

ORDINANCE NO. 4939

AN ORDINANCE OF THE CITY OF ELLENSBURG, WASHINGTON,  
GRANTING A NON-EXCLUSIVE ELECTRICAL UTILITY FRANCHISE TO PUGET  
SOUND ENERGY.

WHEREAS, Puget Sound Energy, Inc., a Washington corporation ("PSE"), is a regulated utility that provides electric power and energy to parts of unincorporated Kittitas County adjacent to the City of Ellensburg, Washington (the "City") and within the City and elsewhere; and

WHEREAS, PSE's electrical system provides power and energy to certain unincorporated areas surrounding the City, areas within the City, and elsewhere, and PSE requires the rights for installation, operation and maintenance of power poles and other related facilities to be located within certain public rights of way of the City; and

WHEREAS, the City, pursuant to the provisions of RCW 35A.11.020, RCW 35A.47.040 and RCW 80.32.010 has the authority to regulate power line facilities within rights-of-way of the City and to grant to PSE a utility agreement for the use thereof; and

WHEREAS, the City and PSE desire to set forth the terms and conditions by which PSE may use the rights-of-way of the City,

**NOW, THEREFORE**, the City Council of the City of Ellensburg, Washington do hereby ordain as follows:

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## **Section 1. Definitions.**

1.1 Where used in this franchise (the “Franchise”), the following terms will have the meaning set forth in this Section 1. Other terms are defined elsewhere in this Franchise.

1.1.1 “City” means the City of Ellensburg, a code city of the State of Washington, and its successors and assigns.

1.1.2 “Decommissioned Pole” means a utility pole Facility that is located in the Franchise Area and is no longer needed to provide a Regulated Service.

1.1.3 “Dispute” means any and all claims, controversies or disputes arising between the Parties relating to or in connection with this Franchise.

1.1.4 “Environmental Laws” means any and all Laws relating to the protection of human health and the environment, including those relating to the generation, use, handling, transportation, storage, release, discharge or disposal of Hazardous Substances, such as the Model Toxics Control Act, chapter 70A.305 RCW.

1.1.5 “Facilities” means, collectively and as applicable, any and all of the following facilities that are owned, operated, or maintained by PSE: (i) electric transmission and distribution facilities and systems, including poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices and infrastructure (including advanced metering infrastructure), and communication systems; and (ii) any and all other equipment, appliances, attachments, appurtenances, and other facilities or items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located above ground or underground.

1.1.6 “Force Majeure Event” means any event or circumstance (or combination thereof) that: (i) delays or prevents performance by a Party of any of its obligations under this Franchise; (ii) is not caused by, and is beyond the reasonable control of, the affected Party; and (iii) could not have been prevented or overcome by commercially reasonable measures taken by the affected Party to avoid the effect of the event or circumstance on the affected Party’s ability to perform its obligations hereunder and to mitigate the consequences of the event or circumstance. Force Majeure Events may include the following: (a) acts of nature, including storms, epidemics, and pandemics; (b) acts of public enemies, terrorism, war, rioting, insurrection or sabotage; (c) any form of compulsory government action or change in state or federal Law; (d) accidents or other casualties causing damage, loss or delay; (e) labor disturbances, strikes, lock-outs or other industrial actions affecting the Parties or any of their contractors, subcontractors, agents or employees; (f) supply chain disruptions, shortages in materials, or similar events delaying or preventing the procurement of certain materials; and (g) delay in obtaining or denial of any regulatory consents or approvals.

1.1.7 “Franchise Area” means any and all of the roads, streets, avenues, alleys, and highways, and rights-of-way of the City as now laid out, platted, dedicated or improved; and any and all roads, streets, avenues, alleys, highways, and rights-of-way that may hereafter be laid out, platted, dedicated or improved within the limits of the City.

1.1.8 “Hazardous Substances” means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant that is specifically designated as such and regulated by any Environmental Law.

1.1.9 “Law” means any and all federal, state or municipal law, code, statute, ordinance, rule, tariff, regulation or other requirement that is applicable to a Party or its activities under this Franchise and is accorded the full force and effect of law and is binding upon such Party.

1.1.10 “Ordinance” means Ordinance No. 4939, which sets forth the terms and conditions this Franchise.

1.1.11 “Party” means, as applicable, PSE or the City, and “Parties” means, collectively, PSE and the City.

1.1.12 “PSE” means Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.

1.1.13 “Public Improvement Project” means a capital improvement project within the Franchise Area that requires the relocation of Facilities within the Franchise Area, is funded by the City (either with its own funds or with other public monies obtained by the City for such capital improvement project), and is undertaken by the City.

1.1.14 “Regulated Service” means any utility, telecommunications, or similar service that is subject to the jurisdiction of one or more federal or state agencies that regulate the terms and conditions such service (including the Federal Energy Regulatory Commission, the Federal Communications Commission, and the WUTC).

1.1.15 “Term” means the term of this Franchise as defined in Section 15 (Franchise Term).

1.1.16 “WUTC” means the Washington Utilities and Transportation Commission, and any successor agency with jurisdiction over the terms and conditions of any energy services provided by PSE to its customers.

## **Section 2.      Grant of Rights.**

2.1      The City hereby grants to PSE the right, privilege, authority and 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 for the purpose of supplying, distributing, selling, and transmitting electric power and energy to customers beyond and within the corporate limits of the City, for such purposes for which energy may be used. If, during the Term of this Franchise, the City annexes any territory to the City in accordance with state Law and RCW 35A.14.900 applies to such annexation, then pursuant to RCW 35A.14.900, the Franchise Area will be deemed amended to include the annexed territory and the rights granted PSE under this Franchise will be extended to the annexed area.

2.2      This Franchise is not, and will not be deemed to be, an exclusive Franchise. This Franchise will 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 will not affect the jurisdiction of the City over the Franchise Area and will not limit or constrain the exercise of the City's police powers, or prohibit or prevent the City from using the Franchise Area, in a manner that is consistent with Law and the terms and conditions of this Franchise.

2.3 PSE will exercise its rights within the Franchise Area in accordance with Law; except, that in the event of any conflict or inconsistency between any municipal law, code, statute, ordinance, rule, regulation, policy or other requirement of the City and the terms and conditions of this Franchise, the terms and conditions of this Franchise will govern and control.

2.4 This Franchise will not convey any right to PSE to install any Facilities on, under, over or across, or to otherwise use, any City-owned or City-leased properties of any kind that are located outside the Franchise Area. Further, this Franchise will not govern or apply to any Facilities located on any PSE-owned or PSE-leased properties or any easements (whether inside or outside of the Franchise Area, whether granted by a private or public entity, and whether now existing or hereafter acquired), and such Facilities are not, and will not be deemed to be, located pursuant to rights derived from this Franchise.

2.5 Facilities that were installed or maintained by PSE in accordance with a prior franchise agreement between PSE and the City, but that are not within the Franchise Area, may be maintained, repaired, and operated by PSE at the location such Facilities exist as of the Effective Date; except, that no such Facilities may be enlarged, improved, or expanded by PSE without the prior review and approval of the City pursuant to and consistent with Law.

### **Section 3. PSE's Use and Occupancy of the Franchise Area.**

3.1 All work performed on Facilities within the Franchise Area will be accomplished in a good and workmanlike manner, by means that, to the extent practicable, minimize interference with the free passage of pedestrian, bicycle, or vehicular traffic, and by methods that allow for reasonable access to adjoining property, whether public or private. PSE will post and maintain proper barricades, flags, flaggers, lights, flares, safety devices, establishing detours as necessary, and other measures as required by Law. If any work by PSE on Facilities within the Franchise Area impairs the lateral support of the Franchise Area or adjacent properties, PSE will take such action as is reasonably necessary to restore and maintain the lateral support of the Franchise Area or such adjacent properties.

3.2 Prior to PSE engaging in any work on Facilities located within the Franchise Area, PSE will obtain all City permits required to do such work, and will, except to the extent contrary to or inconsistent with the terms and conditions of this Franchise, comply with all requirements and conditions of such permits. If Facilities within the Franchise Area are in such a condition so as to endanger the property, life, health, or safety of any individual or threaten system integrity, or are otherwise compromised, in each case as reasonably determined by PSE, PSE may take prompt action to correct the dangerous condition without first obtaining any required City permits on the condition that PSE applies for any such permit(s) as soon as reasonably practicable after taking such action. If the City discovers an emergency situation involving any Facilities, the City will promptly notify PSE, and PSE will address the emergency situation pursuant to this Section 3.2.

3.3 PSE will, after completing any installation, construction, relocation, maintenance, removal or repair of any of Facilities within the Franchise Area pursuant to this Franchise, restore the affected Franchise Area and any other City property situated within the Franchise Area that may be disturbed or damaged by such work, to at least the same condition as such area or property was in immediately prior to the applicable work. The City will not impose any fee, fine, charge, or other cost or expense on PSE for any such damage or disturbance if such restoration work is completed to the reasonable satisfaction of the City. All survey monuments which are to be disturbed or displaced by any such work will be referenced and restored consistent with Law.

3.4 PSE will have the right to cut, clear, and remove vegetation encroaching on, overhanging, or growing into Facilities within the Franchise Area so as to prevent such vegetation from coming in contact with such Facilities and to maintain safe and reliable operations of such Facilities. The exercise of such right will be subject to the City's prior approval, which will not be unreasonably withheld, conditioned, or delayed. PSE's tree trimming activities will preserve the appearance, integrity, and health of the trees to the extent reasonably possible. Except in emergency situations or as otherwise approved by the City, PSE will (i) be responsible for all debris removal from such activities and (ii) ensure such work is performed under the direction of a certified arborist.

3.5 The Parties acknowledge that PSE is subject to state and federal Laws that apply to its energy operations and that certain information related to such operations is publicly available, including by or through the WUTC. The City may review such information, including publicly available maintenance, safety, and inspection information related to Facilities, in its discretion.

#### **Section 4. Planning and Coordination.**

4.1 Each Party will exercise commercially reasonable efforts to coordinate construction work it may undertake within the Franchise Area with the other Party so as to promote the orderly and expeditious performance and completion of such work as a whole. In so doing, the Parties will undertake cooperative planning so as to promote the coordinated timing, location, and prosecution of such work within the Franchise Area. Upon the reasonable request of a Party, but not more often than annually (unless otherwise agreed upon by the Parties), the Parties will meet to discuss and coordinate regarding future construction activities then being planned by either Party within the Franchise Area. Such discussions and coordination will be for informational purposes only and will not obligate either Party to undertake any specific improvements or other activities within the Franchise Area.

4.2 The City may, from time to time, request:

4.2.1 copies of certain available PSE plans for potential improvements to Facilities within the Franchise Area if and to the extent such information is needed by the City for its own project planning purposes, and

4.2.2 copies of certain available maps in use by PSE showing the approximate locations of Facilities within the Franchise Area if and to the extent such information is needed by the City for specific right-of-way management purposes.

Any such request by the City must be submitted by email to [Map.Request@pse.com](mailto:Map.Request@pse.com) (or by such other method as PSE may reasonably direct, from time to time) and must be reasonable in scope

and at intervals that minimize administrative burdens on both Parties. Any release of information to the City pursuant to this Section 4.2 will be subject to PSE's prior approval, which will not be unreasonably withheld. Any information provided by PSE pursuant to this Section 4.2 will be for informational purposes only and will not obligate PSE to undertake any specific improvements or other activities within the Franchise Area, or be construed as a proposal to undertake any specific improvements or other activities within the Franchise Area. PSE does not warrant the accuracy of any information provided pursuant to this Section 4.2 and, to the extent the locations of Facilities are shown in any such information, such Facilities are shown in their approximate locations. Further, notwithstanding anything in this Franchise to the contrary, PSE will have no obligation to disclose any records, documents, or other information that, in PSE's reasonable discretion: (i) are financial, commercial, or proprietary in nature, or (ii) constitute critical energy infrastructure information as regulated under the Federal Power Act, 16 U.S.C. § 791, et seq.

4.3 If either Party causes an excavation to be made within the Franchise Area, the Party causing such excavation will afford the other Party an opportunity to use such excavation if the Party causing such excavation: (i) receives a written request from the other Party to do so, (ii) such joint use would not unreasonably delay the work of the Party causing such excavation, and (iii) such joint use is arranged and accomplished upon terms and conditions reasonably satisfactory to the Party causing such excavation.

4.4 Nothing in this Franchise is intended (nor will be construed) to relieve either Party of its respective obligations under Law with respect to determining the location of underground utility facilities, including Facilities.

#### **Section 5. City Use of PSE Poles in Franchise Area.**

During the Term, the City and PSE may enter into one or more agreements related to the installation, operation, and maintenance of City-owned overhead facilities on PSE-owned pole Facilities within the Franchise Area. Any such agreement may address commercial and noncommercial uses of PSE's poles by the City. The City will install, operate, and maintain any such facilities at its sole risk and expense and will conduct all such activities in accordance with Law and consistent with such reasonable terms and conditions as PSE may specify from time to time (including requirements accommodating Facilities or the facilities of other parties having the right to use PSE's poles). PSE will have no obligation under Section 10 (Indemnification and Insurance) in connection with any City-owned facilities that are installed or maintained on PSE's pole Facilities. PSE will not charge the City for its use of PSE's pole Facilities pursuant to this Section 5 that is noncommercial in nature (e.g., municipal uses) and does not constitute a Regulated Service; except, that nothing herein will require PSE to bear any cost or expense in connection with any such use by the City.

#### **Section 6. Decommissioned Facilities**

6.1 As of the Effective Date, PSE and third parties having attachments of wires, devices and other equipment to PSE-owned pole Facilities located within the Franchise Area will use the National Joint Utilities Notification System ("NJUNS") as the means of providing official notice of actions required to be taken and reporting of actions taken by such third parties with respect to such attachments. To the extent consistent with Law and at the request of the City, PSE will use

commercially reasonable efforts (subject to the functional capabilities and limitations of NJUNS) to include the City as an interested party to any notification tickets submitted by PSE in NJUNS with respect to any PSE-owned pole Facilities located within the Franchise Area that are permanently no longer in use by PSE and which contain third-party attachments. The City may monitor activity associated with such third-party attachments through NJUNS.

6.2 If PSE determines that a PSE-owned pole Facility located within the Franchise Area is a Decommissioned Pole, PSE will notify the City of the same and such notice will establish the date by which such Decommissioned Pole will be removed from the Franchise Area. PSE will use commercially reasonable efforts to remove such Decommissioned Pole from the Franchise Area within one hundred-eighty (180) days after the date of such notice. If, however, upon receipt of any such notice from PSE, the City reasonably determines that such Decommissioned Pole unreasonably interferes with the free passage of pedestrian, bicycle, or vehicle traffic within the Franchise Area, the City will notify PSE of the same, and PSE will use commercially reasonable efforts to remove such Decommissioned Pole from the Franchise Area within thirty (30) days after the date of such notice from the City.

6.3 If the City reasonably determines that a PSE-owned pole Facility located within the Franchise Area is no longer in use by PSE or any authorized third-party, the City may request that PSE determine if such Facility constitutes a Decommissioned Pole. Upon receipt of such request, PSE will review the status of the Facility in question. If PSE determines such Facility to be a Decommissioned Pole, PSE will give the City notice thereof in accordance with Section 6.1. If PSE determines that such Facility is not a Decommissioned Pole, PSE will notify the City of the same, and such notice will explain the basis for making such determination. The Parties will work together to establish mutually agreeable procedures for the implementation of this Section 6.3 that achieve the right-of-way management objectives of the City in a manner that minimizes the administrative burdens on both Parties.

6.4 The Parties acknowledge that: (i) the removal of underground Facilities often causes significant disruptions to applicable rights-of-way within the Franchise Area, which may adversely impact the use of the affected Franchise Area and inconvenience the public, and (ii) an approach of decommissioning certain Facilities in place within the Franchise Area, consistent with prudent utility practice and this Franchise, could help the Parties reduce unnecessary disruptions to the Franchise Area while maintaining the Parties' respective responsibilities under this Franchise with respect to such Facilities. Accordingly, PSE may, from time to time, elect to discontinue its use of underground Facilities within the Franchise Area, and decommission such Facilities in place ("Decommissioned Underground Facilities"). In such event, PSE will notify the City of its decision to decommission such Facilities and will decommission such Facilities in place consistent with prevailing industry standards and Law. Decommissioned Underground Facilities shall, at a minimum, have the cable removed from all buried conduit. As requested by the City in accordance with Section 4.2, PSE will provide the City with maps that show the approximate location of Decommissioned Underground Facilities. In addition, for the avoidance of doubt, Decommissioned Underground Facilities within the Franchise Area remain subject to the terms and conditions of this Franchise, including Section 8 (Relocation of Facilities) and Section 10 (Indemnification and Insurance).

## **Section 7. Hazardous Substances.**

PSE will only use Hazardous Substances within the Franchise Area incident to PSE's normal business operations, and in all cases (i) limited to such quantities as may be required in its normal business operations, (ii) used, transported or stored in accordance with prevailing industry standards and Law, and (iii) used, transported or stored only for its intended use. In the event PSE or its contractors cause an unlawful release of Hazardous Substances within the Franchise Area, PSE will notify the City within twenty-four (24) hours after its discovery of such release. PSE will act promptly to remediate such release of Hazardous Substances in accordance with federal and state Law.

## **Section 8. Relocation of Facilities.**

8.1 Whenever the City causes a capital improvement project to be undertaken within the Franchise Area, and the City believes such project constitutes a Public Improvement Project that requires the relocation of then-existing Facilities within the Franchise Area (for purposes other than those described in Section 8.2), the City will provide to PSE, within a reasonable time prior to the commencement of such project:

8.1.1 written notice of the applicable project; and

8.1.2 reasonable plans and specifications sufficient to allow PSE to: (i) evaluate whether the proposed project constitutes a Public Improvement Project, including whether the relocation of any Facilities within the Franchise Area is necessary, and (ii) if the project is a Public Improvement Project that requires any such relocations, to develop an initial system design for such Facilities in connection with such Public Improvement Project.

After receipt of such notice and such plans and specifications, the City and PSE will work together to review the plans and specifications provided pursuant to Section 8.1.2 as well as any proposed relocation of Facilities for such Public Improvement Project. For any Facilities that must be relocated within the Franchise Area for such Public Improvement Project, PSE will perform such relocations at no charge to the City and in accordance with a schedule mutually agreed upon by the City and PSE. If the City requires the subsequent relocation of any such Facilities within five (5) years from the date of the initial relocation of such Facilities pursuant to this Section 8.1, the City will bear the entire cost of such subsequent relocation.

8.2 Whenever (i) any public or private development within the Franchise Area, other than a Public Improvement Project, requires the relocation of Facilities within the Franchise Area to accommodate such development, or (ii) the City requires the relocation of Facilities within the Franchise Area for the benefit of any person or entity other than the City, then, in such event, PSE will have the right as a condition of such relocation, to require such person or entity to make payment to PSE, at a time and upon terms and conditions acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of such Facilities.

8.3 Any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of Facilities will be a relocation under Section 8.2 (including any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

8.4 For the avoidance of doubt, and notwithstanding anything to the contrary in Section 8.2 or Section 8.3, PSE will not be obligated to pay the cost of any relocation of its Facilities pursuant to this Section 8 that is required or made a condition of a private development, unless that development results in the construction, widening, or improvement of a roadway on the City's arterial/collector system. If the removal or relocation of Facilities is caused directly by an identifiable private development of property in the area, or is made for the convenience of a customer, PSE may charge and collect the reasonable expense of removal and relocation from the developer or customer. For example, PSE can recover relocation costs in connection with that portion of a road widening or realignment where the non-arterial/collector road project is adjacent to the development and is made a condition of or caused by said private development.

8.5 Nothing in this Franchise will require PSE to bear any cost or expense in connection with the location or relocation of any Facilities authorized by easement or other rights not derived from this Franchise, regardless of whether such easement or other rights are on public or private property and regardless of whether such easement or other rights extend to property within the Franchise Area. In the event that a relocation of Facilities under Section 8.1 results in PSE electing to acquire easement rights to complete the relocation, the acquisition and cost of said easement will be the responsibility of PSE.

### **Section 9. Undergrounding of Facilities.**

PSE provides electric energy services on a non-preferential basis subject to and in accordance with tariffs on file with the WUTC. Subject to the availability of such services in accordance with such tariffs, and if, during the Term, the City directs or otherwise requires PSE to underground overhead Facilities within the Franchise Area, such undergrounding will be arranged and accomplished subject to and in accordance with applicable tariffs. For the avoidance of doubt, in the event that PSE elects to underground its existing overhead Facilities as part of a relocation pursuant to Section 8.1, as between the City and PSE, such undergrounding shall be the responsibility of PSE. This Section 9 governs all matters related to the undergrounding of PSE's overhead Facilities within the Franchise Area pursuant to this Franchise.

### **Section 10. Indemnification and Insurance.**

10.1 PSE will indemnify and hold the City, its employees and elected officials harmless from and against any and all claims and demands made against it on account of injury or death of any person or damage to property, to the extent such injury or damage is caused by the negligence or intentional misconduct of PSE, its agents or employees in exercising the rights granted to PSE by this Franchise. In the event any such claim or demand is presented to or filed with the City, the City must promptly notify PSE thereof in writing, and PSE will have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, or to defend the same at its sole cost and expense, by attorneys of its own election. In addition, in the event any suit or action is begun against the City based upon any such claim or demand, the City must likewise promptly notify PSE thereof in writing, and PSE will have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or to defend the same at its sole cost and expense, by attorneys of its own election.

10.2 It is further specifically and expressly understood that, solely to the extent required to enforce any indemnification under this Section 10, PSE waives any immunity it may have under RCW Title 51; except, that the foregoing waiver will not in any way preclude PSE from asserting such immunity directly against any of its own employees or such employees' estates or other representatives. The waiver set forth in this Section 10.2 has been specifically negotiated by the Parties.

10.3 During the Term, PSE will maintain the following liability insurance coverages, insuring PSE and including the City as additional insured 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 to PSE in this Franchise:

10.3.1 Commercial General Liability insurance with limits not less than five million dollars (\$5,000,000) per occurrence for bodily injury or death, property damage, and public liability.

10.3.2 Automobile liability for owned, non-owned and hired vehicles with a Combined Single Limit of two million dollars (\$2,000,000) for each accident.

10.3.3 Worker's compensation with statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000).

10.4 In lieu of the insurance requirements in Section 10.3, PSE may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the City's request, PSE will provide the City with reasonable written evidence that PSE is maintaining such self-insurance program.

### **Section 11. Reservation of Easement in Event of Vacation.**

In the event the City vacates any portion of the Franchise Area containing Facilities during the Term, the City will reserve an easement for such Facilities that are located in such vacated portion of the Franchise Area in a manner consistent with the City's vacation procedures, as applicable, and at no cost to PSE. The City will give PSE advance notice of its intent to vacate any portion of the Franchise Area and will consult with PSE regarding the terms and conditions of the easement to be reserved for Facilities.

### **Section 12. Force Majeure.**

If performance of this Franchise, or of any obligation hereunder, is prevented or substantially restricted or interfered with by reason of a Force Majeure Event, the affected Party, upon giving notice to the other Party of the Force Majeure Event and its impact on the affected Party, will be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party must use commercially reasonable efforts to avoid or remove such causes of nonperformance under this Franchise and must continue performance hereunder whenever such causes are removed.

### **Section 13. Dispute Resolution.**

13.1 A Dispute must be resolved in accordance with the dispute resolution procedures set forth in this Section 13. A Party will notify the other Party promptly following the occurrence or discovery of a Dispute. The initial mechanism to resolve a Dispute will be by negotiation between the Parties' representatives, so designated by the Parties by notice given pursuant to this Section 13.1.

13.2 If the Parties cannot resolve a Dispute satisfactorily within fifteen (15) business days after receipt of the initial notice in accordance with Section 13.1, either Party may thereafter deliver to the other Party notice initiating the dispute resolution procedures set forth in this Section 13.2. Such notice will (i) contain a detailed description of the issues in Dispute, (ii) identify the senior officers or administrators authorized to settle the Dispute on behalf of the Party providing such notice, and (iii) propose a date or dates, not less than thirty (30) days from the date of such notice, that such officers or administrators are available for a meeting to resolve such Dispute. The recipient Party will, within ten (10) business days following receipt of notice pursuant to this Section 13.2, provide to the notifying Party a parallel schedule of availability of the recipient Party's senior officers or administrators authorized to settle the Dispute on behalf of the recipient Party. Following delivery of the respective senior officers' or administrators' schedules of availability, the senior officers or administrators so designated will engage in good-faith negotiations for a period of at least thirty (30) days after the first meeting between such officers or administrators (or such other time period as may be agreed upon by the Parties), to resolve the Dispute to the satisfaction of both Parties.

13.3 If at any time after the expiration of such thirty (30) day period (or such other time period as may be agreed upon by the Parties pursuant to Section 13.2), a Party determines that continued negotiations with the other Party will not result in a resolution of the Dispute, and if the Party reasonably believes that the other Party is in default of its obligations under this Franchise, such Party may serve upon the other Party a written order to comply with the provisions of this Franchise pursuant to Section 14 (Default).

13.4 Except as otherwise provided in Section 13.3, the Parties intend that the Parties exhaust the procedures for dispute resolution set forth in this Section 13 before a Party exercises any other right or remedy available under this Franchise.

### **Section 14. Default.**

If PSE fails to comply with the provisions of this Franchise, the City may serve upon PSE a written order to so comply within sixty (60) days after the date on which such order is received by PSE. If PSE is not in compliance with this Franchise after expiration of such sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; except, that if any failure to comply with this Franchise by PSE cannot be corrected with due diligence within such 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), the time within which PSE may so comply will be extended for such time as may be reasonably necessary and so long as PSE commences promptly and diligently to effect such compliance.

### **Section 15. Franchise Term.**

This Franchise is and will remain in full force and effect for a period of ten (10) years from and after the Effective Date (the "Term"). The Public Works Director may extend the Term for up to two (2) additional five (5) year periods if PSE requests such an extension not more than two (2) years nor less than one hundred eighty (180) days prior to the expiration of the then-current Term. If the Public Works and Utilities Director elects to extend the Term pursuant to this Section 15, the City will provide written notice of such extension to PSE prior to the end of the then-current Term.

### **Section 16. Assignment.**

PSE will not assign this Franchise to any unaffiliated third party without the prior written consent of the City, which consent will not be unreasonably withheld. Notwithstanding the foregoing, PSE will 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 17. Miscellaneous.**

17.1 Unless otherwise specifically provided by this Franchise, all notices, consents, requests, demands or other communications required or permitted by this Franchise must be in writing and given by personal delivery, email, or certified mail. All legal notices provided in connection with this Franchise, including notices relating to breach of this Franchise or a waiver of any right or obligation under this Franchise, however, must be in writing and sent to the notice address set forth in this Section 17.1 of the Party being notified. Such a notice will be deemed effective as follows: (i) if sent by certified mail with return receipt requested, upon certified receipt; (ii) if sent by a nationally recognized courier or mail service, delivery charges or postage prepaid, with delivery receipt requested, upon receipt; or (iii) if delivered personally, upon delivery.

To PSE:                   Puget Sound Energy  
                                 Brandon Leyritz  
                                 Municipal Liaison Manager  
                                 P.O. Box 97034  
                                 Bellevue, WA 98009

With a copy sent via email to: [Municipal.Relations@pse.com](mailto:Municipal.Relations@pse.com)

To City:                   City of Ellensburg  
                                 Ryan Lyyski  
                                 Public Works & Utilities Director  
                                 501 N. Anderson Street  
                                 Ellensburg, WA 98926

With a copy sent via email to: [lyyskir@ci.ellensburg.wa.us](mailto:lyyskir@ci.ellensburg.wa.us)

A Party may change its address for purposes of this Section 17.1 by giving written notice of such change to the other Party pursuant to this Section 17.1.

17.2 The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs. Terms defined in a given number, tense or form have the corresponding meaning when used in this Franchise in another number, tense or form. References containing terms such as "hereof," "herein," "hereto," "hereinafter" and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Franchise taken as a whole. The terms "includes" or "including" will not be deemed limited by the specific enumeration of items, but will be deemed without limitation. The term "or" is not exclusive.

17.3 Any provisions of this Franchise prohibited or rendered unenforceable by any state or federal Law will be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Franchise. In such event, the remainder of this Franchise will remain valid and enforceable. Upon such determination that any term or other provision is prohibited or rendered unenforceable as described in this Section 17.3, the Parties will negotiate in good faith to modify this Franchise so as to maintain the original intent of the Parties as closely as possible in an acceptable manner to the end that rights and obligations contemplated under this Franchise are fulfilled to the greatest extent possible.

17.4 This Franchise may be amended only by a 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 Law. This Franchise constitutes the entire agreement between the Parties with respect to the subject matter of this Franchise, and supersedes all other prior agreements and understandings, oral and written, between the Parties, with respect to the same.

17.5 If the City elects to codify this Franchise in the Ellensburg City Code, the City will codify this Franchise in its entirety (either by providing a link to a copy of this Franchise or by including this Franchise in its entirety in the Ellensburg City Code). Any such codification will not amend or otherwise modify any of the terms or conditions of this Franchise and, in no event, will a Party's failure to comply with any terms or conditions of this Franchise constitute a breach of the Ellensburg City Code by virtue of any such codification for purposes of a Party seeking any remedies or imposing any penalties against the other Party in connection with such failure to comply. For the avoidance of doubt, if PSE or any of its employees violate the Ellensburg City Code while performing PSE's obligations under this Franchise, PSE may still be held responsible for such violation of the Ellensburg City Code in a manner that is consistent with the terms and conditions of this Franchise. This Franchise is a negotiated agreement between the Parties, and the terms and conditions of this Franchise may not be amended, modified, or otherwise altered except as expressly provided in Section 17.4. In the event of any conflict or inconsistency between the Ellensburg City Code and the terms and conditions of this Franchise, the terms and conditions of this Franchise will govern and control.

17.6 As provided by RCW 35.21.860, the City may recover from PSE actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise.

17.7 Nothing in this Franchise will be construed to create any rights or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise will not confer any right or remedy upon any person other than the City and PSE. No action may be commenced or prosecuted against either the City or PSE by any third party claiming as a third-party beneficiary of this Franchise.

17.8 The Parties will act in good faith and use commercially reasonable efforts to carry out their respective obligations under this Franchise. The failure of either Party to insist on or enforce strict performance of any provision of this Franchise or to exercise any right or remedy under this Franchise or Law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect.

17.9 This Franchise will be governed by, subject to and construed under the laws of the State of Washington. The venue and jurisdiction over any Dispute shall be with the state and federal courts located in Kittitas County, Washington, as applicable. This Franchise is subject to the provisions of any applicable tariff on file with the WUTC or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and any such tariff, the provisions of the tariff will control.

17.10 All terms and conditions of this Franchise that must be reasonably construed to survive the expiration or termination of this Franchise in order to give full force and effect to the intent of the Parties as set forth herein will survive the expiration or termination of this Franchise, regardless of whether such survival is expressly specified herein.

#### **Section 18. Effective Date.**

The Ordinance shall be effective five (5) days after its passage, approval and publication in accordance with Laws. This Franchise will take effect as of the date of PSE's written acceptance thereof (the "Effective Date").

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 18<sup>th</sup> day of March, 2024.

ATTEST:

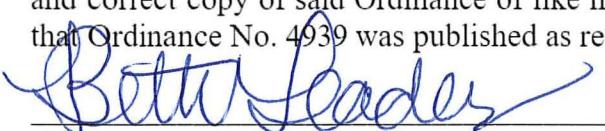
  
\_\_\_\_\_  
MAYOR  
\_\_\_\_\_  
Betty Rader  
\_\_\_\_\_  
CITY CLERK

Approved as to form:

  
\_\_\_\_\_  
CITY ATTORNEY

Publish: 3-21-2024

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4939 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4939 was published as required by law.

  
\_\_\_\_\_  
BETH LEADER

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF ELLENSBURG, WASHINGTON

In the matter of the application )  
of Puget Sound Energy, Inc., a )  
Washington corporation, for a )  
franchise to construct, operate )  
and maintain facilities in, upon, )  
over under, along, across and )  
through the franchise area of the )  
City of Ellensburg, )  
Washington )

Franchise Ordinance No. 4939  
ACCEPTANCE

WHEREAS, the City Council of the City of Ellensburg, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. 4939, bearing the date of March 18, 2024; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on March 27, 2024, from said City of Ellensburg, Kittitas 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 Ellensburg, Kittitas County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned Director, Customer & System Projects thereunto duly authorized on this 27th day of March, 2024.

ATTEST:

PUGET SOUND ENERGY, INC.

Ryan Blood - Dir, Customer & System Projects  
\_\_\_\_\_  
(Printed name and title) By: Ryan Blood  
\_\_\_\_\_  
(signed)

Copy received for City of Ellensburg  
on March 27th -, 2024

By: Bethie Gladys  
\_\_\_\_\_  
City Clerk