February 8, 2016

CITY COUNCIL STUDY SESSION ITEM

<u>SUBJECT:</u>
Discussion on proposed Ordinance to replace the existing Petroleum Products Franchise Agreement with a new ten (10) year agreement between the City of Bellevue and Olympic Pipe Line Company.

<u>FISCAL IMPACT</u>
Under the franchise agreement, the Olympic Pipe Line Company is required to pay an annual franchise fee to the City. The annual fee is increased by the Consumer Price Index for Urban Consumers (CPI-U) as published in January of each year, or at a rate of 1.5%, whichever is greater. The 2016 franchise fee amount is $22,500.

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<u>POLICY ISSUES:</u>

<u>Federal Law and Regulations:</u>
- Pipeline Safety Improvement Act of 2002. 49 U.S.C. Chapters 601 & 603, Title 49 CRF 190-199.
- Transportation Pipeline Safety49 U.S.C. 60104(c).

<u>State Law:</u>
- Gas and Hazardous Liquid Pipelines: Chapter 81.88 RCW.
- Gas Companies – Safety: 480-93 WAC.

<u>Bellevue City Code:</u>
- Franchise Terms and Conditions: BCC Chapter 14.20

<u>Existing Franchise Agreement:</u>
- Ordinance No. 5603

<u>DIRECTION NEEDED FROM COUNCIL:</u>
___Action
_X_Discussion
___Information

<u>BACKGROUND/ANALYSIS:</u>
After 9/11, and tragic pipeline incidents, Congress passed the Pipeline Safety Improvement Act of 2002. The Act provided the federal Department of Transportation, Office of Pipeline Safety (OPS) with additional resources and requirements, one of the new requirements created was for the first time mandatory inspections of interstate Natural Gas and Hazardous Liquid Pipelines.

The Act and subsequent acts in 2006 and 2011 have amended 49 U.S.C. Chapters 601 & 603, and Title 49 CRF 190-199.

Acting through the Office of Pipeline Safety, the Pipeline and Hazardous Materials Safety Administration (PHMSA) released in October, 2015 new proposed rule changes that will increase the inspection and reporting mechanisms for Hazardous Liquid Pipelines. These proposed rule changes are the result of efforts dating back to 2010 to increase pipeline safety in response to incidents that commanded national attention. Among the proposed rules are stipulations that require pipeline operators to inspect their pipelines immediately following extreme weather events including earthquakes, as well as increases the scope of pipeline deficiencies that require immediate repair. Future proposals related to valve automation are also anticipated.

In consideration of the current franchise agreement it is of note that federal law allows for more stringent safety requirements for certified intrastate programs, but preempts additional safety requirements on interstate facilities:

> "…A State authority that has submitted a current certification under section 60105 (a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation. Notwithstanding the preceding sentence, a State authority may enforce a requirement of a one-call notification program of the State if the program meets the requirements for one-call notification programs under this chapter or chapter 61." - 49 U.S.C. 60104(c).

After the 1999 Bellingham incident, state lawmakers and community members were impassioned to gain additional safety rules and inspection authority from the federal government. Passage of the Washington Pipeline Safety Act set the stage for Washington State to not only receive certification under 49 U.S.C. 60105(a) to inspect and enforce intrastate pipelines, but to also become one of only five states under signed agreement with OPS to act as an agent for the federal government and perform inspections and report back to OPS with recommended enforcement actions. Under these rules the Washington Utilities and Transportation Commission (WUTC), inspects and enforces intrastate hazardous liquid pipeline safety requirements, and inspects on behalf of OPS, interstate pipelines. Additionally, more stringent requirements were put in place for intrastate pipelines within Washington State under Chapter 81.88 RCW and 480-93 WAC.

Locally, BCC Chapter 14.20 provides the basic terms and conditions for granting a franchise. The City grants and manages franchises with utilities and other providers using the rights-of-way and other public ways. Franchise agreements are necessary to balance the effective distribution of services in the public rights-of-way and the need to ensure the health, safety and welfare of the general public.

Olympic Pipe Line Company first entered into a Franchise Agreement with the City of Bellevue in 1964. The current 2005 Franchise Agreement between the two parties was established by Ordinance No. 5603 (Attachment A). The agreement was originally set to expire on May 26, 2015. On November 4, 2014, in keeping with Section 4.1 of the agreement, Olympic Pipe Line

Company requested an extension of the Franchise Agreement for an additional ten (10) year period. After negotiations, staff recommendations, and Council approval, the agreement expiration date was extended twice for a total of nine months to February 26, 2016.

A separate agreement to share information is in place between the City of Bellevue and OPLC. The Agreement to Share Information (Attachment B) was not incorporated into the Franchise Agreement, and was also extended to February 26, 2016.

Olympic Pipe Line Company is an <u>interstate</u> pipeline company with 400 miles of petroleum product pipelines. The pipeline extends from the Cherry Point Refinery near Blaine, WA and continues south until terminating at a delivery facility in Portland, OR. OPLC's pipeline, designated a Hazardous Liquid Pipeline under federal regulations, transports various grades of gasoline, aviation turbine fuel (kerosene), and diesel fuel. The pipeline provides fuel to delivery facilities in Seattle, SeaTac (aviation turbine fuel), Tacoma, Renton, and Portland, among others. Prior to reaching the Renton Control Center the pipeline runs through Bellevue with two parallel tar coated steel pipes with diameters of 16 and 20 inches.

During the review of the agreement extension request by OPLC it became evident to staff that elements of the Franchise Agreement would need to be amended to help ensure the City has adequate access to safety information. The existing Agreement to Share Information has terms that require OPLC to post emergency response plans, damage prevention plans, leak, and inspection documents onto a secure website that the City has access to. Overtime this process ceased to be utilized, and subsequently the terms in the Agreement to Share Information became outdated.

Prior to the 2005 Franchise Agreement, safety information sharing was addressed within the Franchise Agreement itself. Returning to the previous model, staff worked with representatives from OPLC to redraft the Franchise Agreement (Attachment C) with minor grammatical changes, textual clarifications, and a new Section 20 that incorporates the major elements from the Agreement to Share Information.

The following are highlights of unchanged items that the OPLC franchise addresses:

1. Permitting/Restoration:
   The franchise ensures the City's ability to require permits, through which the City can influence the documentation and location of facilities (e.g. where pipes, valves, etc. can be installed within the public right-of-way). When facilities are installed in the public right-of-way, permitting ensures the City's infrastructure (roads, sidewalks, etc.) is adequately restored. Furthermore, the permitting requirements help ensure OPLC's facilities are not installed in the right-of-way in conflict with City utilities, further protecting the City's assets.

2. Relocation:
   As an occupant of the public right-of-way, OPLC is subject to relocation if necessitated by the installation of public infrastructure. The franchise lays out the conditions that trigger relocation of facilities and when OPLC is responsible for paying for those relocations. The procedures for relocation (notification requirements, conditions, etc.) are detailed within the franchise.

3. Emergency Response Costs:
   Any reasonable cost incurred by the City responding to any spill, leak, or other release of Petroleum Product may be recovered from OLPC. This element of the franchise protects the City from incurring large emergency service costs associated with any potential disturbance of the pipelines.

The franchise proposal was reviewed by staff under the guidelines set forth in BCC 14.20.70.C as outlined below. The four core items reviewed are as follows:

1. The applicant's past service and safety record in the city and in other communities.
2. The nature of the proposed facilities and services, proposed area of service.
3. Proposed rates.
4. Whether the proposal would adequately serve the public needs and the overall interests of the citizens of the City.

Review of the core items reflects the following
1-2. Past service and safety records reviewed by staff did not indicate any heighted risks associated with the continued use of the Franchise Area by the franchisee. State inspection results posted on the WUTC website indicate that the facilities are being properly maintained. Accident reporting to the National Response Center (NRC) and Emergency Response Plan documentation did not highlight any leaks associated with corrosion within the City of Bellevue. Additionally, from 1997-2012 only 12 reportable (more than 5 gallons leaked) incidents occurred, none of which took place within the City of Bellevue. Furthermore, the 2014 Internal Line Inspection found only one abnormality within the City of Bellevue, which in keeping with federal regulations was followed up with additional inspection and a repair program.
3. Rates imposed by the WUTC do not directly impact residents and businesses within the City of Bellevue.
4. OPLC provides petroleum products to the airport and Puget Sound region at large, the pipeline also helps to keep up to 1,800 tanker trucks a day off of the interstate highways. The economic role of the pipeline does not have a feasible replacement at this time.

After thorough review and comparison with franchise agreements of other local jurisdictions with OPLC, it is staff's conclusion that, given the effectiveness of existing Federal and State laws and oversight, as well as elements within the proposed franchise in addressing the City's objectives of providing a high quality built environment, protecting the safety and human potential of the general public, regional economic development, and efficient transportation, and the uncertainties introduced by reentering the negotiation process, it is in the City's best interest to adopt the attached Franchise Agreement.

ALTERNATIVES:
1) Direct staff to present an Ordinance for adoption at a future date without changes.
2) Direct staff to amend the Ordinance with specific modifications.
3) Direct staff to table the Ordinance, and let the existing Franchise Agreement expire.
4) Direct staff to bring forward a Resolution to extend the term of the existing Franchise Agreement, which would result in the continuation of the status quo, and allow time for continued negotiations of a new franchise with OPLC.

RECOMMENDATION:
Alternative No. 1

ATTACHMENTS:
Attachment A: Existing Franchise Ordinance No. 5603
Attachment B: Existing Agreement to Share Information
Attachment C: Draft Ordinance