

ORDINANCE NO. 2100

AN ORDINANCE granting Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of transmission, distribution and sale of energy for power, heat, light and any other purpose for which energy can be used; and to charge and collect tolls, rates and compensation for such energy and such uses.

THE CITY COUNCIL OF THE CITY OF FERNDALE, 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 "Puget" means Puget Sound Energy, Inc., a Washington corporation, and its respective successors and assigns.

1.1.2 "City" means the City of Ferndale, a municipal corporation of the State of Washington, and its respective successors and assigns.

1.1.3 "Franchise Area" means: any, every and all of the roads, streets, avenues, alleys, highways, grounds and public places of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, highways, grounds and public places 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.

1.1.4 "Facilities" means poles (with or without crossarms), wires, lines, conduits, cables, communication and signal lines, braces, guys, anchors, vaults and all necessary or convenient facilities and appurtenances thereto, whether the same be located over or under ground.

1.1.5 "Ordinance" means Ordinance No. 2100, which sets forth the terms and conditions of this Franchise.

SECTION 2. Facilities within Franchise Area.

2.1 The City does hereby grant to Puget the right, privilege, authority and franchise to:

2.1.1 Set, erect, construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of transmission, distribution and sale of energy for power, heat, light and any other purpose for which energy can be used; and

2.1.2 To charge and collect tolls, rates and compensation for such energy and such uses.

SECTION 3. Noninterference of Facilities.

3.1 Puget'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. Whenever it shall be necessary for Puget, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, Puget shall, upon completion of such excavation, restore the surface of the Franchise Area, as nearly as practicable, to the same condition it was in prior to such excavation.

SECTION 4. Relocation of Facilities.

4.1 Whenever the City causes the grading or widening and other City improvements necessary for pedestrian and vehicular traffic safety of the Franchise Area (for purposes other than those described in Section 4.2 below) and such grading or widening and other City improvements necessary for pedestrian and vehicular traffic safety requires the relocation of Puget's then existing Facilities within the Franchise Area, the City shall:

4.1.1 provide Puget, within a reasonable time prior to the commencement of such grading or widening and other City improvements necessary for pedestrian and vehicular traffic safety, written notice requesting such relocation; and

4.1.2 provide Puget with reasonable plans and specifications for such grading or widening and other City improvements necessary for pedestrian and vehicular traffic safety.

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 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 subsequent relocation.

4.2 Whenever 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; or, whenever the City requires the relocation of Puget's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then Puget shall have the right as a condition of such relocation to require such person or entity to:

4.2.1 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; and

4.2.2 indemnify and save 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 relocation of Puget's Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of Puget's Facilities or the negligence of the agents, servants or employees of the person or entity requesting the relocation of Puget's Facilities.

4.3 Any condition or requirement imposed by the City upon any person or entity, other than Puget (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) which requires the relocation of Puget's Facilities shall be a required relocation for purposes of Section 4.2. Provided, however, in the event the City reasonably determines and notifies Puget in writing that the primary purpose of imposing such condition or requirement upon such person or entity is to cause, on the City's behalf in a manner consistent with City-approved improvement plans, grading, widening, and other City improvements necessary for pedestrian and vehicular safety within a segment of the Franchise Area, then:

4.3.1 Only those costs and expenses incurred by Puget in integrating and 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 the provisions of Section 4.1.

4.4 Nothing in this Section 4 "Relocation of Facilities" shall require Puget to bear any cost or expense in connection with the location or relocation of any Facilities then existing under benefit of easement or such other prior rights.

SECTION 5. Indemnification.

5.1 Each (as "Indemnitor") agrees to indemnify, defend and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims are caused by the negligence, misconduct or other fault of the indemnitor, its agents, employees or contractors.

SECTION 6. Moving Buildings within the Franchise Area.

6.1 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 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:

6.1.1 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;

6.1.2 where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with Puget's business; and

6.1.3 the person or entity obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and save 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 7. Default.

7.1 If Puget shall fail to comply with the provisions of this Franchise, the City may serve upon Puget a written order to so comply within sixty (60) days from the date such order is received by Puget. If Puget 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 Puget cannot be corrected with due diligence within said sixty (60) day period (Puget'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 Puget may so comply shall be extended for such time as may be reasonably necessary and so long as Puget commences promptly and diligently to effect such compliance.

SECTION 8. Nonexclusive Franchise.

8.1 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 which do not interfere with Puget'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 9. Franchise Term.

9.1 This Franchise is and shall remain in full force and effect for a period of twenty-five (25) years from and after the effective date of the Ordinance, provided, however, Puget shall have no rights under this Franchise nor shall Puget be bound by the terms and

conditions of this Franchise unless Puget shall, within sixty (60) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance.

SECTION 10. Assignment.

10.1 Puget 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, Puget shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits and privileges in and under this Franchise to the Trustee for its bondholders.

SECTION 11. Miscellaneous.

11.1 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 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.

11.2 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 5.1 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 Puget 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:

11.2.1 references this Franchise; and

11.2.2 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.

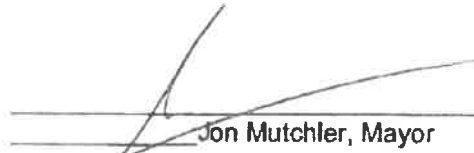
In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

11.3 This Franchise is subject to the provisions of any applicable tariff now or hereafter 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 12. Effective Date.

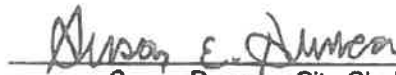
12.1 This Ordinance shall take effect on June 10, 2019, having been: (i) introduced to the City Council not less than five days before its passage; (ii) first submitted to the City Attorney on June 3, 2019; (iii) published at least five days prior to the above-referenced effective date and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the City of Ferndale by a majority of the whole of such legislative body on June 3, 2019.

Signed and approved by the Mayor on the 3rd day of June, 2019,
2019.



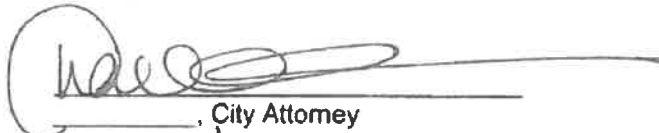
Jon Mutchler, Mayor

ATTEST:



Susan Duncan, City Clerk

APPROVED AS TO FORM:



City Attorney

Date: 6/3/19

