

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 414 - Revised

AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, A NONEXCLUSIVE 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; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way; and

WHEREAS, RCW 35A.47.040 authorizes the City “to grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for ... poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy,...for gas...”; and

WHEREAS, the Council finds that it is in the best interests of the health, safety and welfare of residents of the Burien community to grant a non-exclusive franchise to Puget Sound Energy for the operation of electric distribution, electric transmission and natural gas distribution systems within the City right-of-way; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DO ORDAIN AS FOLLOWS:

1. **Definitions.** The following terms contained herein, unless otherwise indicated, shall be defined as follows:
 - 1.1. **City:** The City of Burien, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.
 - 1.2. **City Manager:** The City Manager of the City of Burien or designee.
 - 1.3. **Days:** Calendar days.

- 1.4. Facilities: Collectively, any and all (i) natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures, 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, fixtures, 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, utilized by PSE in the operation of activities authorized by this Franchise. The abandonment by PSE of any Facilities as defined herein shall not act to remove the same from this definition.
- 1.5. Franchise: This ordinance, Ordinance Number 414, which sets forth the terms and conditions of this franchise.
- 1.6. PSE: Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.
- 1.7. Permittee: A person who has been granted a permit by the Permitting Authority.
- 1.8. Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's Right-of-way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.
- 1.9. Person: An entity or natural person.
- 1.10. Right-of-way: As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement, and/or road right-of-way now or hereafter held or administered by the City of Burien.

2. **Franchise Granted.**

- 2.1. Pursuant to RCW 35A.47.040, the City hereby grants to PSE, its heirs, successors, and assigns, subject to the terms and conditions hereinafter set forth, a nonexclusive franchise beginning on the effective date of this ordinance. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Right-of-way that do not interfere with PSE's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Right-of-way or affect the jurisdiction of the City over the same or any part thereof.

- 2.2. This Franchise shall grant PSE the right, privilege, authority and franchise, subject to the terms and conditions hereinafter set forth, to install, construct, operate, maintain, repair, replace, and use Facilities for electric distribution, electric transmission and natural gas distribution systems, in, under, on, across, over, through, along or below the Right-of-way, for the transmission, distribution and sale of electrical energy and natural gas for power, heat and light, and any other purposes for which electrical energy and natural gas may be used, as approved under City permits issued by the Permitting Authority pursuant to this Franchise and City ordinances.
- 2.3. This Franchise specifically does not authorize PSE to place facilities or to otherwise utilize Facilities in the Right-of-way to provide telecommunications, cable television, point-to-point data communications, or similar services either via wire or wireless technologies regardless of whether these services are provided to any person outside PSE's organization. This Section does not restrict PSE's ability to utilize telemetric devices to monitor and operate its electric distribution, electric transmission and natural gas distribution systems or to monitor and control the usage of electrical energy and/or natural gas.
- 2.4. This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any Right-of-way. Such Franchise shall in no way prevent or prohibit the City from using any Right-of-way or other City property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of new Right-of-way or other public properties of every type and description.
3. **Franchise Term.** The term of the Franchise granted hereunder shall be for the period of fifteen (15) years counted from the last day of the calendar month in which this ordinance becomes effective.
4. **City Ordinances and Regulations, Utility Taxes.**
 - 4.1. **City Ordinances and Regulations:** Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating PSE's exercise of its rights under this Franchise. PSE specifically agrees to comply with the provisions of all applicable City ordinances, regulations, standards, procedures, permits or approvals; provided, however, that in the event of conflict or inconsistency between any such provisions and this Franchise, the terms and conditions of this Franchise shall control.

- 4.2. Utility Taxes: Nothing herein shall be deemed to exempt or excuse PSE from payment to the City of any tax lawfully imposed upon PSE by City ordinances as such ordinances currently exist or may hereafter be lawfully amended or superseded; provided that nothing herein shall be construed in any manner as a waiver by PSE of any right PSE may have to contest the validity of any such tax or the amount of any such tax due from PSE pursuant to such City ordinances.

5. Right-of-Way Management.

- 5.1. Noninterference of Facilities: PSE's Facilities shall be maintained within the Right-of-way and PSE's activities shall be undertaken in such a manner, so as not to unreasonably interfere with the free and safe passage of traffic or use of adjoining property in accordance with City standards and regulations.

- 5.2. Excavation, Emergency, Notice of Entry.

- 5.2.1. PSE shall at all times post and maintain proper barricades and comply with all applicable safety regulations during any period of construction or maintenance activities within the Right-of-way as required by City or state regulations, including RCW 39.04.180, for the construction of trench safety systems.
- 5.2.2. Whenever PSE excavates in the Right-of-way for the purpose of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in the Right-of-way. In no case shall any such work commence within any Right-of-way without a permit, except as otherwise provided in this Franchise.
- 5.2.3. In the event of any emergency where any Facilities located in the Right-of-way are broken or damaged, or if PSE's construction area within the Right-of-way is in such a condition as to place the health or safety of any person or property in imminent danger, PSE shall immediately take any necessary emergency measures to repair or remove its Facilities or otherwise make its construction area safe without first applying for and obtaining a permit as required by this Franchise. This provision shall not relieve PSE from later obtaining any necessary permit for the emergency work. PSE shall apply for the required permit the next business day following the emergency work or, in the case of an extended state of emergency, as soon thereafter as practical.
- 5.2.4. At least ten (10) days prior to its intended construction of Facilities, except for those emergency activities exempted from permit requirements or those activities that will impact the use of the adjacent property for less than a four (4) hour period, PSE shall inform all residents in the immediately affected area, that a construction project will commence, the dates and nature of the project, and provide a toll-free or local number which the resident may call for further information. A pre-printed door hanger may be used for this purpose.

- 5.2.5. PSE shall make a good faith effort to comply with the property owner/resident's preferences, if any, regarding the location or placement of Facilities that extend above ground level consistent with sound engineering practices, City regulations, and state law.
- 5.2.6. At least twenty-four (24) hours prior to entering right-of-way adjacent to or on private property to perform the installation, maintenance, repair, reconstruction, or removal of facilities, except those emergency activities exempted from permit requirements or those activities that will impact the use of the adjacent property for less than a four (4) hour period, a written notice describing the nature and location of the work to be performed shall be physically posted upon the affected private property by PSE.
- 5.3. Restoration of Right-of-way.
- 5.3.1. PSE shall, after any installation, construction, relocation, maintenance, or repair of Facilities within the Right-of-way, promptly restore the Right-of-way to at least the condition the same was in immediately prior to any such installation, construction, relocation, maintenance or repair in accordance with City standards at its sole cost and expense. All concrete encased monuments, which have been disturbed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications.
- 5.3.2. If it is determined that PSE has failed to restore the Right-of-way in accordance with this Section 5.3, the City shall provide PSE with written notice including a description of actions the City believes necessary to restore the Right-of-way. If the Right-of-way is not restored in accordance with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the Right-of-way. PSE shall be responsible for all costs and expenses incurred by the City in restoring the Right-of-way in accordance with this Section. The remedy granted to the City under this Section 5.3 shall be in addition to those otherwise provided by this Franchise.
- 5.4. Bonding Requirement: Before undertaking any of the work authorized by this Franchise, PSE shall furnish a bond executed by PSE and a corporate surety authorized to do surety business in the State of Washington, in a sum to be set and approved by the City Manager as reasonably sufficient to ensure performance of PSE's obligations under this Section 5. The bond shall be conditioned so that PSE shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Section 5, and to restore or replace any defective work or materials discovered in the restoration of the Right-of-way discovered within a period of two years from the final City inspection date of any such restoration. PSE may meet the obligations of this Section 5.4 with one or more bonds acceptable to the City. In the event that a bond issued pursuant to this Section 5.4 is canceled by the surety, after proper notice and pursuant to the terms of said bond, PSE shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section 5.4.

5.5. Recourse Against Bond: With respect to undertaking any of the work authorized by this Franchise, in the event PSE fails to perform its obligations under this Section 5 and further fails to cure its deficiency within a reasonable period of time after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by PSE pursuant to Section 5.4 to cure such deficiency.

5.5.1. In the event the City makes use of such bond(s) furnished by PSE pursuant to Section 5.4, the City shall promptly provide written notice of same to PSE. Within thirty (30) days of receipt of such notice, PSE shall replenish or replace such bond(s) provided pursuant to Section 5.4.

5.5.2. The rights reserved to the City by this Section 5.5 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 under this Section 5.5 shall constitute an election or waiver of any rights or other remedies the City may have.

5.6. Safety.

PSE shall exercise the rights granted in this Franchise in accordance with applicable safety rules and regulations.

5.7. Dangerous Conditions, Authority for City to Abate.

5.7.1. In the event that PSE's Facilities or operations cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the adjoining Right-of-way, public or private property, the City Manager may direct PSE, at no charge or expense to the City, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.

5.7.2. In the event PSE fails to promptly take action as directed by the City, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury to persons or damage to property, the City may take such actions as it believes are necessary to protect persons or property and PSE shall be responsible to reimburse the City for costs thereby incurred by the City. In taking such action the City's authority to act upon PSE's Facilities hereunder is specifically limited to actions, taken by trained emergency response personnel, to stop the flow of natural gas actively contributing to a dangerous condition by closing the natural gas supply valve at the meter or at an appliance.

5.8. Relocation of Facilities.

- 5.8.1. PSE agrees to protect, support, temporarily disconnect, relocate or remove from the Right-of-way its Facilities without cost to the City, when so required by the City to facilitate the completion of or as a result of a Public Project, provided that PSE shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the Right-of-way and upon approval by the City, any Facilities required to be temporarily disconnected or removed. As used in this Section 5, the term “Public Project” means and includes (i) a project included in any future City adopted six-year Capital Improvement Program; and (ii) City declared emergency situations impairing the Right-of-way or the use thereof.
- 5.8.2. If the City determines that a Public Project necessitates the relocation of PSE's existing Facilities, the City shall:
 - 5.8.2.1. Within a reasonable time period prior to the commencement of such Public Project, provide PSE with written notice requiring such relocation; and
 - 5.8.2.2. Provide PSE with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for PSE's Facilities.
- 5.8.3. After receipt of such notice and such plans and specifications, PSE shall complete relocation of its Facilities at no charge or expense to the City at least ten (10) days prior to commencement of the Public Project or at such later time as mutually agreed by the City and PSE.
- 5.8.4. PSE may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise PSE in writing if any of the alternatives are suitable to accommodate the Public Project. If so requested by the City, PSE shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by PSE full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, PSE shall relocate its Facilities as provided in this Section.
- 5.8.5. If the City requires the subsequent relocation of Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section, then the City shall bear the entire cost of such subsequent relocation.

- 5.8.6. The provisions of this Section 5.8 shall in no manner preclude or restrict PSE from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person other than the City, where the improvements to be constructed by said person are not part of a Public Project, provided that such arrangements do not unduly delay or increase the cost of a related Public Project.
- 5.9. Vacation of Right-of-way: If the City vacates any Right-of-way with PSE Facilities, the City shall reserve an easement in its vacation ordinance adequate for the repair, maintenance and replacement of the Facilities and sited along the location of the Facilities, provided that no easement shall be reserved if the vacation is for a Public Project and the Facilities are to be relocated under Section 5.8. No easement shall be reserved if the vacation is conditioned upon a vacation petitioner's payment for the cost of relocating existing Facilities to another Right-of-way or private easement including necessary service reconnections caused by the relocation.
- 5.10. Abandonment of PSE's Facilities: PSE shall not abandon in place any of its Facilities within the Right-of-way without the prior written consent of the City Manager. Absent consent to abandon in place, abandoned Facilities shall be removed from the Right-of-way within 180 days of the discontinuation of their active utilization, or in accordance with a written removal plan authorized by the City Manager. All necessary permits must be obtained prior to such work.
- 5.11. Maps and Records: PSE agrees to provide the City, upon reasonable request and without charge, copies of available as-built plans, maps, and records, in use by PSE, that show the approximate vertical and horizontal location of its Facilities at specified locations within the Right-of-way. If available, such maps shall also be provided in Geographical Information System (GIS) or other digital electronic format used by the City. All such maps and records will be provided for informational purposes only. PSE does not warrant the accuracy of any map or other information provided under this Section 5.11, and to the extent the location of Facilities are shown, such locations are approximate.
- 5.12. Utility Location: 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.
- 5.13. Underground Installation: PSE provides electric and natural gas service on a non-preferential basis subject to and in accordance with tariffs on file with the Washington Utilities and Transportation Commission. Subject to and in accordance with such tariffs, PSE will cooperate with the City in the formulation of policy and regulations concerning underground installation of PSE's Facilities within the Right-of-way. If, during the term of this Franchise, the City shall direct PSE to install underground electrical Facilities within the Right-of-way, such installation shall be arranged and accomplished subject to and in accordance with such tariffs.
6. **Planning Coordination.**

- 6.1. Growth Management: PSE agrees, as follows, to participate in the development of, and reasonable updates to, the utilities element of the City's Comprehensive Plan:
 - 6.1.1. PSE will participate in a cooperative effort with the City to ensure that the Utilities Element of Burien's Comprehensive Plan is accurate as it relates to PSE's operations and is updated to ensure its continued relevance at reasonable intervals.
 - 6.1.2. PSE shall provide information related to the general location, proposed location, and capacity of existing and proposed Facilities as requested by the City Manager within a reasonable time, not exceeding sixty (60) days from receipt of a written request for such information.
- 6.2. System Development Information: PSE will assign a representative whose responsibility shall be to coordinate with the City on planning for City Capital Improvement Program projects. At a minimum, such coordination shall include the following:
 - 6.2.1. By March 1st of each year, PSE shall provide the City Manager or his designee with a schedule of its planned capital improvements, which may affect the Right-of-way for that year;
 - 6.2.2. PSE shall meet with the City, other franchisees and users of the Right-of-way, according to a schedule to be determined by the City, to schedule and coordinate construction; and
 - 6.2.3. All construction locations, activities, and schedules shall be coordinated, as required by the City Manager or his designee, to minimize public inconvenience, disruption, or damages.
- 6.3. Emergency Operations: The City and PSE agree to cooperate in the planning and implementation of emergency operations response procedures.

7. City Use of Facilities

- 7.1. During the term of this Franchise and with respect to poles which are Facilities located within the Right-of-way and which are wholly owned by PSE, the City may, subject to PSE's prior written consent, which consent shall not be unreasonably withheld, install and maintain City-owned overhead wires upon such poles for municipal signal interconnection and communication capabilities or other non-commercial public purpose. The foregoing rights of the City to install and maintain such wires are further subject to the following:
 - 7.1.1. Such installation and maintenance shall be done by the City at its sole risk and expense in accordance with all applicable laws, and subject to such reasonable terms and conditions as PSE may specify from time to time (including without

limitation, requirements accommodating PSE's Facilities or the facilities of other parties having the right to use PSE's Facilities); and

- 7.1.2. PSE shall have no obligation under Section Eight (or arising under the purview of Section Eight) in connection with any City-owned wires so installed or maintained.
- 7.1.3. The City shall indemnify, defend and hold harmless Puget in connection with the City's use of Puget's Facilities.
- 7.1.4. PSE shall not charge the City a fee for the use of such poles in accordance with this Section 7 as a means of deriving revenue there from; provided, however, nothing herein shall require PSE to bear any cost or expense in connection with such installation and maintenance by the City.

8. **Indemnification.**

- 8.1. PSE hereby agrees to indemnify, defend and hold harmless the City, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to the extent the same is caused by the negligent acts or omissions of PSE, its agents, servants, officers or employees in performing activities authorized by this Franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the City to the extent they arise as a result of the negligent acts or omissions of PSE, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any right-of-way or other public place in performance of work or services permitted under this franchise. If final judgment is rendered against the City, its elected officials, employees, agents, and volunteers, or any of them, PSE shall satisfy the same to the extent it is based on a claim or demand which is covered by PSE's indemnification obligations hereunder. In the event any claim or demand presented to, or suit or action is commenced against, the City based upon any such claim or demand, the City shall promptly notify PSE thereof, and PSE may elect, at its sole cost and expense, to settle and compromise such suit or action, or defend the same with attorneys of its choice. If any such claim or demand is subject to RCW 4.24.115 and caused by or results from the concurrent negligence of (a) the City, its elected or appointed officials, or its agents or employees; and (b) PSE, or PSE's agents or employees, then in such event the defense and indemnity provisions provided for in the preceding Section 7.1 shall be valid and enforceable only to the extent of PSE's negligence.
- 8.2. The City shall not be liable upon, and PSE shall indemnify and defend the City from and against, any claim which is caused by the acts or omissions of PSE in exercising its rights under this Franchise and is asserted by any person against the City for injury to any person or damage to property, to the extent such claim is asserted solely on the basis of the City's ownership or control of the Right-of-way or the City's grant of this Franchise to PSE.

- 8.3. PSE's indemnification obligations pursuant to this Franchise shall be valid and enforceable with respect to actions brought against the City by PSE's own employees and the employees of PSE's agents, contractors, and subcontractors notwithstanding PSE's immunity under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that the foregoing waiver is limited solely to claims against the City arising by virtue of PSE's exercise of the rights set forth in this Franchise and excludes claims against PSE or claims arising from and to the extent of the negligent acts or omissions of the City, its officials, employees or agents. The obligations of PSE under this Franchise have been mutually negotiated by the parties hereto, and PSE acknowledges that the City would not enter into this Franchise without PSE waiver thereof. To the extent required to provide this indemnification and this indemnification only, PSE waives its immunity under Title 51 RCW as provided in RCW 4.24.115; provided, however, the foregoing waiver shall not in any way preclude PSE from raising such immunity as a defense against any claim brought against PSE by any of its employees.
- 8.4. Inspection or acceptance by the City of any work performed by PSE at the time of completion of construction shall not be grounds for avoidance of PSE's indemnification obligations. Said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation.

9. **Insurance.**

- 9.1. In lieu of the insurance requirements set forth below in this Section 8 and with the concurrence of the City, PSE may utilize a combination of operating reserves and excess liability insurance to protect against such risks in such amounts as are consistent with good utility practice. To secure such concurrence, PSE and the City may, from time to time, review PSE's financial position and risk management program. Upon PSE's acceptance of this Franchise and upon reasonable request thereafter, PSE shall provide the City with reasonable written evidence that such protection is being maintained.
- 9.2. Except as otherwise provided in Section 8.1, PSE shall procure and maintain for the duration of the 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 or employees. A combination of self-insurance and excess liability insurance may be utilized by PSE. Upon PSE's acceptance of this Franchise, PSE shall provide to the City a certificate of insurance and/or evidence of self insurance evidencing the following required coverages and limits:
- 9.2.1. Automobile Liability insurance for owned, non-owned and hired vehicles with limits no less than \$2,000,000 Combined Single Limit per accident for bodily injury and property damage; and

- 9.2.2. Commercial General Liability insurance policy and self-insurance coverage providing combined coverage of no less than \$5,000,000 combined single limit per occurrence and \$5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. If coverage is provided by self-insurance or a policy of insurance written on a claims made rather than occurrence basis, PSE agrees to maintain the same levels of self-insurance or claims made policy coverage, or to purchase endorsements providing additional reporting periods in which claims otherwise covered by the claims made policy or self-insurance may be reported, for a period of three (3) years following either the discontinuance of the claims made policy or self-insurance or the termination of this Franchise, whichever is earlier.
- 9.3. Payment of deductible or self-insured retention shall be the sole responsibility of PSE.
- 9.4. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, or employees. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. PSE's insurance shall be primary. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of PSE's insurance and shall not contribute with it. Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City.

10. Enforcement.

- 10.1. A substantial violation or breach of this Franchise by PSE shall include, but shall not be limited to, the following:
- 10.1.1. An uncured violation of any material provision of this Franchise, or any material rule, order or regulation of the City made pursuant to its power to protect the public health, safety and welfare;
 - 10.1.2. An intentional evasion or knowing attempt to evade any material provision of this Franchise or practice of any fraud or deceit upon the City;
 - 10.1.3. An uncured failure to pay fees that may be associated with this Franchise, if any.
- 10.2. In the event either party shall fail to comply with the terms of this Franchise, the other party shall provide the non-complying party with detailed written notice of any alleged violation or breach. The party who is allegedly in non-compliance shall have

a period of sixty (60) days following such written notice to cure the alleged violation or breach, demonstrate to the other's satisfaction that a violation or breach does not exist, or submit a plan satisfactory to the other to correct the violation or breach. If, at the end of said sixty (60) day period, the City or PSE reasonably believes that a substantial violation or material breach is continuing and the party in breach is not taking satisfactory corrective action, the other may declare that the party in breach is in default, which declaration must be in writing. Within twenty (20) days after receipt of a written declaration of default, the non-defaulting party may terminate this Franchise.

- 10.3. The City or PSE may, in its discretion, provide an additional opportunity for the other to remedy any violation or breach and come into compliance with this Franchise so as to avoid termination.
- 10.4. Any violation or breach by PSE continuing to exist after the expiration of the notice and cure periods identified in Section 9.2 may be remedied by the City at PSE's expense.
11. **Force Majeure.** Neither party will be subject to penalty for any non-compliance with this Franchise or delay in compliance of any of its obligations hereunder where such compliance is prevented or delayed by acts of God, fire, explosion, accident, flood, epidemic, war, riot, rebellion, interruption or rationing of fuel supply, or other unexpected and uncontrollable event ("force majeure events"). If a force majeure event occurs, this Section will only apply if the Party intending to seek the protections of this Section notifies the other Party in writing. The City may continue to exercise its rights to abate any Dangerous Condition consistent with Section 5.7.
12. **Survival.** All of the provisions, conditions and requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive such termination or expiration. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the parties hereto and all privileges, as well as all obligations and liabilities of each party shall inure to their respective heirs, successors and assigns.
13. **Severability.** If any Section, sentence, clause or phrase of this Franchise 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 Franchise. The Parties may amend, repeal, add, replace, or modify any provision of this Franchise to preserve the intent of the parties as expressed herein prior to any finding of invalidity or unconstitutionality.
14. **Assignment.** This Franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, without the written approval of the City, which shall not be unreasonably withheld. The City may

recover from PSE any actual administrative expenses incurred by the City during its review of any transfer proposed by PSE.

14.1. An assignment of this Franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word “control” as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

14.2. Except as otherwise provided herein, PSE shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of PSE. Every change, transfer, or acquisition of control of PSE shall cause a review of the proposed transfer. In the event that the City denies its consent and such change, transfer or acquisition of control has been affected, the City may immediately terminate this Franchise.

14.3. PSE shall be permitted, without the City’s approval, to mortgage its rights, privileges and authority in and under this Franchise to the trustee under its mortgage indenture for the benefit of its bondholders.

15. **Notice.** Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

Puget Sound Energy
P.O. Box 90868
Bellevue, WA 98009-0868
Attn: Community Services

City Manager
City of Burien
415 SW 150th St
Burien, WA 98166

16. **Non-Waiver.** The failure of either party to enforce any breach or violation by the other party of any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver by the non-breaching party of any subsequent breach or violation of the same or any other provision of this Franchise.

17. **Alternate Dispute Resolution.** If the parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the parties. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

18. **Entire Agreement.** This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other prior agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

19. **Amendment.** 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.
20. **Supremacy.** This Franchise represents the dominant agreement between the parties. In the event of any conflict between this Franchise and any City ordinance or permit, the provisions of this Franchise shall control. In the event, however, of any conflict between the provisions of this Franchise and PSE's applicable tariff on file with the Washington Utilities and Transportation Commission or a successor state regulatory authority, the tariff shall control for the duration of that conflict, provided, that PSE shall provide the City written notice within five (5) days of filing any proposed tariff or amended tariff which would affect the terms of this Franchise or any rights of the City hereunder.
21. **Directions to City Clerk and Acceptance by PSE.** The City Clerk is hereby directed to forward a certified copy of this ordinance to PSE within ten (10) days of its Effective Date. PSE shall file with the City Clerk, within sixty (60) days from receipt of the certified copy of this ordinance, a written unconditional acceptance of the Franchise granted to PSE in this ordinance, in a form similar to the attached acceptance form herein incorporated by reference, or this Franchise will be null and void.
22. **Publication Costs.** In accordance with state law, this ordinance shall be published in full. The costs of said publication shall be borne by PSE.
23. **Effective Date.** This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 1ST DAY OF NOVEMBER, 2004, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 1ST DAY OF NOVEMBER, 2004.

CITY OF BURIEN

Noel Gibb, Mayor

ATTEST/AUTHENTICATED:

Jan Roegner, City Clerk

Approved as to form:

Lisa Marshall, City Attorney

Filed with the City Clerk: October 28, 2004
Passed by the City Council: November 1, 2004
Ordinance No.414
Date of Publication: November 4, 2004

ATTACHMENT: acceptance form

HONORABLE MAYOR AND CITY COUNCIL
CITY OF BURIEN, WASHINGTON

In the matter of the application :
of Puget Sound Energy, Inc., a : Franchise Ordinance No. _____
Washington corporation, for a :
franchise to construct, operate :
and maintain facilities in, upon, :
over under, along, across and :
through the franchise area of the : ACCEPTANCE
City of Burien, Washington :

WHEREAS, the City Council of the City of Burien, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. 414, bearing the date of November 1, 2004; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on _____, 2004, from said City of Burien, King County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby unconditionally accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Burien, King County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned _____ thereunto duly authorized on this _____ day of _____, 2004.

ATTEST: PUGET SOUND ENERGY, INC.

By: _____ By: _____

Copy received for City of Burien on _____, 2004

By: _____
Jan Roegner, City Clerk