Legislation Passed September 15, 2015

The Tacoma City Council, at its regular City Council meeting of September 15, 2015, adopted the following resolutions and/or ordinances. The summary of the contents of said resolutions and/or ordinances are shown below. To view the full text of the document, click on the bookmark at the left of the page.

Resolution No. 39268
A resolution authorizing the execution of an Interlocal Agreement with local governments within the Green/Duwamish Watershed in King County, in an amount up to $230,000, budgeted from the Water Operating Fund, for a ten-year period from January 1, 2016 through December 31, 2025, to support salmon recovery efforts in the Green River.
[Greg Volkhardt, Operations Manager; Linda McCrea, Water Superintendent]

Resolution No. 39269
A resolution setting Tuesday, October 13, 2015, at approximately 5:30 p.m., as the date for a public hearing by the City Council on the proposed Development Regulation Agreement with Metro Parks Tacoma, to manage the development of Point Defiance Park under its 20-Year Master Plan.
[Ian Munce, Special Assistant to the Director; Peter Huffman, Director, Planning and Development Services]

Ordinance No. 28316
An ordinance vacating a one-foot portion of right-of-way running along Commerce Street, South 15th Street, and Pacific Avenue to cure a building foundation encroachment for the Waddell Building.
(Tacoma Hospitality, LLC; File No. 124.1356)
[Phyllis Macleod, Hearing Examiner]

Ordinance No. 28318
An ordinance granting a nonexclusive franchise to Puget Sound Energy, Inc. to construct, operate, maintain, remove, replace, and repair pipeline facilities in public rights-of-way, for the transportation, distribution and sale of natural gas.
[Jennifer Hines, Assistant Division Manager; Kurtis D. Kingsolver, P.E., Director, Public Works]
RESOLUTION NO. 39268

A RESOLUTION relating to the Department of Public Utilities, Water Division (d.b.a. "Tacoma Water"); authorizing the execution of an Interlocal Agreement between the City and local governments within the Green/Duwamish Watershed in King County for a ten-year period, from January 1, 2016, through December 31, 2025, in an amount up to $230,000, budgeted from the Water Operating Fund, to support salmon recovery efforts in the Green River.

WHEREAS, in 2001, 17 local governments, including the City of Tacoma, Department of Public Utilities, Water Division (d.b.a. "Tacoma Water"), entered into an Interlocal Agreement ("ILA") to form the Water Resource Inventory Area ("WRIA") 9 Ecosystem Forum ("Forum") for the purpose of restoring salmon populations in the Green River/Duwamish Watershed ("Watershed") in King County, and

WHEREAS the ILA partners share in the operating costs for the WRIA 9 Lead Entity, which oversees the distribution and use of approximately $2.5 million annually in grant funds from federal, state, and local sources for said purposes, and

WHEREAS the current ILA will expire on December 31, 2015, and

WHEREAS Tacoma Water is requesting approval to enter into a ten-year renewal of the ILA, from January 1, 2016, through December 31, 2025, to continue participation in and support of the Forum, and

WHEREAS the Water Superintendent or designee would serve as the City's representative on the Forum, and

WHEREAS Tacoma Water would be responsible for approximately 4.4 percent to 5 percent of the total annual ILA cost share, with costs anticipated to be up to $230,000 over a ten-year period, and
WHEREAS RCW 39.34.030 requires that interlocal agreements be approved by the Public Utility Board and the City Council, and

WHEREAS, by adoption of Public Utility Board Resolution No. U-10800 on August 26, 2015, the proposed ILA was approved, pending confirmation from the City Council; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the City of Tacoma, Department of Public Utilities, Water Division (d.b.a. “Tacoma Water”) is hereby authorized to enter into an Interlocal Agreement with local governments within the Green/Duwamish Watershed in King County for a ten-year period, from January 1, 2016, through December 31, 2025, in an amount up to $230,000, budgeted from the Water Operating Fund, to support salmon recovery efforts in the Green River, said document to be substantially in the form of the Interlocal Agreement on file in the office of the City Clerk.

Adopted ________________________

________________________________________
Mayor

Attest:

________________________________________
City Clerk

Approved as to form:

________________________________________
Chief Deputy City Attorney

Requested by Public Utility Board Resolution No. U-10800
RESOLUTION NO. 39269

A RESOLUTION relating to the Metropolitan Park District; setting Tuesday, October 13, 2015, at approximately 5:30 p.m., as the date for a public hearing on the proposed Development Regulation Agreement which, if approved, will serve as an agreement between the City and Metro Parks to manage the development of Point Defiance Park under its 20-Year Master Plan.

WHEREAS Metro Parks Tacoma ("Metro Parks") has completed "Destination Point Defiance," a 20-Year Master Plan for Point Defiance Park, and

WHEREAS, in late 2014, Metro Parks submitted a formal application for a Development Regulation Agreement ("DRA") pursuant to Tacoma Municipal Code ("TMC") 13.05.095, which, if approved, will serve as an agreement between Metro Parks and the City to manage the development of Point Defiance Park under its 20-Year plan, and

WHEREAS the Master Plan expands upon a 2008 Conceptual Plan, and includes additional details on potential program elements, and locations, and

WHEREAS, if pursued individually, the projects would require a series of overlapping Conditional Use Permits, a process which would not encompass the extent of the scope of work nor comprehensively manage all of the elements that might be affected by the individual projects, and

WHEREAS state law allows for an optional application procedure that can authorize certain major projects in key locations to be reviewed, rated, and approved with conditions, to the extent that the projects advance Comprehensive Plan goals and policies and, additionally, document specific compliance with policies and standards set forth in the Comprehensive Plan, and
WHEREAS the City has adopted the optional application procedure under RCW 36.70B.170-210, and provided a Comprehensive Policy, Policy No. OS-SP-2, which supports the use of the DRA process for Point Defiance Park, and

WHEREAS the City desires to fix a time and date for public hearing for the purpose of considering the proposed DRA; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That a public hearing, for the purpose of considering the proposed Development Regulation Agreement, which, if approved, will serve as an agreement between the City and Metro Parks Tacoma to manage the development of Point Defiance Park under its 20-Year Master Plan, shall be held before the City Council in the Council Chambers on the first floor of the Tacoma Municipal Building, 747 Market Street, Tacoma, Washington, on Tuesday, October 13, 2015, at approximately 5:30 p.m., or as soon thereafter as the same may be heard.

Section 2. That the Clerk of the City of Tacoma shall give proper notice of the time and place of said hearing.

Adopted ______________________

__________________________________________
Mayor

Attest:

__________________________________________
City Clerk

Approved as to form:

__________________________________________
Deputy City Attorney
ORDINANCE NO. 28316

AN ORDINANCE related to the vacation of City right-of-way; vacating a
one-foot portion of right-of-way running along Commerce Street,
South 15th Street, and Pacific Avenue to cure a building foundation
encroachment for the Waddell Building, previously permitted through
Street Occupancy Permit No. 140; and adopting the Hearing Examiner’s
Findings, Conclusions, and Recommendations related thereto.

WHEREAS all steps and proceedings required by law and by resolution
of the City Council to vacate the portion of the right-of-way hereinafter
described have been duly taken and performed; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That the City Council hereby adopts the Hearing Examiner’s
Findings, Conclusions, and Recommendations as contained in the Hearing
Examiner’s Report and Recommendation to the City Council bearing File
No. 124.1356 and dated July 17, 2015, which Report is on file in the office of
the City Clerk.
Section 2. That a one-foot portion of right-of-way running along Commerce Street, South15th Street, and Pacific Avenue, described as follows:

The Westerly 1.00 foot of Pacific Avenue lying adjacent to and being contiguous with the Northerly 34.37 feet of Block 1504, of the Map of New Tacoma, according to the plat recorded February 3, 1875, in Volume 1 of plats, page 1, records of Pierce County, Washington;

AND

The Easterly 1.00 foot of Commerce Street lying adjacent to and being contiguous with the Northerly 35.57 feet of said Block 1504;

AND

The Southerly 1.00 foot of South 15th Street lying adjacent to and being contiguous with Lot 1 of said Block 1504;

TOGETHER WITH the Southerly 1.00 foot of said South 15th Street lying adjacent to and contiguous with said Westerly 1.00 foot of Pacific Avenue;

AND TOGETHER WITH the Southerly 1.00 foot of said South 15th Street lying adjacent to and contiguous with said Easterly 1.00 foot of Commerce Street;

Situate in the City of Tacoma, Pierce County, Washington;

is hereby vacated, and the land so vacated is hereby surrendered and attached to the property bordering thereon, as a part thereof, and all right or
title of the City in and to the portion of the right-of-way so vacated does hereby vest in the owners of the property abutting thereon, all in the manner provided by law.

Passed ____________________________

______________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to form: Property description approved:

______________________________
Deputy City Attorney

______________________________
Chief Surveyor

Public Works Department

Location: A one-foot portion of right-of-way running along Commerce Street, South15th Street, and Pacific Avenue

Petitioner: Tacoma Hospitality, LLC

Vacation Req. No. 124.1356

Req. #15-0794
ORDINANCE NO. 28318

AN ORDINANCE granting Puget Sound Energy, Inc., a Washington corporation, its successors, grantees and assigns the nonexclusive right, privilege, authority and franchise to construct, operate, maintain, remove, replace, and repair pipeline facilities in public rights-of-way within the corporate limits of the City of Tacoma as defined in this franchise, together with all facilities, equipment and appurtenances thereto, for the transportation, distribution and sale of natural gas within and through those certain right-of-way areas, streets and public property within the City of Tacoma.

WHEREAS Puget Sound Energy, Inc., (hereinafter “Grantee”) was assigned those franchise rights granted to the Washington Natural Gas Company in 1984, pursuant to City of Tacoma Ordinance No. 23256 (the “1984 Franchise”), which allowed Grantee to operate and maintain natural gas pipelines within City of Tacoma rights-of-way, and

WHEREAS the 1984 Franchise expired, and has been in holdover status since June 2009, and the City and Grantee desire to enter into a new franchise agreement/ordinance to replace the 1984 Franchise pursuant to the terms and conditions contained herein (herein this “Franchise”) to operate and maintain natural gas pipelines in Public Rights-of-Way within the corporate limits of the City of Tacoma as defined, herein, (the City of Tacoma is hereinafter referred to as the “City” or “Grantor”), and

WHEREAS the Tacoma City Charter authorizes the City to grant nonexclusive franchises for the use of City rights-of-way, streets and public property; Now, Therefore,
BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. Purpose.

The City grants this nonexclusive Franchise to Grantee to operate and maintain a natural gas pipeline distribution system, including, but not limited to, gas pipes, pipelines, mains, laterals, conduits, regulators, meters, meter-reading devices, communication systems, and related equipment, appliances, attachments, appurtenances and other facilities reasonably necessary to the foregoing and to operate and maintain the pipeline as a natural gas pipeline distribution system for Grantee’s business (the “Pipeline System”). This Franchise is conditioned upon the terms and conditions contained herein and Grantee’s compliance with any applicable federal or state regulatory programs that currently exist or may hereafter be enacted by any federal or state regulatory agencies with jurisdiction over the Grantee. The purpose of this Franchise is to delineate the conditions relating to Grantee’s use of the Public Rights-of-Way (as defined below) and to create a foundation for the parties to work cooperatively in the public’s best interests after this ordinance becomes effective. By granting this Franchise, the City is not assuming any risks or liabilities therefrom.

Section 2. Right Conveyed.

2.1 Grantor hereby grants, under the terms and conditions contained herein, to Grantee, a corporation organized and existing under and by virtue of the laws of the state of Washington, and which is registered and authorized to transact business within the state of Washington, its successors and assigns, which shall be bound hereto, the right, privilege, authority and franchise to construct, set, lay,
extend, support, attach, connect, enlarge, use, operate, maintain, remove, replace
and repair the Pipeline System, together with all equipment and appurtenances as
may be necessary thereto, for the transportation, distribution, sale and handling of
natural gas, within the corporate limits of the City of Tacoma, and in, upon, over,
under, along, across and through the “Public Rights-of-Way” as defined as follows:
“Public Right(s)-of-Way” mean(s) any, every and all public streets, roads, avenues,
alleys, highways and City-owned right-of-way easements which, under the City
Charter, the Tacoma Municipal Code, City ordinances and applicable laws the City
has authority over to grant franchises, permits, or licenses for use thereof or has
regulatory authority thereover, as the same are now laid out, platted, dedicated or
improved, and any, every and all roads, streets, avenues, alleys, highways and
City-owned right-of-way 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, excluding railroad right-of-way areas, and airport, and harbor areas.
Public Rights-of-Way, for the purpose of this Franchise, do not include buildings,
parks, poles, or similar facilities, structures, or property owned by or leased to the
City, including, by way of example and not limitation, City-owned or leased
structures in the Public Rights-of-Way. Those areas constituting the Public
Rights-of-Way are hereinafter, at times, also collectively referred to as the
“Franchise Area.”
2.2 This Franchise is only intended to convey a limited right and interest
as to Public Rights-of-Way in which the City has an actual interest. It is not a
warranty of title or interest in City road right-of-way areas, nor is it a warranty of

-3-
Grantee’s right to locate in any such area. None of the rights granted herein shall affect the City’s ability or jurisdiction over its property, streets or right-of-way areas; provided that the City acknowledges that this Franchise constitutes a binding agreement between the City and Grantee that may be amended only by mutual written agreement of both parties and the rights granted to Grantee may not be abrogated, impaired, modified or limited by unilateral action of the City.

2.3 Existing facilities of the Grantee that are installed or maintained by the Grantee on public grounds and places within the City in accordance with prior franchises (but are not within the Franchise Area as defined in this Franchise) may continue to be maintained, repaired and operated by the Grantee at the location such facilities exist as of the effective date of this Franchise for the term of this Franchise unless relocation or removal is required pursuant to this Franchise; and provided that no such facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to applicable ordinances, codes, resolutions, standards and procedures. When either Grantee or Grantor discovers any such existing facilities, the discovering party shall notify the other and the parties shall work cooperatively to either add such facilities to the Franchise Area or document the facilities by a separate easement.

2.4 This Franchise shall not apply to non-right-of-way facilities located on Grantee-owned or leased properties or easements (whether inside or outside 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. Term.

Each of the provisions of this Franchise shall become effective upon
Grantee’s acceptance of the terms and conditions of this Franchise (the “Effective
Date”) and shall remain in effect for twenty-five (25) years thereafter.
Subsequently, and in accordance with the terms and provisions of Tacoma Charter
Article VIII, the City Council may consider renewing this Franchise, at the written
request of Grantee, for an additional renewal period at any time within two (2) years
before the end of the Franchise’s original twenty-five (25) year term, unless either
party expresses its intention in writing to terminate this Franchise at the conclusion
of the original twenty-five (25) year term.

Section 4. Compliance with Laws and Standards.

Grantee shall, in carrying out any authorized activities under the privileges
granted herein, comply with all applicable federal, state and local laws, rules and
regulations of any governmental entity with jurisdiction over the Pipeline System
and its operations within the Franchise Area (herein “Applicable Laws”). This
obligation (and all other obligations in this Franchise that require compliance with all
Applicable Laws) shall include all Applicable Laws existing at the Effective Date of
this Franchise or that may be subsequently enacted by any governmental entity
with jurisdiction over Grantee and/or the Pipeline System; provided that,
notwithstanding the foregoing or any other provision of this Franchise to the
contrary, in the event any local laws, rules or regulations enacted by the City after
the effective date of this Franchise materially impairs Grantee’s rights hereunder, the terms of this Franchise will govern and control; and further provided that the exercise of Grantee’s rights does not otherwise conflict with state or federal laws, rules, or regulations. In addition, Grantee’s activities shall comply with all applicable commercially acceptable industry standards.

Section 5.  Construction on Public Properties.

5.1 This Section 5 shall apply to all construction done by Grantee in the Franchise Area. Except in the event of an emergency, Grantee shall provide Grantor at least ten (10) calendar days’ written notice prior to any alteration, integrity testing, repair, replacement, removal, or other substantial activity, other than routine inspections and maintenance, by Grantee, its agents, employees or contractors on Grantee’s Pipeline System within the Franchise Area. Said written notice shall include, at a minimum, a detailed description of the proposed work and anticipated time of the work. Such work shall only commence upon the issuance of applicable permits by the City, which permits shall not be unreasonably withheld or delayed. In the event of an emergency requiring immediate action by Grantee for the protection of the Pipeline System, Grantor’s property or other persons or property, Grantee may take such action upon such notice to Grantor as is reasonable under the circumstances. A subsequent report of work performed must be delivered to the City as soon as possible after the emergency work is completed.

5.2 All work done hereunder by Grantee or upon Grantee’s direction or on Grantee’s behalf shall be undertaken and completed in a workmanlike manner and in accordance with the descriptions, plans and specifications provided to, and
approved by, Grantor. Grantee’s activities shall be conducted in such a manner as to avoid damage or interference with other utilities, drains or other structures, including both public and private infrastructure, and to not unreasonably interfere with public travel, or other municipal uses. The Grantee’s construction, maintenance and repairs shall be conducted in compliance with all Applicable Laws. Additionally, Grantee shall place markers underground demarcating the pipeline’s location each time Grantee trenches along the pipeline for a length of six (6) feet or more or when installing new facilities.

5.3 The City may condition the granting of any permit or other approval that is required under this Franchise, at any time, on any lawful condition or regulation, unless such condition or regulation is inconsistent or in conflict with this Franchise, Applicable Laws or any federal or state directive, as may be reasonably necessary to the management of the Public Rights-of-Way or the Grantor’s property, including, by way of example and not limitation, bonding, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and protecting any right-of-way improvements, private facilities and public safety.

5.4 Whenever it shall be necessary in constructing, maintaining, repairing, relocating, removing or replacing any of the Grantee’s Pipeline System in any Public Right-of-Way, the Grantee shall without delay, as soon as is commercially reasonable, and at no cost to the City, remove all debris and restore the surface of the Public Right-of-Way in the area directly disturbed by the Grantee’s work as nearly as practicable to as good or better condition as it was in before the work.
began in compliance with the City’s right-of-way restoration policy. Grantee shall replace any property corner monuments, survey reference or hubs that were disturbed or destroyed during Grantee’s work in the areas covered by this Franchise. Such restoration shall be done in a manner consistent with applicable codes and laws, under the supervision of the City’s Director of Public Works or his authorized designee and to the City’s reasonable satisfaction and specifications.

5.5 As and to the extent required by Applicable Laws, both Grantee and the City shall continuously be a member of the state of Washington one number locator service under RCW 19.122, or approved equivalent, and shall comply with all such applicable rules and regulations. Grantee shall provide reasonable notice to the City, through the permitting process, prior to commencing any work or construction within the Franchise Area under this Franchise. Grantee shall also provide notice to those owners or other persons in control of property abutting the Franchise Area, in accordance with Grantee’s then-current notification processes and procedures, when such work or construction within the Franchise Area will materially affect access to or use of such abutting property or otherwise adversely impact the private or public improvements within said area.

5.6 Grantee shall make available to the City, upon the City’s written request and at no cost to the City, copies of any maps and records in use by Grantee showing the then-current location and condition of Grantee’s facilities at specific locations within the Franchise Area in connection with a public improvement project (as defined in Section 8 below) being planned and undertaken by the City. As to any such maps or records so provided, Grantee does not warrant
the accuracy thereof, and to the extent the location of facilities is shown, such facilities are shown in their approximate location. The foregoing notwithstanding, nothing in this Section 5.6 or in any other provision of this Franchise is intended (nor shall be construed) to relieve either party of their respective obligations arising under Applicable Laws with respect to determining the location of utility facilities.

5.7 Nothing in this Franchise shall be deemed to impose any duty or obligation upon Grantor to determine the adequacy or sufficiency of Grantee’s plans and designs or to ascertain whether Grantee’s proposed or actual construction, testing, maintenance, repairs, replacement or removal is in conformance with the plans and specifications reviewed by Grantor. Grantee shall be solely and completely responsible for its compliance with Applicable Laws relating to workplace safety and safe working practices on its job sites within the Franchise Area.


6.1 Grantee shall operate, maintain, inspect and test its Pipeline System within the Franchise Area in full compliance with the applicable provisions of all Applicable Laws, as now enacted or hereafter amended, and any other current or future laws or regulations that are applicable to the operation, maintenance, inspection and testing of Grantee’s Pipeline System.

Section 7. Notice and Reporting.

If reasonably requested by Grantor in writing, which request may not be made more frequently than once in any calendar year, Grantee shall provide to Grantor a list of reports relating to pipeline integrity for the Pipeline System within
the Franchise Area that Grantee has submitted to governmental entities during the previous year.

Section 8. Relocation.

8.1 Relocation for Public Improvement Projects. In the event that Grantor undertakes or approves the construction of or changes to the grade or location of any water, electrical, public communications, sewer or storm drainage line, street, sidewalk or other City improvement project or any governmental agency or any person or entity acting in a governmental capacity, or on the behalf of, under the authority of, or at the request of the Grantor or any other governmental agency, undertakes any improvement project within the Franchise Area, and the Grantor determines that the project might reasonably require the relocation of Grantee's Pipeline System, Grantor shall provide the Grantee at least ninety (90) calendar days' prior written notice or such additional time as may reasonably be required, of such project requiring relocation of Grantee's Pipeline System.

8.1.1 The City shall provide the Grantee (a) with written notice of any required relocation in accordance with the TMC, and (b) with reasonable plans and specifications for the public improvement project.

8.1.2 Grantee may, after receipt of written notice requesting a relocation of its Pipeline System under this Section 8.1, submit to the City written alternatives to such relocation within fifteen (15) calendar days of receiving the corresponding plans and specifications. The City shall evaluate such alternatives and advise Grantee in writing if one or more of the alternatives are suitable to accommodate the work that would otherwise necessitate relocation of the Pipeline.
System. If so requested by the City, Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Grantee full and fair consideration, but the City retains full discretion to decide for itself whether to utilize its original plan or an alternative proposed by Grantee. In the event the City ultimately determines that there is no other reasonable alternative, Grantee shall relocate the affected portion of its Pipeline System at its own cost and expense.

8.1.3 Grantor shall work cooperatively with Grantee in determining a viable and practical route within which Grantee may relocate its Pipeline System under this Section 8, in order to minimize costs while meeting the public improvement project's objectives. Upon receipt of Grantor's notice, plans and specifications for a public improvement project pursuant to Section 8.1.1, the Grantee shall relocate the affected portion of its Pipeline System within the Franchise Area at no charge to the City. Grantee shall complete relocation of the designated portion of the Pipeline System so as to accommodate the public improvement project at least ten (10) calendar days prior to commencement of the public improvement project or such other time as the parties may agree in writing.

8.1.4 Nothing in this Section 8.1 shall be deemed to require that Grantee be responsible for the relocation costs of any public agency, entity or governmental jurisdiction other than the City (a) with which Grantee has an effective agreement regarding allocation of facility relocation responsibilities, or (b) with which Grantee is able to reach agreement after a relocation request regarding allocation of facility relocation responsibilities, or (c) when such agency, entity or
other governmental jurisdiction engages in a public improvement project within the
Franchise Area requiring Grantee to relocate in the same location more than once
in a five (5) year period. In all cases where Grantee either has an existing
agreement regarding relocation responsibilities or reaches an agreement prior to
relocation, Grantor will take such agreement into account in determining Grantee’s
responsibility for relocation costs,

8.2 Reservation of Rights. Nothing in this Section 8 shall require Grantee
to bear any cost or expense in connection with the location or relocation of its
Pipeline System existing at the time of a relocation request 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.

8.3 Emergencies. In the event of an emergency, or where the Pipeline
System or related facility(ies) creates or is contributing to an imminent danger to
health, safety, or property, the City may take reasonable action to protect its utility
lines in the Public Rights-of-Way and the health of its citizens.

8.4 Relocation for Other than Public Projects. Whenever any non-public
development occurs within the Franchise Area that requires the relocation of
Grantee’s Pipeline System to accommodate such development, Grantee shall have
the right as a condition of such relocation, to require such developer, person or
entity to make payment to Grantee, at a time and upon terms acceptable to
Grantee, for any and all costs and expenses incurred by Grantee in the relocation
of Grantee’s Pipeline System.
8.5 Redesign Option. As an alternative to relocation of its Pipeline System in connection with any public improvement project, Grantee may, in addition to the ability to offer other alternatives under Subsection 8.1.2 above, propose an alternative design for the pending public improvement project in order to avoid any relocation of Grantee’s Pipeline System. Such redesign proposal shall be subject to review and approval by the City and all costs of the redesign, including, without limitation, the costs actually incurred in the public improvement project as a result of the redesign requested by Grantee shall be solely for Grantee’s account. Approval and acceptance of any such redesign proposal shall be at the sole discretion of the City.

8.6 Delay. Subject to compliance by the City with the terms of this Section 8, and to the maximum extent provided by law, Grantee shall reimburse the City for any costs, expenses, and/or damages that are legally required to be paid by the City to its third-party contractor(s) as a direct result of a delay in meeting the mutually established schedule for the relocation work required to accommodate any public improvement project, but only if, as, and to the extent the delay is directly caused by Grantee’s breach of its obligations under this Franchise with respect to the relocation of Grantee’s Pipeline System within the Franchise Area in accordance with the mutually established schedule for the relocation work required to accommodate the public improvement project; provided the City first gives Grantee written notice of any such claim by the third-party contractor(s) and gives Grantee the opportunity to work with the third-party contractor(s) to resolve the claim for a period of not less than sixty (60) days prior to the City’s payment of the
claim. For purposes of clarity, nothing in this Section 8 will require Grantee to bear
or be responsible for any cost, expense or damage that results from any delay in
meeting the schedule for a public improvement project if, as, and to the extent the
delay is caused by the City, any third party, or any other cause or condition outside
of the reasonable control of Grantee should Grantee fail to relocate its facilities by
the time specified by Grantor, then Grantee shall be responsible for any costs
incurred by Grantor as a result of such delay.

Section 9. Leaks, Spills, and Emergency Response.

Grantee will maintain the Pipeline System within the Franchise Area in
accordance with all Applicable Laws, including, but not limited to, applicable
regulations provided in 49 CFR 191, 49 CFR 192, RCW 81.88, and 480-93 WAC,
as hereafter amended. To that end, Grantee will maintain a “Leakage Program"
and “Distribution Integrity Management Program,” in accordance with Applicable
Laws, as hereafter amended.

Section 10. Dispute Resolution.

10.1 In the event of a dispute between Grantor and Grantee arising by
reason of this Franchise, or any obligation hereunder, the dispute shall first be
referred to the operational officers or representatives designated by Grantor and
Grantee to have oversight over the administration of this Franchise. Said officers or
representatives shall meet within thirty (30) calendar days of either party’s request
for said meeting, whichever request is first, and the parties shall make a good faith
effort to attempt to achieve a resolution of the dispute.
10.2 In the event that the parties are unable to resolve the dispute under
the procedure set forth in Section 10.1, then the parties may mutually agree to refer
the matter to mediation. In such event, the parties shall mutually agree upon a
mediator to assist them in resolving their differences. If the parties are unable to
agree upon a mediator, the parties shall jointly obtain a list of seven (7) mediators
from a reputable dispute resolution organization and alternate striking mediators on
that list until one remains. A coin toss shall determine who may strike the first
name. If a party fails to notify the other party of which mediator it has stricken
within two (2) business days, the other party shall have the option of selecting the
mediator from those mediators remaining on the list. Any expenses incidental to
mediation shall be borne equally by the parties.

10.3 If the parties do not agree to refer the matter to mediation or, once
referred to mediation, either party is dissatisfied with the outcome of the mediation,
either party may then pursue any available judicial remedies, provided, that if the
party seeking judicial redress does not substantially prevail in the judicial action, it
shall pay the other party’s reasonable legal fees and costs incurred in the judicial
action.

Section 11. Decommissioning or Removal of Facilities.

In the event of abandonment or Grantee’s permanent cessation of use of its
Pipeline System, or any portion thereof within the City of Tacoma, the Grantee shall
accomplish abandonment or removal of the Pipeline System in accordance with
Applicable Laws.
Section 12. Non-Exclusive Franchise.

This Franchise is non-exclusive. Grantor reserves the right to grant other franchises, easements, licenses, permits or other approvals to others, subject to the rights granted herein.

Section 13. Indemnification.

13.1 General Indemnification. Grantee shall indemnify, defend and hold harmless Grantor from any and all third party claims and demands, and any resulting liability, loss, damage, cost or expense, arising on or after the date of acceptance of this Franchise, whether at law or in equity, that are made on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence or willful misconduct of Grantee, its agents, servants or employees in exercising the rights granted to Grantee under 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 Grantee thereof, and Grantee 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 Grantee thereof, and Grantee 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. Notwithstanding the foregoing, Grantee may not compromise or settle any claim, suit or action without the City’s consent (such consent not to be unreasonably withheld or delayed) if the proposed compromise or settlement would
require the City to pay monetary damages not reimbursed by Grantee or violate applicable law or if the compromise or settlement would adversely impact the City.

13.2 Environmental Indemnification. Grantee shall indemnify, defend and hold harmless Grantor from and against any and all third party claims and demands, and any resulting liability, loss, damage, expense or costs, to the extent such claim or demand is caused by Grantee’s breach of any Environmental Laws (as defined below) in its operation of the Pipeline System within the Franchise Area. This indemnity includes, but is not limited to, any claim or demand based on each of the following to the extent the same is caused by Grantee’s violation of any Environmental Laws or unlawful release of hazardous substances (as defined below) into the Franchise Area in violation of applicable Environmental Laws:

(a) liability for a governmental agency’s costs of removal or remedial action for such violation or release by Grantee of hazardous substances; (b) damages to natural resources caused by such violation or release by Grantee of hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person’s costs of responding to such violation or release by Grantee of hazardous substances; (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws that are caused by such breach or release by Grantee of hazardous substances; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory that are caused by such breach or release by Grantee of hazardous substances.
13.3 Definitions.

13.3.1 “Hazardous Substance” means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant, including all substances designated under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D, RCW; all as may be amended from time to time; or any other federal, state, or local statute, code or ordinance or lawful rule, regulation, order, decree, or other governmental authority as now or at any time hereafter in effect.

Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the
Washington Model Toxics Control Act, Chapter 70.105D RCW; all as amended from
time to time; or any other federal, state, or local statute, code, or ordinance or
federal or state administrative rule, regulation, ordinance, order, decree, or other
governmental authority as now or at any time hereafter in effect pertaining to the
protection of human health or the environment.


14.1 Insurance. The Grantee shall procure and maintain for the duration of
this Franchise, insurance, or in lieu thereof provide self-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 the Grantee in this Franchise. The Grantee’s maintenance of
insurance as required by this Franchise shall not be construed to limit the liability of
the Grantee to the coverage provided by such insurance, or otherwise limit the
City’s recourse to any remedy available at law or in equity. The Grantee shall
obtain insurance of the type described below with the following insurance limits (at
a minimum):

A. Commercial general liability insurance, which shall be written on
Insurance Services Office ("ISO") occurrence form CG 00 01 (12/2007) or a custom
form providing coverage equal to or broader than the CG 00 01 (12/2007) and shall
include stop gap liability. There shall be no endorsement or modification of the
Commercial General Liability insurance for liability arising from explosion, collapse
or underground property damage. The City shall be named as an additional
insured, without limitation, under the Grantee’s Commercial General Liability

insurance policy using ISO Additional Insured – State or Political Subdivisions –

Permits CG 20 12 or a substitute endorsement providing equivalent coverage. The

commercial general liability insurance shall be written with limits no less than

$100,000,000 each occurrence, $100,000,000 general aggregate and

$100,000,000 products-completed operations aggregate limit. In addition, the

Grantee shall maintain liability insurance with limits not less than $100,000,000

each occurrence and $100,000,000 annual aggregate to protect against claims for

bodily injury or property damage arising from natural gas vapor releases and

Grantee’s obligations concerning environmental indemnification as provided herein.

B. Automobile liability insurance, which shall cover all owned,

non-owned, hired and leased vehicles. Coverage shall be written on ISO form

CA 00 01 (11/2008) or a substitute form providing equivalent liability coverage, or in

lieu thereof provide self-insurance. The automobile insurance shall have combined

single limit for bodily injury and property damage of no less than $2,000,000 per

accident.

C. Insurance coverage shall include, but is not limited to, all defense

costs. Such insurance shall include, but is not limited to, pollution liability coverage,

at a minimum covering liability from pollution incidents, subject to time element

reporting requirements, and such other applicable pollution coverage as is

reasonably available in the commercial marketplace. Pollution liability shall include

coverage for incidents occurring onsite, offsite, and during transportation. In the

event that a deductible applies to the insurance herein, Grantee agrees to pay the

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amount of that deductible. All required liability policies shall be maintained for a period of not less than three years following termination of this Franchise.

The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance: (1) the Grantee’s insurance coverage shall be primary insurance as respects the City; any insurance, self-insurance or insurance pool coverage maintained by the City shall be excess of the Grantee’s insurance and shall not contribute with it; and (2) the Grantee’s insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the City. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VIII.

14.2 Self-Insurance Option. In lieu of the insurance requirements set forth in this Section 14, the Grantee may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the City’s request, the Grantee shall provide the City with reasonable written evidence that the Grantee is maintaining and funding such self-insurance at a level to adequately fund up to the liability limits required in this Section 14.

14.3 Proof of insurance and a copy of the insurance policy or reasonable proof of self-insurance funding, including, but not limited to, coverage terms and claims procedures, shall be provided to the Grantor prior to the beginning of any substantial work, testing or construction or reconstruction on the Pipeline System. All required liability policies shall be maintained for a period of not less than three (3) years following termination of this Franchise. The indemnity and
insurance provisions set forth under Sections 13 and 14 shall survive the
termination of this Franchise and shall continue for as long as the Grantee’s
Pipeline System and related facilities shall remain in or on the Franchise Area or
until the parties execute a new franchise agreement which modifies or terminates
these indemnity or insurance provisions.

14.4 Performance Bond.

Within thirty (30) days of acceptance of this Franchise, the Grantee shall
furnish a bond executed by the Grantee and a corporate surety authorized to do
surety business in the state of Washington, in favor of the City in the amount of
$1,000,000 in order to ensure performance of the Grantee’s obligations under this
Franchise (the “Performance Bond”). The Performance Bond shall be in favor of
the City conditioned that Grantee shall well and truly observe, fulfill, and perform
each term and condition of this Franchise. At all times during the effective term of
this Franchise, provided that Grantee is not otherwise in default of any obligation,
the Performance Bond shall also satisfy any City bonding requirement with respect
to specific work, installation, improvements, construction, repair, relocation or
maintenance conducted pursuant to this Franchise. The bond shall be conditioned
so that the Grantee shall observe all of the covenants, terms and conditions of this
Franchise, and faithfully perform all of the obligations of this Franchise, and to erect
or replace any defective work or materials discovered in the replacement of the
Public Rights-of-Way within a period of two (2) years from the date of the
replacement and acceptance of such repaired Public Rights-of-Way by the City.
This bond shall be conditioned that in the event Grantee shall fail to comply with
any one or more of the provisions of this Franchise, then there shall be recoverable
jointly and severally from the principal and surety of such bond, any damages
suffered by the Grantor as a result thereof, including the full amount of any
compensation, indemnification, or cost of removal, relocation or abandonment of
property/facilities as prescribed herein; said condition to be a continuing obligation
for the duration of this Franchise and thereafter until Grantee has satisfied all of its
obligations with the City that may have arisen from the acceptance of the Franchise
by Grantee or from its exercise of any privilege herein granted. Written evidence of
payment of required premiums shall be filed and maintained with the City. In lieu of
the bond, Grantee may provide for a letter of credit or similar arrangement to be
established giving the City rights substantially the same as the rights of the City in
relation to the bond, the provisions of which letter of credit or other arrangement
shall be subject to the approval of legal counsel for the City.

Neither the provisions of this section, any bond accepted by the City
pursuant hereto, or any damages recovered by the City thereunder shall be
construed to excuse faithful performance by Grantee or to limit the liability of
Grantee under this Franchise or for damages, either to the full amount of the bond
or otherwise, except as otherwise provided herein.

14.5 Validity of Bond. If at any time during the term of this Franchise, the
condition of the entity issuing the bond shall change in such a manner as to render
the bond unsatisfactory to the City, Grantee shall replace such bond by a bond of
like amount and similarly conditioned, issued by an entity satisfactory to the City.
The City Council, from time to time, may authorize or require appropriate and
reasonable adjustments in the amount of the bond; provided, however, that prior to
any required increase in the amount of the bond, the City shall give Grantee at least
sixty (60) days’ prior notice thereof stating the exact reason for the requirement.
Such reasons must demonstrate a change in Grantee’s business practices or other
financial or safety related circumstances, which would materially prohibit or impair
its ability to comply with the terms of the Franchise or afford compliance therewith.

14.6   Security Fund.

14.6.1 Within thirty (30) days after the effective date of this Franchise,
Grantee shall deposit into a bank account, established by the City, and maintained
through the term of this Franchise with interest running to Grantee, the sum of
$50,000, as security for compliance with all orders, permits and directions of any
agency/department of the City, and for the payment of any claims, liens and taxes
due the City or liquidated damages imposed by the City which arise by reason of
the construction, operation or maintenance of the Pipeline System or related
facilities or pursuant to any other terms of this Franchise.

14.6.2 Within thirty (30) days after notice to it that any amount has
been withdrawn by the City from the security fund pursuant to this Section 14.6,
Grantee shall deposit a sum of money sufficient to restore such security fund to the
original amount in the account at the time of withdrawal.

14.6.3 If Grantee fails, after ten (10) days’ notice, to pay the City any
delinquent fees, taxes or other amounts due and unpaid according to the terms of
this Franchise; or, fails to repay to the City, after such ten (10) days’ notice, any
damages, costs or expenses which the City shall be compelled to pay by reason of
any act or default of Grantee in connection with this Franchise; or fails, after
45 days’ notice of such failure by the City to comply with any provision of the
Franchise which the City reasonably determines can be remedied by an
expenditure of the security, the City may immediately withdraw the amount thereof,
with interest and any penalties, from the security fund. Upon such withdrawal, the
City shall notify Grantee of the amount and date thereof and Grantee shall
immediately redeposit an amount equal to that so withdrawn.

14.6.4 The security fund deposited pursuant to this section shall
become the property of the City in the event that this Franchise is canceled by
reason of the default of Grantee or revoked for cause. Grantee, however, shall be
entitled to the return of such security fund, or portion thereof as remains on deposit
at the expiration of the term of this Franchise, or upon termination of this Franchise
at an earlier date, upon payment of all sums then due from Grantee to the City
hereunder.

14.6.5 The rights reserved to the City with respect to the security
fund are in addition to all other rights of the City whether reserved by this
Franchise or authorized by law, and no action, proceeding or exercise of a right
with respect to such security fund shall affect any other right the City may have.

14.6.7 In lieu of the security fund provided for herein, Grantee may
provide for a letter of credit or similar arrangement to be established giving the City
rights substantially the same as the rights of the City in relation to the security fund,
the provisions of which letter of credit or other arrangement shall be subject to the
approval of legal counsel for the City.
Section 15. Administrative Fees.

15.1 As specifically provided in RCW 35.21.860, the City may not impose a franchise fee or any other fees or charge of whatever nature or description upon Grantee. However, as expressly provided and permitted in RCW 35.21.860, Grantee shall pay Grantor its actual administrative expenses incurred that are directly related to Grantor receiving and approving a permit, license, and the Franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW.

15.2 Grantee agrees that it will obtain, pursuant to the City’s currently effective code and rates and the applicable provisions of this Franchise, any and all licenses, permits or other approvals necessary for Grantee to operate, maintain or repair its Pipeline System in the Franchise Area. This shall include, by way of example only and not limitation, inspection and permit costs associated with Grantee’s work in the Public Rights-of-Way as permitted by Applicable Laws. The administrative fees set forth in this section do not include any generally applicable taxes that the Grantor may legally levy.

Section 16. Notice.

All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:
Grantor: Director of Public Works  
City of Tacoma  
747 Market Street, #408  
Tacoma, WA 98402

with copy to: City Attorney  
City of Tacoma  
747 Market Street, #1120  
Tacoma, WA 98402

Grantee: Puget Sound Energy, Inc.  
3130 South 38th Street  
Tacoma, WA 98409  
Attn: Municipal Liaison Manager

with copy to: Puget Sound Energy, Inc.  
10885 N.E. 4th Street  
P.O. Box 97034  
Bellevue, WA 98009-9734  
Attn: General Counsel

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

Section 17. Assignment and Transfer of Franchise.

17.1 In accordance with Tacoma City Charter Article VIII, Section 8.5, this Franchise shall not be leased, assigned or otherwise alienated without the express consent of the Grantor by ordinance, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, Grantee shall have the right, without such consent, to mortgage its rights, benefits and privileges in and under this Franchise.
for the benefit of bondholders; provided said mortgage does not adversely impact
Grantee’s ability to meet its obligations pursuant to this Franchise.

17.2 Subject to the foregoing, Grantee and any proposed assignee or
transferee shall provide and certify the following to the City not less than 120 days
prior to the proposed date of transfer:

17.2.1 Complete information setting forth the nature, terms and
conditions of the proposed assignment or transfer;

17.2.2 All information reasonably required by the City of a franchise
applicant under Tacoma City Charter Article VIII and any applicable provisions of
the Tacoma Municipal Code, with respect to the proposed assignee or transferee;

17.2.3 Any other information reasonably required by the City; and

17.2.4 An application fee which shall be set by the City, plus any
other costs actually and reasonably incurred by the City in processing and
investigating the proposed assignment or transfer.

17.3 No transfer shall be approved unless the assignee or transferee has
at least the legal, technical, financial, and other requisite qualifications to carry on
the activities of the franchisee granted hereunder.

17.4 Any transfer or assignment of this Franchise without the prior written
consent of the City as set forth herein shall be void and shall result in revocation of
the existing permit or franchise.

Section 18. Transfers of Control.

If Grantee intends to enter into a transaction which would result in a change
of the operational control of Grantee, the City shall be notified and given
ninety (90) days within which to provide written comments and identify any issues of concern to the City. Grantee will reimburse Grantor for actual and reasonable expenses to perform due diligence with regard to the legal, financial and technical experience and qualifications of the proposed new operator, provided that reimbursement shall not exceed Twenty-five Thousand Dollars ($25,000.00).
Grantee shall provide reasonable cooperation to Grantor during Grantor’s due diligence. Grantee shall respond in writing within sixty (60) days to any written comments submitted by Grantor regarding the transfer of operational control.

Section 19. Reservation of Police Power.

All the rights and privileges granted in this Franchise shall be governed by the terms and conditions of this Franchise; provided that the City reserves all its police powers to enact ordinances that are necessary to protect the health, safety and welfare of the general public.

Section 20. Termination.

20.1 Grantor may terminate this Franchise (ultimately by a revocation ordinance), upon the occurrence of any of the following events:

20.1.1 If Grantee materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this Franchise or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within thirty (30) calendar days of Grantor’s providing Grantee written notice thereof, or, if not reasonably capable of being cured within thirty (30) calendar days, within such other reasonable period
of time as may be reasonably necessary so long as Grantee commences promptly
and diligently to effect such compliance; or

20.1.2 A single uncontained release of any product from the
pipeline within the City of Tacoma if such release would subject the City to
environmental remediation/response costs in excess of $50,000 or if any such
release of the Pipeline System’s product does other damage to the property of the
City of Tacoma or its citizens in an amount exceeding $50,000 and remains
unaddressed/unremediated by Grantee for more than ten (10) business days from
discovery; or

20.1.3 Grantee becomes insolvent, unable or unwilling to pay its
debts, or is adjudged bankrupt.

20.2 This Franchise shall not be terminated, for whatever reason, except
upon a majority vote of the City Council, after reasonable notice to Grantee and an
opportunity to be heard, provided that if exigent circumstances necessitate
immediate termination, the hearing may be held as soon as possible after the
termination.

20.3 In the event of termination of this Franchise under this Section 20,
Grantee shall continue to comply with all Applicable Laws relating to the
modification, reduction or discontinuance in the operation of the Pipeline System
through the Franchise Area.

20.4 Termination of this Franchise shall not release either party from any
liability or obligation with respect to any matter occurring prior to such termination,
nor shall such termination release Grantee from any obligation to remove or secure
the Pipeline System and restore the Franchise Area pursuant to Section 11 hereof.

Section 21. Legal Relations.

21.1 Grantee accepts any privileges granted hereunder by Grantor under
this Franchise to the Franchise Area in an "as is" condition. Grantee agrees that
the City has never made any representations, implied or express warranties or
guarantees as to the suitability, security or safety of Grantee's location of its
Pipeline System within the Franchise Area or possible hazards or dangers arising
from other uses of the public right-of-way or other public property by the City or the
general public. Grantee shall remain solely and separately liable for the function,
testing, maintenance, replacement and/or repair of the Pipeline System in the
Franchise Area or other activities of Grantee permitted hereunder, except to the
extent of any damage or loss caused by the negligence or willful misconduct of the
City, its employees, agents or contractors, or any third party.

21.2 Grantee hereby waives immunity under Title 51 RCW in any cases
involving the Grantor; provided, however, the foregoing waiver shall not in any way
preclude Grantee from raising such immunity as a defense against any claim
brought directly against Grantee by any of its employees. Grantor and Grantee
have specifically negotiated this provision, to the extent it may apply.

21.3 This Franchise may be 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 any such tariff, the provisions of such tariff shall govern and

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control to the extent such tariff is deemed to preempt the City of Tacoma’s regulatory authority.

21.4 This Franchise ordinance shall not create any duty on the City or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the City or any of its officials, employees or agents in the exercise of powers reserved herein. Further, this ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the Grantor with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the City hereunder shall be deemed a duty to the general public and not to any specific party, group or entity.

21.5 This Franchise shall be governed by, and construed in accordance with, the laws of the state of Washington and the parties agree that, in any such action brought hereunder, except actions based on federal questions, venue shall lie exclusively in Pierce County, Washington.

Section 22. Grantee’s Acceptance.

This Franchise ordinance shall be completely void if Grantee shall not file its unconditional acceptance of this Franchise within thirty (30) calendar days from the final passage of same by the City Council. Grantee shall file its unconditional acceptance with the City’s Finance Director and a copy of same with the City Attorney’s Office.

Section 23. Specific Performance.

The parties acknowledge that the covenants set forth herein are essential to this Franchise, and, but for the mutual agreements of the parties to comply with
such covenants, the parties would not have entered into this Franchise. The parties
further acknowledge that they may not have an adequate remedy at law if the other
party materially breaches such covenants. Therefore, the parties shall have the
right, in addition to any other rights they may have, to seek in any court of
competent jurisdiction injunctive relief to restrain any material breach or threatened
material breach of any such covenants or otherwise to specifically enforce any of
such covenants contained herein should the other party fail to perform them after
notice as provided in Section 16 and Section 20.1.1.


24.1 All the provisions, conditions, terms and requirements contained
herein shall be binding upon the Grantee’s successors and assigns. All of
Grantee’s privileges, obligations, and liabilities shall inure to its successors and
assigns equally as if they were specifically mentioned in this Franchise wherever
the Grantee is so mentioned.

24.2 Any modification, change or alteration to this Franchise shall only be
effective if set forth in a 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 13 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 Grantee 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: (a) references this Franchise; and (b) 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.

24.3 No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Franchise or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Franchise, and each and every covenant, agreement, term and condition of this Franchise shall continue in full force and effect with respect to other then existing or subsequent breaches hereof.
24.4 The captions of this Franchise ordinance are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Franchise.

Passed__________________

________________________
Mayor

Attest:

________________________
City Clerk

Approved as to form:

________________________
Deputy City Attorney
FRANCHISE ACCEPTANCE BY GRANTEE:

I, the undersigned official of Puget Sound Energy, Inc. (“PSE”), am authorized to bind PSE and to accept the terms and conditions of the foregoing franchise (Ordinance No. ________), which are hereby accepted by PSE this _____ day of ______________, 201__. The foregoing date shall constitute the “Effective Date” of the Ordinance.

Puget Sound Energy, Inc.

By: ________________________________
Name: ________________________________
Title: ________________________________

Subscribed and sworn to before me this _____ day of ______________, 201__.

____________________________________
Notary Public in and for the
State of Washington
My commission expires ________________

Received on behalf of the City this _____ day of ______________, 201__.

____________________________________
Name: ________________________________
Title: ________________________________