

## **ORDINANCE NO. 2591**

AN ORDINANCE GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA TO PROVIDE FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF NATURAL GAS AND ELECTRIC ENERGY FOR POWER, HEAT AND LIGHT, AND ANY OTHER PURPOSES FOR WHICH NATURAL GAS AND ELECTRIC ENERGY MAY BE USED.

THE CITY COUNCIL OF THE CITY OF ISSAQUAH, 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 Issaquah, a Municipal Corporation within the State of Washington, and its successors and assigns.

1.1.3 "Franchise Area" means any, every and all right-of-way for public roads, streets, avenues, alleys, highways and other public ways of the City as now laid out, platted, dedicated or improved; and any, every and all right-of-way for public roads, streets, avenues, alleys, highways and other public ways that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended. For the purpose of this definition, right-of-way includes property owned by the City in fee and used for public roads and other public ways of the City.

1.1.4 "Facilities" means, collectively, any and all (i) natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, meters, meter-reading devices, and communication systems; (ii) electric transmission and distribution systems, including, but not limited to poles (with or without cross-arms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices, and communication systems; and (iii) 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.

1.1.5 "Ordinance" means Ordinance No.2591, which sets forth the terms and conditions of this Franchise.

## **Section 2. Facilities Within Franchise Area.**

2.1 The City does hereby grant to PSE the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of gas and electric energy for power, heat, light and such other purposes for which gas and electric energy may be used.

## **Section 3. Noninterference of Facilities.**

3.1 PSE's Facilities shall be maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with the laws of the State of Washington and the City. PSE shall exercise its rights within the Franchise Area in accordance with applicable City codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and 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 such City codes and ordinances.

3.2 PSE shall provide the City, upon the City's reasonable request, copies of available drawings in use by PSE showing the location of its Facilities at specific locations within the Franchise Area and shall provide field markings of its underground Facilities within the Franchise Area for the design of City projects at no cost to the City. As to any such drawings so provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location. With respect to any excavations within the Franchise Area undertaken by or on behalf of PSE or the City, nothing herein 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 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 (for purposes other than those described in paragraph 4.2 below), 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. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 4.1, the City shall bear the entire cost of such subsequent relocation. As used herein, the term "public right of way improvement" is a City-funded capital improvement to the public right of way identified in the City's six-year transportation improvement program.

4.2 Whenever (i) any public or private development within the Franchise Area, other than a

public right of way improvement, requires the relocation of PSE's Facilities within the Franchise Area to accommodate such development; or (ii) 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.

4.3 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 paragraph 4.2 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).

4.4 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 easement or such other rights not derived from this Franchise.

### **Section 5. Indemnification.**

5.1 PSE hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by PSE's own employees for which PSE might otherwise be immune under Title 51 RCW, for injury or death of any person or damage to property caused by or arising out of the negligent acts or omissions of PSE, its agents, servants, officers or employees in the performance of this Franchise, and any rights granted hereunder.

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 by PSE of any of its obligations under this Section. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that PSE refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification provision contained herein, and said 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 of the City's costs for defense of the action, including all expert witness fees, costs, and attorney's fees, including costs and fees incurred in recovery under this indemnification provision.

In the event of liability for damages arising out of bodily injury to persons or damages 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. It is further specifically and expressly understood that the indemnification provision provided herein constitutes PSE's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Section shall survive the expiration or termination of this Franchise.

## **Section 6. Insurance**

6.1 PSE shall procure and maintain for the duration of this Franchise, insurance against 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 PSE, its agents, representatives or employees. PSE shall provide a copy of a Certificate of Insurance to the City for its inspection prior to the adoption of this Franchise Ordinance, and such insurance certificate shall evidence a policy of insurance that includes:

- A. Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per occurrence for bodily injury and property damage; and
- B. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

PSE may satisfy the requirements of this section by a self-insurance program or membership in an insurance pool providing substantially the same coverage as set forth above.

## **Section 7. Vacation or Disposal of Franchise Area.**

7.1 In the event the City vacates or disposes of any portion of the Franchise Area during the term of this Franchise, the City shall provide PSE prior notice of same, and in its vacation or disposal procedure shall reserve an easement for utilities suitable for PSE's Facilities if the Issaquah City Council deems such action to be in the best interests of the public welfare and the City.

## **Section 8. Moving Buildings within the Franchise Area.**

8.1 If any person or entity obtains permission 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 arrange with PSE for the temporary adjustment of PSE's overhead wires necessary to accommodate the moving or removal of such building or other object. Such person or entity shall make such arrangements, upon terms and conditions acceptable to PSE, not less than thirty (30) days prior to the moving or removal of such building or other object. In such event, PSE shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its overhead wires which may obstruct the moving or removal of such building or object.

## **Section 9. Default.**

9.1 If PSE willfully violates or fails to comply with any of the provisions of this Franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given PSE by the City under the provisions of this Franchise, then PSE shall, at the election of the Issaquah City Council, forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Council after a hearing held upon notice to PSE.

## **Section 10. Remedies to Enforce Compliance.**

10.1 The City may elect, in lieu of the provisions of Section 9 above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling PSE to comply with the provisions of this Ordinance and to recover damages and costs incurred by the City by reason of PSE's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force PSE and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

## **Section 11. City Ordinances and Regulations.**

11.1 Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any Facilities within the Franchise Area by PSE, and PSE shall promptly conform with all such regulations, unless compliance would cause PSE to violate other requirements of law or applicable regulation. The provisions of Issaquah Municipal Code shall apply to performance of the conditions of this Franchise except as may be inconsistent or in conflict with the provisions of this Franchise.

## **Section 12. City Use of Facilities.**

12.1 During the term of this Franchise, the City may, subject to PSE's prior written consent which shall not be unreasonably withheld, install and maintain City-owned overhead wires for traffic signalization and police and fire communications upon PSE's poles which are Facilities located within the Franchise Area. The foregoing rights of the City to install and maintain such wires are further subject to the following:

12.1.1 The City shall perform such installation and maintenance at its sole risk and expense in accordance with all applicable laws and in accordance with such reasonable terms and conditions as PSE may specify from time to time (including, without limitation, requirements accommodating Facilities or the facilities of other parties having the right to use the Facilities);

12.1.2 PSE shall have no obligation under Section 5 of this Franchise in connection with any City-owned wires installed or maintained on PSE's poles. The City shall indemnify, defend and hold harmless PSE in connection with the City's use of PSE's poles.

Nothing in this section is intended or shall be deemed to amend, alter or limit any provisions, terms or conditions of any other agreement with respect to attachments to PSE's Facilities existing as of the date of this Franchise.

### **Section 13. Nonexclusive Franchise.**

13.1 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 14. Franchise Term.**

14.1 This Franchise is and shall remain in full force and effect for a period of thirty (30) years from and after the effective date of the Ordinance; 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 the Ordinance.

### **Section 15. Assignment.**

15.1 This Franchise may not be assigned or transferred without the written consent of the City. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. PSE shall provide prompt written notice to the City of any such assignment or transfer, and all of the provisions, terms, conditions, and requirements this Franchise shall be binding upon successors and assigns as if they were specifically mentioned wherever PSE is named herein.

### **Section 16. Acceptance.**

16.1 Within sixty (60) days after the passage and approval of this Ordinance, this Franchise may be accepted by PSE by its filing with the City Clerk an unconditional written acceptance thereof. Failure of PSE to so accept this Franchise within said period of time shall be deemed a rejection thereof by PSE, and the rights and privileges herein granted shall, after the expiration of the sixty day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

### **Section 17. Survival.**

17.1 All of the provisions, terms, conditions and requirements of Sections 4, Relocation of Facilities; 5, Indemnification; and 6, Insurance; of this Franchise shall be in addition to any and all other obligations and liabilities PSE may have to the City at common law, by statute, or by contract, and shall survive the termination or expiration of this Franchise and any renewals or extensions thereof.

### **Section 18. Notice.**

18.1 Any notice or information required or permitted to be given to the parties under this Franchise agreement may be sent to the following addresses unless otherwise specified:

CITY OF ISSAQUAH

Public Works Director  
PO Box 1307  
Issaquah, WA 98027

PUGET SOUND ENERGY

Community Services  
PO Box 97034 EST-11W  
Bellevue, WA 98009-9734

### **Section 19. Severability.**

19.1 If any section, sentence, clause or phrase of this Ordinance should be 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 Ordinance unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such courts' ruling.

### **Section 20. Miscellaneous.**

20.1 If any provision, term, 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 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.

20.2 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. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 5 above) 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:

20.2.1 references this Franchise; and

20.2.2 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.

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.

20.3 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 21. No Third Party Beneficiary.**

21.1 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, nor confer any right or remedy upon any person other than the City and PSE. No action may be commenced or prosecuted against either the City or PSE by any other party claiming beneficiary of this Franchise and nothing this Franchise shall release or discharge any obligation or liability of any third party to either the City or PSE.

**Section 22. Effective Date.**

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

**Section 23. Cost of Publication.**

23.1 The cost of the publication of this Ordinance shall be borne by PSE.

Passed by the City Council of the City of Issaquah the 20th day of September, 2010.

Approved by the Mayor of the City of Issaquah the 20th day of September, 2010.

APPROVED:

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AVA FRISINGER, MAYOR

APPROVED AS TO FORM:

BY: \_\_\_\_\_

OFFICE OF THE CITY ATTORNEY:  
WAYNE D. TANAKA

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CHRISTINE EGGERS, CITY CLERK

PUBLISHED: September 29, 2010  
EFFECTIVE DATE: October 4, 2010  
ORDINANCE NO. 2591/AB 6159