

**CITY COUNCIL REGULAR SESSION**

Ordinance of the City of Bellevue, Washington, granting Puget Sound Energy, Inc., a Washington corporation, the right, privilege and authority and franchise to set, erect, construct, support, attach, connect and stretch facilities between, maintain, repair, replace, enlarge, operate and use facilities in, upon, under, along and across the franchise area for purposes of transmission, distribution and sale of electrical energy for power, heat, light and any other purpose for which such energy can be used.

Mark Poch, Assistant Director, 452-6137  
Rick Logwood, Right of Way Manager, 452-6858  
Brian Rodan, Franchise Manager, 452-6056  
*Transportation Department*

Nicholas Matz, AICP Senior Planner, 452-5371  
*Community Development*

Monica Buck, Assistant City Attorney, 452-4082  
*City Attorney's Office*

**EXECUTIVE SUMMARY**

This Ordinance grants an Electrical Franchise Agreement to Puget Sound Energy.

**RECOMMENDATION**

Move to adopt Ordinance No. 6424  
If approved, effective date: 10/11/2018

**BACKGROUND/ANALYSIS**

On April 16, Council received an initial staff briefing including state law for acting on a proposed Franchise Ordinance, previous code amendments setting 10-year term provisions, and the status for PSE's application and negotiations. Council provided staff with initial direction to:

- Bring forward the Franchise Ordinance and related memoranda of understanding (MOUs) collectively for introduction and action; and
- Engage with interested community group representatives to gather input and feedback before formal action is taken.

At the July 16 Study Session, Council received information regarding the previous Franchise Ordinance (Ordinance 5443), changes in code regarding renewal periods, regulatory oversight roles of the Washington Utilities and Transportation Commission (WUTC) and City, and a summary of the operating provisions related to MOUs associated with the PSE Franchise Ordinance. Staff recommended the addition of a new MOU addressing removal of discontinued poles. The existing Relocation MOU went into effect in 2012 and was the only MOU that did not have recommended changes. Staff also

introduced the (renewal) Ordinance and four MOUs. Council requested minor modifications to the Ordinance and MOUs directing staff to:

- Review termination and carryover provisions across the documents
- Explore timeline and publication of materials for future Reliability Workshops
- Evaluate Load Forecasting and Reporting

Staff was asked to return to Study Session with an introduction of the new Franchise Ordinance references and revised MOUs and seek direction to return for subsequent action to adopt the new Franchise Ordinance in accordance with RCW 35A.47.040.

At the September 10 Study Session, staff returned to Council and reintroduced the Franchise Ordinance and the four MOUs revised to incorporate changes discussed at the July 16 Council Meeting. At that meeting a question was raised regarding whether any changes to the Franchise Ordinance could be made prior to adoption. Under state law, a franchise ordinance must be introduced at least five days prior to adoption. As a result, any substantive changes to the ordinance presented at the September 10 Study Session would require the ordinance be reintroduced. There have been no changes to the Franchise Ordinance that was presented on September 10.

The following is a summary of the documents (presented on September 10) which staff now recommends for adoption and execution:

### **Franchise Ordinance**

Overall there are few changes to the Franchise Ordinance (since Ordinance 5443). As presented on July 16, the recommended changes include:

- Clarification of pavement cut and restoration requirements at no cost to the City of Bellevue (Section 5)
- Attachment of City facilities to PSE poles; whereas, commercial uses will still require compensation in accordance with applicable tariff (Section 10)
- Revision to the Indemnification Provisions clarifying tendering of claims and work inspected by the City (Section 14)
- Adding applicable reference and provisions for the proposed Discontinued Pole MOU (Section 25)

Section 2.3 is now revised in response to a review of the termination and carryover provisions.

### **Related MOU**

As presented on July 16, recommended changes to MOUs provide consistency through recitals, dispute resolution, noticing, termination, 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 to advance 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

- This new MOU captures the City's interests as represented in the Comprehensive Plan to maintain the character and appearance within neighborhoods by removing unnecessary poles. Provisions reflect PSE's regulatory requirements in accordance with state law and administrative codes, Federal Energy Regulatory Commission (FERC), and WUTC.
- 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.

#### Record of Facilities

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

#### Relocation Procedures

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

Within each new or revised MOU, the term has been revised in response to a review of the termination and carryover provisions within the MOUs.

#### **A separate MOU for Electrical System Performance and Reliability Reporting addresses Council direction:**

- The annual reliability workshop's *scheduling details* have been revised to clarify purpose, timing, information availability and participation roles.
- City staff and PSE will continue working to improve clarity and accessibility to *project plans and locations*. In updating their website, PSE will evaluate their ability to provide plan information while also maintaining overall security for critical infrastructure.
- The workshop's interest in reliability is about what is happening today. Separately, as a key stakeholder in how Puget Sound Energy plans their system, the City works with PSE based on their state and federal regulatory framework for long-range planning and *forecasting*.
  - The City will also instruct its longtime outside consultant, Exponent, to compare PSE forecast outcomes for reporting periods with actuals as reported by PSE in its regulatory filings. With Council direction under the Electric Reliability Implementation framework, the City could follow up with PSE if we saw a concerning trend.

- The WUTC identified in its 2017 Integrated Resource Plan acknowledgement letter an issue regarding forecasting in PSE long-range plans *and its effect* on conservation (IRP Acknowledgement Letter p. 10). The City could continue to monitor, through its IRP, participation on how PSE responds to such WUTC-identified concerns.

A separate agenda memo authorizing execution of the related MOUs and Electrical Reliability MOU is on the Council agenda.

### **Community Interest Group Outreach**

Staff met with community interest groups on April 27 and July 10. Staff were unable to confirm a meeting in advance of this evening, after having offered two potential dates and concluding negotiations with PSE.

Some of the expressed items of interest from these meetings are addressed above in the MOU revision section. Community interest group outreach identified other consistent themes that are more effectively addressed through broader policy and legislative efforts directed by Council. These themes include new technology implementation, regulatory improvements, and vision for electrical infrastructure. There is Comprehensive Plan policy support for continued development of efficient energy and renewable resources. However, these are outside of City authority under its grant of a franchise agreement and thus would constitute a separate work program.

## **POLICY & FISCAL IMPACTS**

### **Policy Impact**

The Franchise Ordinance and related MOUs are in alignment with current policies and regulatory authority. With the adoption of the Growth Management Act, both the WUTC and the City of Bellevue have jurisdiction over PSE's electrical utility activities within the City limits:

1. The 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).

Bellevue City Code:

BCC 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.

The Comprehensive Plan has policies to influence the exercise of the Franchise Ordinance and associate MOUs:

### **Land Use Element**

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 Element

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-59: 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.

#### Environmental Element

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.

#### **Fiscal Impact:**

There are no financial impacts in executing the Franchise Ordinance and related MOUs.

Relative to Council discussion surrounding undergrounding overhead electrical distribution facilities as part of Capital Investment Program (CIP) street projects (scope, budget, and cost are presented as part of the CIP budget process), there are no current CIP projects that budgeted for undergrounding distribution facilities. As recognized by Council, undergrounding has additional fiscal impacts upon residents.

The Franchise Ordinance does not govern undergrounding of electrical distribution facilities, but the City and PSE look for opportunities to identify projects planned for undergrounding. In some projects, PSE and other non-city managed utilities have installed empty conduit and facilities at their cost, or at

the cost of a third party in accordance with tariff schedules, in anticipation of compatibility with future undergrounding. Since 2004, PSE has installed 11 underground electrical projects, with two additional projects identified for 2019 including Bridle Trails Circuit 22.

## **OPTIONS**

1. Adopt the Ordinance of the City of Bellevue, Washington, granting Puget Sound Energy, Inc., a Washington corporation, the right, privilege and authority and franchise to set, erect, construct, support, attach, connect and stretch facilities between, maintain, repair, replace, enlarge, operate and use facilities in, upon, under, along and across the franchise area for purposes of transmission, distribution and sale of electrical energy for power, heat, light and any other purpose for which such energy can be used.
2. Do not adopt the Ordinance and provide alternative direction to staff.

## **ATTACHMENTS & AVAILABLE DOCUMENTS**

Proposed Ordinance No. 6424

## **AVAILABLE IN COUNCIL LIBRARY**

N/A