

ORDINANCE NO. 770

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN FACILITIES WITHIN PUBLIC RIGHTS-OF-WAY FOR THE DISTRIBUTION AND SALE OF NATURAL GAS TO CUSTOMERS BOTH WITHIN AND OUTSIDE OF THE CITY OF UNIVERSITY PLACE

THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions.

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

1.1.1 "PSE" means Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.

1.1.2 "City" means the City of University Place, an optional municipal code city of the State of Washington.

1.1.3 "Franchise Area" means any and all public rights-of-way of the City. In addition, upon subsequent mutual written agreement between the City and PSE, Franchise Area may include other publicly owned land.

1.1.4 "Facilities" means, collectively, a natural gas distribution system of sufficient size and capacity to serve customers within and outside of the City. Facilities includes, but is not limited to, gas pipes, mains, laterals, conduits, feeders, regulators, valves, meters, meter reading devices, fixtures and communication systems and any other equipment necessary for the distribution and sale of natural gas to customers both within and outside the City.

1.1.5 "Transmission Lines" means any segment(s) of a natural gas pipeline as described in 49 CFR 192.3 on the effective date of this Franchise.

Section 2. Grant of Franchise.

2.1 The City hereby grants PSE the right, privilege, authority, and franchise to construct, operate and maintain Facilities within the Franchise Area necessary for the distribution and sale of natural gas to customers both within and outside the City.

2.2 PSE shall not construct, operate, or maintain Transmission Lines within the Franchise Area unless the City authorizes construction, operation, or maintenance of Transmission Lines within the Franchise Area pursuant to a separate franchise agreement or other grant of authority. PSE does not operate any Facilities within the Franchise Area that are Transmission Lines within the meaning of 49 CFR 192.3 as of the effective date of this Franchise. In the event of any amendment to 49 CFR 192.3, all Facilities located within the Franchise Area prior to the effective date of such amendment shall not be considered Transmission Lines for the purposes of this Section 2.2.

2.3 Facilities that are meter reading devices or communication systems which utilize wireless transceivers installed pursuant to this Franchise shall be (i) used exclusively for meter reading and internal control of PSE's natural gas distribution system, and (ii) comply with UPMC Title 23. The total number of such facilities shall not exceed thirty (30) without prior authorization by the City.

Section 3. Noninterference of Facilities.

3.1 PSE's Facilities shall be maintained within the Franchise Area so as not to either incommode the public or interfere with the free passage of traffic. Such Facilities shall be maintained in accordance with the laws and regulations of the State of Washington and City ordinances. In the event of any conflict or inconsistency of City codes or ordinances with the terms and conditions of the Franchise, the terms and conditions of this Franchise shall govern and control except as provided in Section 14.4.

3.2 PSE shall provide the City upon request with copies of drawings in use by PSE showing the approximate location of PSE's Facilities at specified locations within the Franchise Area. Neither party relieves the other of the obligation arising under applicable law with respect to determining the locations of underground utility facilities prior to excavations.

Section 4. Relocation of Facilities.

4.1 Whenever the City causes a public right of way improvement to be undertaken within the Franchise Area, and such public right of way improvement requires the relocation of PSE's then existing Facilities within the Franchise Area, the City shall:

4.1.1 provide PSE, within a reasonable time prior to the commencement of such public right of way improvement, written notice requesting such relocation; and

4.1.2 provide PSE with reasonable plans and specifications for such public right of way improvement.

After receipt of such notice and such plans and specifications, PSE shall relocate such Facilities within the Franchise Area at no charge to the City.

4.2 Nothing in this Franchise shall prevent PSE from recovering its costs for relocating Facilities for the benefit of a third party upon terms and conditions acceptable to PSE (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).

4.3 Nothing in this Section 4 "Relocation of Facilities" shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to a private easement or other real property right.

Section 5. Avoidance of Pavement Disruptions.

5.1 Whenever the City paves any portion of the Franchise Area, the City may request that PSE determine whether Facilities may be installed to provide future service from existing Facilities within the Franchise Area to the owners of unimproved properties adjacent to the paved area. In the event PSE determines such Facilities can be installed, and such services provided, in accordance with applicable tariff provisions, PSE may install such Facilities in order to provide future service without additional trenching or pavement disruptions of the Franchise Area.

Section 6. Joint Trenching.

6.1 In the event either PSE or the City shall cause excavations to be made within the Franchise Area, the party causing such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation so long as such joint use does not unreasonably delay the work of the party causing such excavation, and such joint use is arranged and accomplished upon terms and conditions reasonably satisfactory to the party causing such excavation. In the event another utility which is authorized by the City to locate its facilities within the Franchise Area shall request an opportunity to use PSE's excavations within the Franchise Area, PSE shall make reasonable efforts to accommodate such request

upon terms and conditions satisfactory to PSE so long as such joint use does not unreasonably delay PSE's work.

Section 7. Indemnification.

PSE shall defend, indemnify, and hold harmless the City, its officers, officials, and employees ("City Indemnitees") from and against any and all claims, suits, actions, or liabilities made against any City Indemnitee on account of injury or death of any person, or for damage to property, to the extent such injury or damage is caused by the negligence or intentional misconduct of PSE or its agents or employees in exercising the rights granted to PSE under this Franchise.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of any claim, suit, action, or liability for damages arising out of bodily injury to persons (including death) or damages to property caused by or resulting from the concurrent negligence of PSE and any City Indemnitee, PSE's obligations under this Section 7 shall be only to the extent of PSE's negligence. It is further specifically and expressly understood that, solely to the extent required to enforce any indemnification provided under this Section 7, PSE waives any immunity under Industrial Insurance, Title 51 RCW; except, that the foregoing waiver shall not in any way preclude PSE from asserting such immunity directly against any of its own employees or such employees' estates or other representatives. This waiver has been mutually negotiated by the parties. The provisions of this Section 7 shall survive the expiration or termination of this Agreement.

Section 8. Insurance.

8.1 Insurance Term. PSE shall procure and maintain for the duration of this Franchise and as long as PSE has Facilities in the rights-of-way, insurance, or self-insurance against claims for injuries to persons or damage to property which may arise from or in connection with this Franchise and use of the Franchise Area by PSE.

8.2 No Limitation. PSE's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of PSE to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

8.3 Minimum Scope of Insurance. PSE shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, pollution, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be included as an additional insured under PSE's Commercial General Liability insurance policy with respect to this Franchise.

2. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as PSE's Commercial General Liability and Automobile Liability insurance. The City shall be included as an additional insured on PSE's Excess or Umbrella Liability insurance policy with respect to liability arising out of activities performed by or on behalf of PSE in connection with this Franchise to the extent of limits required herein.

8.4 Minimum Amounts of Insurance. PSE shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits of no less than \$5,000,000 for each occurrence, \$5,000,000 general aggregate.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

3. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through PSE's Commercial General Liability and Automobile Liability insurance, self-insurance, or any combination thereof that achieves the overall required limits.

8.5 Other Insurance Provisions. PSE's Commercial General Liability, Automobile Liability, and Excess or Umbrella Liability, policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance to the extent of PSE's negligence and as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of PSE's insurance and shall not contribute with it.

8.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

8.7 Verification of Coverage. PSE shall furnish the City with original certificates and a copy of the amendatory endorsements annually, including the additional insured endorsement, evidencing the insurance requirements of this Franchise.

8.8 Subcontractors. PSE shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of PSE-provided insurance as set forth herein, except PSE shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors.

8.9 Notice of Cancellation. PSE shall provide the City with written notice of any policy cancellation within ten (10) business days of their receipt of such notice. In the event of any policy cancellation, PSE shall obtain and furnish to the City evidence of replacement insurance meeting the requirements of Section 8.

8.10 PSE – Self Insurance. If PSE is self-insured or becomes self-insured during the term of this Franchise, (i) the City may review PSE's financial position via its SEC filings available at <http://www.pugetenergy.com/pages/filings.html>; and (ii) PSE or its parent company is responsible for all required payments within the self-insured retention. Upon the City's request, PSE shall provide the City with reasonable written evidence that PSE is maintaining such self-insurance program.

Section 9. Reservation of Easement in Event of Vacation.

9.1 In the event the City vacates any portion of a public right-of-way, it shall take reasonable steps, including notification to PSE, to reserve an easement for PSE's Facilities in the area vacated.

Section 10. Default.

10.1 If PSE shall fail to comply with the provisions of this Franchise, the City may serve upon PSE a written order to comply within sixty (60) days from the date such order is received by PSE. If PSE is not in compliance with this Franchise after expiration of said sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply

with this Franchise by PSE cannot be corrected with due diligence within said sixty (60) day period (PSE's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which PSE may so comply shall be extended for such time as may be reasonably necessary and so long as PSE commences promptly and diligently to effect such compliance.

Section 11. Nonexclusive Franchise.

11.1 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with PSE's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 12. Franchise Term.

12.1 This Franchise is and shall remain in full force and effect for a period of twenty (20) years from and after the effective date of this Franchise; provided, however, PSE shall have no rights under this Franchise nor shall PSE be bound by the terms and conditions of this Franchise unless PSE shall, within sixty (60) days after the effective date of the Ordinance, file with the City its written acceptance of this Franchise.

Section 13. Assignment.

13.1 PSE shall have the right to assign its rights, benefits, and privileges in and under this Franchise. Any assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise. Notwithstanding the foregoing, PSE shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits, and privileges in and under this Franchise for the benefit of bondholders.

Section 14. Miscellaneous.

14.1 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.

14.2 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.

14.3 In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any permits, license, agreement or other document between PSE and the City, the provisions of this Franchise shall control, unless otherwise specifically agreed to by written instrument, signed by both parties.

14.4 PSE's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and PSE agrees to comply with all applicable laws, ordinances, or regulations properly enacted pursuant to the police powers of the City. Any conflict between the provisions of this Franchise and any applicable law, ordinance or regulation enacted by the City shall be resolved in favor of this Franchise; provided that in the event of such conflict, the City may request that PSE and the City enter into good faith negotiations to eliminate such conflict pursuant to Section 14.5. Pending completion of such negotiations resulting in mutually agreeable amendment(s) of this Franchise, City adoption of such amendment(s) by ordinance and acceptance of such ordinance by PSE, this Franchise shall remain in full force and effect, except as otherwise provided in Section 14.1.

14.5 If so requested by Section 14.4, within thirty (30) days from and after receipt of written notice from the City, the parties shall, at a mutually agreeable time and place, commence good faith negotiations to amend only the portions(s) of this Franchise that are in conflict with applicable laws, ordinances or regulations enacted pursuant to the police powers of the City. In the event such negotiations do not result in mutually agreeable amendment(s) of this Franchise within one hundred and eighty (180) days of the commencement of such negotiations, then the City may, at its option, terminate this Franchise by ordinance.

14.6 PSE shall pay for all costs of publication of this Franchise and public notice required by law.

Section 15. Effective Date.

15.1 This Ordinance shall be in full force and effect five (5) days after final passage. This Franchise shall be effective five (5) days after its written acceptance by PSE. If PSE has not accepted this Franchise within sixty (60) days after the City Council has adopted this Ordinance, and unless extended by the City Council, the City's approval of this Ordinance shall lapse and be of no further effect.

PASSED BY THE CITY COUNCIL ON JUNE 14, 2023.

Steve Worthington, Mayor

ATTEST:

Emelita J. Genetia, City Clerk

APPROVED AS TO FORM:

Matthew S. Kaser, City Attorney

Publication Date: 06/15/23

Effective Date: 06/20/23