

ORDINANCE NO. 376

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

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

Section 1. Definitions.

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

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

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

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

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

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

Section 2. Grant of Franchise.

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

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

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

Section 3. Noninterference of Facilities.

- 3.1 PSE's Facilities shall be maintained within the Franchise Area so as not to either incommode the public or interfere with the free passage of traffic. Such Facilities shall be maintained in accordance with the laws and regulations of the State of Washington and City ordinances. In the event of any conflict or inconsistency of City codes or ordinances with the terms and conditions of the Franchise, the terms and conditions of this Franchise shall govern and control except as provided in Section 13.4.
- 3.2 PSE shall provide the City upon request with copies of drawings in use by PSE showing the location of PSE's Facilities at specified locations within the Franchise Area. Neither party relieves the other of the obligation arising under applicable law with respect to determining the locations of underground utility facilities prior to excavations.

Section 4. Relocation of Facilities.

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

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

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

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

- 4.2 Nothing in this Franchise shall prevent PSE from recovering its costs for relocating Facilities for the benefit of a third party upon terms and conditions acceptable to PSE (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).
- 4.3 Nothing in this Section 4 "Relocation of Facilities" shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to a private easement or other real property right.

Section 5. Avoidance of Pavement Disruptions

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

Section 6. Joint Trenching

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

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

Section 7. Indemnification.

7.1 PSE shall indemnify and hold the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, including, but not limited to, reasonable attorneys fees, expert witness fees, investigative fees and court, mediation and litigation costs incurred by the City in defense thereof, to the extent such injury or damage is caused by the negligence of PSE, its agents, servants or employees in exercising the rights granted to PSE in 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 PSE thereof, and PSE 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 PSE thereof, and PSE 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.

Section 8. Reservation of Easement in Event of Vacation.

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

Section 9. Default.

9.1 If PSE shall fail to comply with the provisions of this Franchise, the City may serve upon PSE a written order to so comply within sixty (60) days from the date such order is received by PSE. If PSE is not in compliance with this Franchise after expiration of said sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by PSE cannot be corrected with due diligence within said sixty (60) day period (PSE's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which PSE may so comply shall be extended for such time as may be reasonably necessary and so long as PSE commences promptly and diligently to effect such compliance.

Section 10. Nonexclusive Franchise.

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

Section 11. Franchise Term.

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

Section 12. Assignment.

12.1 PSE shall have the right to assign its rights, benefits and privileges in and under this Franchise. Any assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this

Franchise. Notwithstanding the foregoing, PSE shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

Section 13. Miscellaneous.

- 13.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect.
- 13.2 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington.
- 13.3 In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any permits, license, agreement or other document between PSE and the City, the provisions of the Franchise shall control, unless otherwise specifically agreed to by written instrument, signed by both parties.
- 13.4 PSE's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and PSE agrees to comply with all applicable laws, ordinances or regulations enacted pursuant to the police powers of the City. Any conflict between the provisions of this Franchise and any applicable law, ordinance or regulation enacted by the City shall be resolved in favor of the Franchise; provided that in the event of such conflict, the City may request that PSE and the City enter into good faith negotiations to eliminate such conflict pursuant to subsection 13.5. Pending completion of such negotiations resulting in mutually agreeable amendment(s) of this Franchise, City adoption of such amendment(s) by ordinance and acceptance of such ordinance by PSE, this Franchise shall remain in full force and effect, except as otherwise provided in section 13.1.
- 13.5 If so requested by subsection 13.4, within thirty (30) days from and after receipt of written notice from the City, the parties shall, at a mutually agreeable time and place, commence good faith negotiations to amend only the portions(s) of this Franchise that are in conflict with applicable laws, ordinances or regulations enacted pursuant to the police powers of the City. In the event such negotiations do not result in mutually agreeable amendment(s) of this Franchise within one hundred and eighty (180) days of the commencement of such negotiations, then the City may, at its option, terminate this Franchise by ordinance.
- 13.6 PSE shall pay for all costs of publication of the Franchise and public notice required by law.

Section 14. Effective Date.

- 14.1 This Ordinance shall be effective on 5-4-03, having been: (i) introduced to the City Council not less than five days before its passage; (ii) having first been submitted to the City Attorney; (iii) published at least five days prior to the above-referenced effective date and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the City of University Place by a majority vote of the City Council on April 7, 2003.

APPROVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE WASHINGTON ON
APRIL 7, 2003



Jean Brooks, Mayor

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, Catrina Craig, the duly qualified City Clerk of the City of University Place, an optional municipal code city, situated in the County of Pierce, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 376, an ordinance of the City of University Place, entitled:

ORDINANCE NO. 376

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

I further certify that said Ordinance No. 376 was: (i) introduced on the 3rd day of March, 2003; (ii) published on the 29 day of April, 2003, according to law; (iv) approved by a legislative body of the City of University Place, by a majority vote of the City Council, at a regular meeting thereof on the 7th day of April, 2003; and (v) approved and signed by the Mayor of the City of University Place on the 7 day of April, 2003.

WITNESS my hand and official seal of the City of University Place, this 17 day of April, 2003.

Catrina Craig
Catrina Craig, City Clerk
University Place, State of Washington



HONORABLE MAYOR AND CITY COUNCIL
CITY OF UNIVERSITY PLACE, WASHINGTON

In the matter of the application :
of Puget Sound Energy, Inc., a :
Washington corporation, for a : Franchise Ordinance No. 376
franchise to construct, operate and :
maintain facilities within public :
rights-of-way for the distribution and :
sale of natural gas to customers :
both within and outside of the City of : ACCEPTANCE
University Place, Washington :

WHEREAS, the City Council of the City of University Place, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. 376, bearing the date of April 7, 2003; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on April 24, 2003, from said City of University Place, Pierce County, Washington.

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

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned Mark Bowman thereunto duly authorized on this 28th day of April, 2003.

ATTEST:

[Signature]

PUGET SOUND ENERGY, INC.

By: [Signature]

Copy received for City of University Place
on May 5th, 2003

By: [Signature]
Catrina Craig, City Clerk

ATTEST:

[Signature]
Catrina Craig, City Clerk

APPROVED AS TO FORM:

[Signature]
Timothy X. Sullivan, City Attorney
Date: May 5, 2003