facilities. No above ground or at grade Facilities constructed or owned by PSE and located within the Franchise Area may be permanently decommissioned in place without the express written consent of the City.

2. Whenever PSE permanently discontinues use of, and leaves in place, any underground Facilities within the Franchise Area, PSE shall submit to the City a plan for the permanent decommissioning of such Facilities. If the parties thereafter determine that the removal of any such Facilities is required to avoid a conflict with a Public Improvement undertaken by the City, PSE will, upon request by the City, remove any such Facilities that require removal in accordance with Section 10, paragraph E, and the relocation procedures. The parties will work together in good faith to avoid or minimize the need to remove any underground Facilities within the Franchise Area that are permanently discontinued and left in place by PSE.

### **Section 11. Franchise Compliance.**

A. **Franchise Violations.** The failure by PSE to fully comply with any of the provisions of this Franchise may result in a written notice from the City that describes the violations of this Franchise and a request to cure such violations within 60 days of receipt of such notice. If PSE has not cured the violations in all material respects at the end of the 60-day period following receipt of the violation notification, the City may, by ordinance, declare an immediate termination of this Franchise unless such cure was not reasonably possible within that 60-day period.

B. **Other Remedies.** Nothing contained in this Franchise shall limit either party's available remedies in the event of a material breach of any provisions of this Franchise by the other party to include, but not limited to, a party's right to a lawsuit for specific performance and/or damages; provided that, if PSE's performance of this Franchise or of any obligations hereunder is prevented or substantially restricted or interfered with by reason of any Force Majeure Event, PSE shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference.

C. **Emergency Response Plan.** During the term of this Franchise, PSE shall have a written emergency response plan and procedure. PSE's emergency plans and procedures shall designate PSE's responsible local emergency response officials and a direct 24-hour emergency contact number for PSE.

**Section 12. Insurance.** PSE shall procure and maintain for the duration of this Franchise, and for so long thereafter as PSE shall have Facilities in the Franchise Area, adequate insurance, or in lieu thereof provide self-insurance, against all claims for injuries to persons or damage to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to PSE, its agents, representatives or employees.

**Section 13. Permits and Approvals.** Except as expressly set forth in this Franchise, PSE shall not be relieved from any obligation to obtain approvals or necessary permits from applicable federal, state, and City authorities for all activities of PSE within the Franchise Area.

**Section 14. Assignment.**

A. The rights, privileges, benefits, title, or interest provided by this Franchise shall not be sold, transferred, assigned, or otherwise encumbered, without the prior written consent of the City, with such consent not being unreasonably withheld or delayed. No such consent shall be required for a transfer in trust, by other hypothecation, or by assignment or any rights, title, or interest in PSE's system in order to secure indebtedness. Further, PSE shall have the right, without notice or consent, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

B. In any transfer of this Franchise that requires the consent of the City under Section 14, paragraph A, PSE shall, at the City's request, provide information readily available to PSE that bears on the transferee's technical ability and financial capability to comply with the obligations and terms required under this Franchise. The qualifications of any transferee shall be determined by hearing before the City Council and the approval to such transfer shall be granted by resolution of the City Council, which approval will not be unreasonably withheld or delayed.

**Section 15. Administrative Fees.** 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 PSE. However, as provided in RCW 35.21.860, the City may recover from PSE actual administrative expenses incurred by the City that are directly related to: (a) receiving and approving a permit, license or this Franchise, (b) inspecting plans and construction, or (c) preparing a detailed statement pursuant to Chapter 43.21C RCW. To the extent consistent with the foregoing, PSE shall be subject to a \$5,000 administrative fee for reimbursement of costs associated with the preparation, processing, and approval of this Franchise.

**Section 16. Notices.** Any notice to be served upon the City or PSE shall be delivered to the following addresses respectively:

City of Tukwila  
Office of the City Clerk  
6200 Southcenter Boulevard  
Tukwila, WA 98188

Puget Sound Energy, Inc.  
Community and Business Services  
Attn: Municipal Liaison Manager  
P.O. Box 90868 BOT-1G  
Bellevue, WA 98009-0868

## **Section 17. Indemnification.**

A. PSE shall indemnify, defend and hold harmless the City, its elected officials, employees, agents and volunteers, from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligent acts or omissions of PSE, its agents, servants, officers or employees in performing activities authorized by this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the City, the City shall promptly notify PSE thereof, and PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the City based upon any such claim or demand, the City shall likewise promptly notify PSE thereof, and PSE shall have the right, at its election and 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. This covenant of indemnification shall include, but not be limited to, claims against the City arising as a result of the negligent acts or omissions of PSE, its agents, servants, officers or employees in barricading, instituting trench safety systems, or providing other adequate warnings of any excavation, construction of work in any right-of-way or other public place in performance of work or services permitted under this Franchise. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided herein, PSE waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude PSE from raising such immunity as a defense against any claim brought against PSE by any of its employees.

B. Inspection or acceptance by the City of any work performed by PSE at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation.

C. In the event any claim or demand for which indemnification is provided under Section 17, paragraph A, is presented to, or suit or action is commenced against, the City based upon any such claim or demand, the City shall promptly notify PSE thereof, and PSE may elect, at its sole cost and expense, to settle and compromise such suit or action, or defend the same with attorneys of its choice. In the event PSE refuses to undertake the defense of any suit or any claim for which indemnification is provided under Section 17, paragraph A, after the City's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and PSE's refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of PSE, then PSE shall pay all the of the City's cost and expenses for defense of the action, including reasonable attorney's fees of recovering under this indemnification clause, as well as any judgment against the City.

D. Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of PSE and the City, its officers, employees and agents, PSE's liability hereunder shall be only to the extent of PSE's negligence.

**Section 18. Severability.** If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise. The parties may amend, repeal, add, replace or modify any provision of this Franchise by mutual written agreement to preserve the intent of the parties as expressed herein prior to any finding of invalidity or unconstitutionality.

**Section 19. Amendment.**

A. This Franchise may be amended only by written instrument, 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. Without limiting the generality of the foregoing, this Franchise 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 PSE of any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

1. references this Franchise; and
2. states that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

B. In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

**Section 20. Dispute Resolution.**

A. The parties recognize that cooperation and communication are essential to resolving issues quickly and efficiently. If any dispute arises in regard to the terms or conditions of this Franchise, then the parties shall meet and engage in good faith discussions with the objective of settling the dispute within 10 days after either party requests such a meeting. If the parties cannot resolve the dispute within such 10-day period, the parties will, upon the written request of either party, seek to resolve the dispute in accordance with the following dispute resolution process:

1. **Level One.** A representative from PSE and the City's Public Works Director shall meet to discuss and attempt to resolve the dispute in a timely manner. If these representatives cannot resolve the dispute within 14 calendar days after referral of the dispute to Level One, either party may, by written notice to the other party, refer the dispute to Level Two.

2. **Level Two.** In the event either party properly refers the dispute to Level Two, a different PSE representative and the City Administrator shall meet to discuss and attempt to resolve the dispute in a timely manner. If these representatives cannot resolve the dispute within 14 calendar days after referral of the dispute to Level Two, either party may, by written notice to the other party, refer the dispute to Level Three.

3. **Level Three.** In the event either party properly refers the dispute to Level Three or the dispute is not resolved at Level Two within 14 calendar days after referral of that dispute to Level Two, either party may seek resolution of the dispute through litigation or other judicial proceedings in the King County Superior Court.

B. Notwithstanding Section 20, paragraph A, or any other provision of this Franchise to the contrary, with respect to any dispute arising under this Franchise, either party may commence litigation or other judicial proceedings within 30 days prior to the date after which the commencement of litigation could be barred by any applicable statute of limitations or other law, rule, regulation, or order of similar import or in order to request injunctive or other equitable relief necessary to prevent irreparable harm. In such event, the Parties will (except as may be prohibited by judicial order) nevertheless continue to follow the procedures set forth in Section 20, paragraph A.

**Section 21. Police Powers.** Franchisee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce ordinances reasonably necessary to protect the health, safety and welfare of the public.

**Section 22. Future Rules, Regulations, and Specifications.** PSE acknowledges that the City may develop rules, regulations, and specifications, including a general ordinance or other regulations, governing utility operations in the City that are not inconsistent with the provisions of this Franchise. Such general ordinances and regulations shall thereafter govern PSE's activities hereunder; provided, however, in the event of any conflict or inconsistency of such rules, regulations, specifications or ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded PSE by City codes and ordinances; provided further, however, that in no event shall such rules, regulations, specifications or ordinances:

1. materially interfere with or adversely affect PSE's rights pursuant to and in accordance with this Franchise; or
2. be applied in a discriminatory manner as it pertains to PSE and other similar user of such facilities.

**Section 23. Reservation of Rights.** Subject only to the provisions of this Franchise, the City expressly reserves all of its rights, authority and control arising from any relevant provisions of federal, state or local laws granting the City rights, authority or control over the public rights-of-way or the activities of the Franchisee.

**Section 24. Filed Tariffs.** This Franchise is subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

**Section 25. Repealer.** Ordinance Nos. 471 and 1178 are hereby repealed.

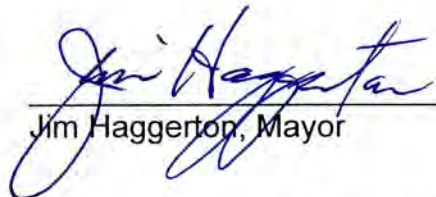
**Section 26. Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to: correct clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

**Section 27. Effective Date.** This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this 19<sup>TH</sup> day of October, 2015.

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Christy O'Flaherty, MMC, City Clerk

  
\_\_\_\_\_  
Jim Haggerton, Mayor

APPROVED AS TO FORM BY:

  
\_\_\_\_\_  
Rachel B. Turpin, City Attorney

Filed with the City Clerk: 10-14-15  
Passed by the City Council: 10-19-15  
Published: 10-22-15  
Effective Date: 10-27-15  
Ordinance Number: 2483

Attachment: Exhibit A – Acceptance of Franchise and Performance Guarantee

**EXHIBIT A**

(Form of Acceptance of Franchise)

**Puget Sound Energy, Inc.**

**Acceptance of Franchise and Performance Guarantee**

Franchise issued pursuant to Ordinance No. 2483 and accepted October 30, 2015;

I, Janet Kavran, am the Director of Customer Outreach and (am the authorized representative to accept the above-referenced Franchise on behalf of Puget Sound Energy. I certify that this Franchise and all terms and conditions thereof are accepted by Puget Sound Energy without qualification or reservation and that Puget Sound Energy unconditionally guarantee(s) performance of all such terms and conditions.

DATED this 30 day of October, 2015

Janet Kavran

By Janet Kavran  
Its Director of Customer Outreach

Tax Payer ID# 91-0374630

STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that JANET KAVRAN is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it (as the DIRECTOR of CUSTOMER OUTREACH, at PUGET SOUND ENERGY corporation,) to be the free and voluntary act of such corporation/individual for the uses and purposes mentioned in the instrument.

Dated this 30TH day of OCTOBER, 2015

[Signature]

(Signature of Notary)

DENISE C. STEENDAHL

Print Name

Notary Public in and for the State of WASHINGTON  
residing at KING COUNTY

My appointment expires 11/01/2017



**EXHIBIT A**  
*(Form of Acceptance of Franchise)*

**Puget Sound Energy, Inc.**  
**Acceptance of Franchise and Performance Guarantee**

Franchise issued pursuant to Ordinance No. \_\_\_\_\_ and accepted \_\_\_\_\_,  
20\_\_\_\_;

I, \_\_\_\_\_, am the \_\_\_\_\_,  
and (am the authorized representative to) accept the above-referenced Franchise on  
behalf of \_\_\_\_\_. I certify that this Franchise and all  
terms and conditions thereof are accepted by \_\_\_\_\_, without  
qualification or reservation and that \_\_\_\_\_ unconditionally  
guarantee(s) performance of all such terms and conditions.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

Tax Payer ID# \_\_\_\_\_

STATE OF \_\_\_\_\_ |  
COUNTY OF \_\_\_\_\_ | ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is  
the person who appeared before me, and said person acknowledged that said person signed  
this instrument, on oath stated that said person was authorized to execute the instrument and  
acknowledged it (as the \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_ corporation,) to be the free and voluntary act of such corporation/individual  
for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
*(Signature of Notary)*

\_\_\_\_\_  
*Print Name*

Notary Public in and for the State of \_\_\_\_\_,  
residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_





City of Tukwila Public Notice of Ordinance Adoption for Ordinances 2483-2486.

On October 19, 2015 the City Council of the City of Tukwila, Washington, adopted the following ordinances, the main points of which are summarized by title as follows:

**Ordinance 2483:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, TO CONSTRUCT, INSTALL, REPLACE, MAINTAIN, REPAIR, AND OPERATE ELECTRIC LIGHT, POWER, AND NATURAL GAS SYSTEMS IN, UPON, OVER, UNDER, ALONG, ACROSS, AND THROUGH THE FRANCHISE AREA; REPEALING ORDINANCE NOS. 471 AND 1178; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

**Ordinance 2484:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING ORDINANCE NO. 2305 §3, AS CODIFIED AT TUKWILA MUNICIPAL CODE SECTION 9.48.060; PROVIDING A PROCESS FOR THE DEFERRAL OF TRANSPORTATION IMPACT FEES TO ENCOURAGE RESIDENTIAL DEVELOPMENT WITHIN CERTAIN PORTIONS OF THE SOUTHCENTER AREA OF THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

**Ordinance 2485:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING ORDINANCE NO. 2366 §1 (PART), AS CODIFIED AT TUKWILA MUNICIPAL CODE SECTION 16.28.040; PROVIDING A PROCESS FOR THE DEFERRAL OF PARKS IMPACT FEES TO ENCOURAGE RESIDENTIAL DEVELOPMENT WITHIN CERTAIN PORTIONS OF THE SOUTHCENTER AREA OF THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

**Ordinance 2486:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING ORDINANCE NO. 2365 §1 (PART), AS CODIFIED AT TUKWILA MUNICIPAL CODE SECTION 16.26.040; PROVIDING A PROCESS FOR THE DEFERRAL OF FIRE IMPACT FEES TO ENCOURAGE RESIDENTIAL DEVELOPMENT WITHIN CERTAIN PORTIONS OF THE SOUTHCENTER AREA OF THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

The full text of these ordinances will be provided upon request.

Christy O'Flaherty, MMC, City Clerk

Published Seattle Times: October 22, 2015