

July 16, 2018

## **CITY COUNCIL STUDY SESSION ITEM**

### **SUBJECT**

Introduction of Puget Sound Energy Franchise Ordinance and related Memorandum of Understandings (MOUs).

### **STAFF CONTACTS**

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### **POLICY ISSUES**

State Law establishes two public agencies shared jurisdiction over Puget Sound Energy (PSE) within the City of Bellevue: 1) the Washington Utilities and Transportation Commission (WUTC) has authority to regulate rates, services, facilities and practices of electrical utilities (RCW 80.01.040); and, 2) the City of Bellevue has franchise authority over use of public streets and public right of way for transmission and distribution of electrical energy (RCW 35A.47.040).

The Franchise Ordinance shall be submitted to the City Attorney's Office and may not be acted on by Council on the day of its introduction (RCW 35.A.47.040).

Bellevue City Code Chapter 14.20 contains the terms and conditions for granting franchises with utility providers (such as PSE) using public streets and right of way. Franchise agreements are necessary to protect the City's rights to manage and control the rights of way.

A number of Comprehensive Plan policies exist providing guidance associated with the MOU's as follows:

#### **Land Use**

LU-2: Retain the City's park-like character through the preservation and enhancement of parks, open space, and tree canopy throughout the City.

LU-13: Support neighborhood efforts to maintain and enhance their character and appearance.

#### **Utilities**

UT-20: Coordinate emergency preparedness and response with local and regional utility partners.

UT-18 and 48: Coordinate with other jurisdictions and governmental entities in the planning and implementation of multi-jurisdictional utility facility additions and improvements.

UT-58: When implementing street projects, determine whether the relocation of distribution facilities underground is required. If so, determine the manner of payment: tariff schedule, capital improvement program, or the formation of a local improvement district.

UT-62: Support neighborhood efforts to underground existing electrical transmission and distribution lines.

UT-63: Support neighborhood efforts to form financial arrangements, such as local improvement districts, to cover the non-utility share of project costs for undergrounding electrical lines.

UT-66: Encourage directional pruning of trees and phased replacement of improperly located vegetation in the right-of-way. Perform pruning and trimming of trees in an environmentally sensitive and aesthetically acceptable manner and according to professional arboricultural specifications and standards.

UT-75: Prior to seeking City approval for facilities, encourage utilities service providers to solicit community input on the siting of proposed facilities which may have a significant adverse impact on the surrounding community.

UT-78: Support federal or state actions that would preserve local government authority to regulate time, manner and place of construction in the right-of-way.

### **Environment**

EN-4: Promote and invest in energy efficiency and renewable energy resources as an alternative to non-renewable resources.

EN-13: Minimize the loss of tree canopy and natural areas due to transportation and infrastructure projects and mitigate for losses, where impacts are unavoidable.

### **DIRECTION NEEDED FROM COUNCIL**

#### **ACTION**



#### **DIRECTION**



#### **INFORMATION ONLY**



Staff will introduce the proposed Franchise Ordinance, related MOU's, and report on community input received. Staff is seeking Council direction to return on August 6 for Council approval of the Franchise Ordinance and authorizing the City Manager to execute related MOU's.

### **BACKGROUND/ANALYSIS**

At the April 16 Study Session, Council received information regarding the previous Franchise Ordinance expiration, changes in code regarding renewal periods, regulatory oversight roles of the WUTC and City, and a summary of the operating provisions related to four MOUs associated with the PSE Franchise Agreement. Staff also recommended the addition of a new MOU addressing discontinued poles. The existing Relocation MOU went into effect in 2012 and was the only MOU that did not have recommended changes.

Council provided staff direction to complete negotiations with PSE for a new Franchise Agreement; complete updates to the MOUs including one new MOU; and, reach out to the community interest group and incorporate their input where practical. Staff was to then return to Study Session with an introduction of the new Franchise Ordinance and updated MOUs, and seek direction to return for subsequent action to adopt the new Franchise Ordinance in accordance with RCW 35.A.47.040.

Staff has accomplished the steps necessary to return to Study Session and are now providing Council with the proposed revisions, modifications and additions to the Franchise Ordinance and related MOUs (attached). The following is a summary of the recommend changes:

### **Franchise Ordinance:**

Overall there are few changes as presented to Council on April 16. The recommended changes include clarification of pavement cut and restoration addressing loss of pavement integrity with restoration provisions at no cost to the City of Bellevue (Section 5); the City's attachment of its municipal facilities to PSE poles; whereas, commercial uses will still require compensation in accordance with applicable tariff (Section 10); revision to the Indemnification Provisions clarifying provisions in the tendering of claims and work inspected by the City (Section 14); and, adding applicable reference and provisions for the proposed Discontinued Pole MOU (Section 25).

### **MOUs:**

Recommended changes to MOUs provide consistency through recitals, dispute resolution, noticing, and amendments. The following provide specifics to each MOU:

#### Vegetation Management Procedures

- Clarity is added regarding pruning standards to address tree crown management; compliance with Critical Areas or Shorelines permitting; and the removal and replacement of City owned/maintained trees further advancing the City's Land Use and Environmental Comprehensive Plan policies to retain tree canopy.
- Added provisions for the removal and replacement of trees to promote the right tree in the right location.
- Added provision to receive replacement costs from PSE if a tree is removed and not replaced.

#### Discontinued Poles

- Provisions reflect PSE's regulatory requirements in accordance with state law and administrative codes, Federal Energy Regulatory Commission (FERC) and WUTC. This new MOU captures the City's interests as represented in Comprehensive Plan policies in maintaining the character and appearance within neighborhoods by removing unnecessary poles.
- Sets forth the process, provisions, and penalties for removal of Discontinued Poles, including coordination meetings every 180 days to review the overall inventory. Penalties are assessed when all third-party attachments are removed as updated in the National Joint Utility Notification System (NJUNS), and PSE does not remove the pole within 90 calendar days following. Penalties accrue at \$100 per pole per month until removal is completed.

#### Electrical System Performance and Reliability Reporting

- As presented to Council on April 16, annual reporting is reviewed across multiple City departments as part of the annual planning meetings and workshops, which includes community participation.
- Community interest outreach identified consistent themes that are best addressed through broader policy and legislative efforts Council may take through coordination with the WUTC. These themes include the implementation of new technologies, regulatory improvements, and vision for electrical infrastructure. Developing efficient energy and renewable resources align with Comprehensive Plan policies, but are not consistent with the City's authority to grant an electrical Franchise and thus constitutes a separate action.
- Three additional outreach themes included clarity in reporting and accessibility to PSE plans, response and recovery efforts during emergencies, and the undergrounding of overhead systems.

Staff and PSE will continue working to improve clarity and accessibility to project plans. PSE is in the process of updating their website and will evaluate the ability to provide plan information while also maintaining overall security for critical infrastructure.

- The parties will continue coordinating emergency preparedness and response activities to address major and significant events, including the restoration of electrical systems. This effort will consider the safety, magnitude, extent and duration of customer impacts, while further maintaining essential and critical services.
- The City continues to receive interest in the undergrounding of overhead electrical services as part of Capital Investment Program (CIP) projects, which is not addressable with the Franchise Agreement. CIP Project scopes, budgets, and costs as presented to Council as part of the CIP budget process. Council then typically considers the benefits of undergrounding relative to overall City wide priorities, and determines if such costs should be borne by the broader public, or if benefits are more representative of the local neighborhood and thus a Local Improvement District. In review of current practices, no current CIP Project's include the cost of undergrounding. However, PSE and other third-party utilities have installed conduit and facilities to be forward compatible with future undergrounding at their cost, or the cost of a third party in accordance with tariff. Since 2004, PSE has installed eleven underground electrical services, with two additional projects identified for 2019, which includes the undergrounding of overhead power for the Bridle Trails Circuit 22.

#### Record of Facilities

- This MOU contains minor changes addressing recording accessibly relative to safety and securing of critical infrastructure.

#### Relocation Procedures

- This 2012 MOU remains in effect, as executed by multiple parties, with no changes.

#### **Community Interest Group Outreach:**

Staff met with the community interest group on April 27 and again on July 10. Expressed items of interest are addressed above in the MOU section of this memo. Many themes would require coordination with the WUTC or other legislative actions, and are not directly addressable through the Franchise Ordinance.

#### **OPTIONS**

1. Direct staff to return on August 6 with the Ordinance for Council approval granting PSE an Electrical Services Franchise and authorizing the City Manager to execute related MOU's for Performance and Reliability Reporting; Records of Facilities within the Franchise Area; Discontinued Poles; and Vegetation Management Procedure; and publish said Ordinance as required.
2. Provide alternative direction to staff

#### **RECOMMENDATION**

Option 1

#### **ATTACHMENTS**

- A. Electrical Franchise Ordinance
- B. Vegetation Management Procedure MOU

- C. Discontinued Poles MOU
- D. Electrical System Performance and Reliability Reporting MOU
- E. Records of Facilities within the Franchise Area MOU
- F. 2012 Relocation MOU

**AVAILABLE IN COUNCIL DOCUMENT LIBRARY**

- A. Franchise Application Transmittal Letter
- B. Franchise Agreement Application (Electrical Services) Puget Sound Energy