

CITY OF MERCER ISLAND

ORDINANCE NO. B-111

AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON, AMENDING SECTION 17.1 OF ORDINANCE NO. B-110, PUGET POWER FRANCHISE AGREEMENT

THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Mercer Island Ordinance No. B-110 Section 17.1 is hereby amended to read as follows:

"17.1 This Ordinance shall take effect on February 8, 1994, having been: (i) introduced to the City Council not less than five days before its passage; (ii) first submitted to the City Attorney on December 1, 1993; (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 Mercer Island by a majority of the whole of such legislative body on January 10, 1994."

PASSED BY THE CITY COUNCIL AT ITS REGULAR MEETING ON THE 24TH DAY OF JANUARY, 1994.

Judy Clibborn  
Judy Clibborn, Mayor

ATTEST:

Candice Stephens  
Candice Stephens, Associate City Clerk

APPROVED AS TO FORM:

Ronald C. Dickinson  
Ronald Dickinson, City Attorney

Publication Date: 2-2-94

CITY OF MERCER ISLAND

ORDINANCE NO. B-110

AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON, GRANTING PUGET SOUND POWER & LIGHT COMPANY, A WASHINGTON CORPORATION, A NONEXCLUSIVE FRANCHISE TO HAVE AND USE ITS FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS, AND THROUGH ITS FRANCHISE AREA WITHIN THE CITY FOR PURPOSES OF TRANSMISSION, DISTRIBUTION AND SALE OF ENERGY AND TO COLLECT TOLLS, RATES AND COMPENSATION FOR SUCH ENERGY AND SUCH USES.

THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Definitions**

1.1 Where used in this franchise (the "Franchise") the following terms shall be defined as follows:

1.1.1 "Puget" means Puget Sound Power & Light Company, a Washington corporation, and its respective successors and assigns.

1.1.2 "City" means the City of Mercer Island, Washington, a municipal corporation of the State of Washington, and its respective successors and assigns.

1.1.3 "Franchise Area" means all rights-of-way for public roads, streets, avenues, alleys, and highways of the City as now, or as may in the future be laid out, platted, dedicated, or improved. The Franchise Area does not include any other public property owned, in whole or in part, leased, or otherwise occupied by the City.

1.1.4 "Facilities" means poles (with or without crossarms), wires, lines, conduits, cables, communication and signal lines, braces, guys, anchors, vaults, and all necessary or convenient appurtenances thereto, whether the same be located over or under the ground.

**Section 2. Facilities Within and Without Franchise Area**

2.1 The purpose of this Franchise is to grant to Puget the right to use the Franchise Area for the purposes hereinafter specified. Except as expressly provided otherwise herein, Puget shall comply with all applicable City ordinances, resolutions, standards and procedures, as now or hereafter adopted, to the same extent as any other person or entity doing business within the City.

2.2 The City does hereby grant to Puget the right, privilege, authority and franchise to:

2.2.1 Set, erect, construct, support, attach, connect, stretch, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for the purposes of transmission, distribution and sale of energy for power, heat, light, and any other purpose for which energy can be used; and

2.2.2 To charge and collect tolls, rates and compensation for such energy and such uses.

2.3 Existing Facilities installed or maintained by Puget on public grounds and places within the City in accordance with prior franchise agreements (but which such Facilities are not within the Franchise Area as defined by this Franchise) may be maintained, repaired and operated by Puget at the locations where such Facilities exist as of the effective date of this Franchise for the term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to applicable ordinances, codes, resolutions, standards and procedures.

### **Section 3. Noninterference of Facilities**

3.1 Puget's Facilities shall be maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with the laws of the State of Washington.

3.2 Puget shall comply with all applicable federal, state or local safety standards in replacing excavated portions of the Franchise Area.

### **Section 4. Relocation of Facilities**

4.1 Whenever the City undertakes the construction of any water, sewer or storm drainage line (8" inside diameter or larger) or other public street improvement project (including, without limitation, installation of traffic signals, street lights, sidewalks and pedestrian amenities) within the Franchise Area (or within an area described in Subsection 2.3 above) and such street improvement project necessitates the relocation of Puget's then existing Facilities within the Franchise Area (or within an area described in Subsection 2.3 above), the City shall:

4.1.1 provide Puget, within a reasonable time prior to the commencement of such street improvement project, written notice requesting such relocation; and

4.1.2 provide Puget with copies of pertinent portions of the City's plans and specifications for such street improvement project so that Puget may relocate its Facilities to accommodate such street improvement project.

After receipt of such notice and such plans and specifications, Puget shall relocate such Facilities within the Franchise Area (or within an area described in Subsection 2.3 above) at no charge to the City so as to accommodate such street improvement project. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this subsection, the City shall bear the entire cost of such subsequent relocation.

4.2 Whenever any person or entity, other than the City, requires the relocation of Puget's Facilities to accommodate the work of such person or entity within the Franchise Area (or within an area described in Subsection 2.3 above); or, whenever the City requires any person or entity undertaking any work (other than work undertaken at the City's cost and expense) within the Franchise Area (or within an area described in Subsection 2.3 above) and such work necessitates the relocation of Puget's then existing Facilities within the Franchise Area (or within an area described in Subsection 2.3 above), then Puget shall have the right as a condition of any such relocation to require such person or entity to make payment to Puget, at a time and upon terms acceptable to Puget, for any and all costs and expenses incurred by Puget in the relocation of Puget's Facilities.

4.3 Any condition or requirement imposed by the City upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which necessitates the relocation of Puget's Facilities within the Franchise Area (or within an area described in Subsection 2.3 above) shall be a condition or requirement causing relocation of Puget's Facilities to occur subject to the provisions of Subsection 4.2 above. However, in the event the City reasonably determines (and promptly notifies Puget in writing of such determination) that the primary purpose of imposing such condition or requirement upon such person or entity which necessitates such relocation is to cause, on the City's behalf and in a manner consistent with City-approved improvement plans, the construction of a water, sewer or storm drainage line (8" inside diameter or larger) or other public street improvement project (including without limitation, installation of traffic signals, street lights, sidewalks and pedestrian amenities) within a segment of the

Franchise Area (or within a segment of an area described in Subsection 2.3 above) then:

4.3.1 Only those costs and expenses incurred by Puget in integrating and connecting such relocated Facilities with Puget's other Facilities shall be borne by such person or entity in accordance with Subsection 4.2, and Puget shall otherwise relocate its Facilities within such segment of the Franchise Area (or within such segment of an area described in Subsection 2.3 above) in accordance with the provisions of Subsection 4.1.

4.4 This Section 4 shall govern all relocations of Puget's Facilities required in accordance with this Franchise. Any required relocation of Puget's Facilities which also involves a conversion of above ground Facilities to underground Facilities shall, as to those Facilities being converted from above ground Facilities to underground Facilities, be arranged and accomplished in accordance with Section 5. Nothing in this Section 4 shall require Puget to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other rights not arising under this Franchise.

4.5 As to any relocation of Puget's Facilities whereby the cost and expense thereof is to be borne by Puget, in whole or in part, in accordance with this Section 4, Puget may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities which accommodate work, otherwise necessitating relocation of Puget's Facilities, which is being undertaken by or on behalf of the City. Upon the City's receipt from Puget of such written alternatives to relocation, the City shall evaluate such alternatives and shall advise Puget in writing if one or more of such alternatives is suitable to accommodate the work which would otherwise necessitate relocation of Puget's Facilities. If so requested by the City, Puget shall submit additional information to the City to assist the City in evaluating each alternative to relocation proposed by Puget. In evaluating such alternatives, the City shall give each alternative proposed by Puget full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation (including, but not limited to, economic factors). No alternative proposed by Puget shall be unreasonably rejected and no alternative shall be evaluated by the City in an arbitrary or capricious manner. In the event the City reasonably determines that such alternatives are not appropriate, Puget shall relocate its Facilities as otherwise provided in this Section 4.

## **Section 5. Undergrounding of Facilities**

5.1 The City may, by written notice to Puget, request Puget to underground its existing Facilities (of 15,000 volts or less) within the Franchise Area in connection with any improvement of the Franchise Area undertaken by the City (including, but not limited to, any improvement which otherwise requires the relocation of such Facilities in accordance with Subsection 4.1). In such event, the placement underground of Puget's existing Facilities shall be arranged, provided and accomplished in accordance with applicable schedules and tariffs on file with the Washington Utilities and Transportation Commission or its successor.

5.2 If, during the term of this Franchise, Puget elects to install a new extension of any of Puget's existing distribution Facilities (of 15,000 volts or less) within the Franchise Area, installation of such new Facilities shall be underground and shall be arranged, provided and accomplished in accordance with applicable schedules and tariffs on file with the Washington Utilities and Transportation Commission or its successors.

## **Section 6. Indemnification**

6.1 Puget shall indemnify and save the City harmless from any and all claims and demands made against the City on account of injury or damage to the person or property of another, to the extent such injury or damage is alleged to be caused by the negligence of Puget or its agents, servants or employees in exercising the rights granted Puget 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 Puget thereof, and Puget 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 be brought against the City based upon any such claim or demand, the City shall likewise promptly notify Puget thereof, and Puget 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 selection.

## **Section 7. Moving Buildings Within the Franchise Area**

7.1 If any person or entity obtains permission from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Puget for the temporary adjustment of Puget's wires to accommodate the moving or removal of such building or other object. Such necessary arrangements with Puget shall be made, to Puget's

satisfaction, not less than fourteen (14) days prior to the moving or removal of said building or other object. In such event, Puget shall at the expense of the person or entity desiring to move or remove such building or other object, adjust any of its wires which may obstruct the moving or removal of such building or other object, provided that:

7.1.1 the moving or removal of such building or other object which necessitates the adjustment of wires shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with Puget's business;

7.1.2 where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with the City and Puget's business (such route to be determined by the City in consultation with Puget); and

7.1.3 the person or entity obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and save Puget harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is alleged to be caused by the negligence of the person or entity moving or removing such building or other object or the negligence of the agents, servants or employees of the person or entity moving or removing such building or other object.

## **Section 8. Records of Installations**

8.1 To the extent such requests are limited to specific Facilities at a given location within the Franchise Area, Puget shall provide the City, upon the City's reasonable request, copies of available drawings in use by Puget showing the location of such Facilities. As to any such drawings so provided, Puget does not warrant the accuracy thereof and to the extent the location of Facilities are shown, such Facilities are shown in their approximate location. Nothing in this Subsection 8.1 shall release (or be construed to release) either Puget or the City from their respective obligations, as the same may arise from time to time, under Chapter 19.122 RCW (or any other law applicable to determining the location of utility facilities).

8.2 Upon written request of the City, Puget shall provide the City with a map (of general specificity) showing the approximate location of major components of Puget's

existing electrical system within the City. Upon written request of the City, Puget shall update such map to reflect actual or anticipated improvements to the system. Any such map (or update thereof) so submitted shall be for informational purposes only and shall not obligate Puget to undertake any specific improvements, nor shall such map be construed as a proposal to undertake any specific improvements. Puget shall submit such map (and updates thereof) to the City in "GIS" format, unless such map (or updates thereof) cannot readily and inexpensively be made available to the City in such format.

#### **Section 9. Vegetation Management**

9.1 WAC 296-44-31719 states that "[t]rees which may interfere with ungrounded supply conductors should be trimmed or removed." Puget shall, on an annual basis, provide the City with a schedule reflecting anticipated dates and locations within the Franchise Area for routine vegetation management activities. However, such a schedule shall not limit Puget's right under this Franchise to cut, trim or otherwise remove vegetation at any time within the Franchise Area which, due to proximity to Puget's Facilities, poses an imminent threat to public safety.

#### **Section 10. Default**

10.1 If Puget shall fail to comply with the provisions of this Franchise, the City may serve upon Puget a written order to so comply within sixty (60) days from the date such order is received by Puget. If Puget 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 Puget cannot be corrected with due diligence within said sixty (60) day period (Puget'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 Puget may so comply shall be extended for such time as may be reasonably necessary and so long as Puget commences promptly and diligently to effect such compliance.

#### **Section 11. Alteration, Amendment or Modification of Franchise**

11.1 The City and Puget hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise in accordance with the provisions of this Section 11.

11.2 At any time during the term of this Franchise, the City or Puget may request, by written notice, that the other



promptly join in negotiations to alter, amend or modify the terms and conditions of this Franchise.

11.3 Within a reasonable time after receipt of the notice required by Subsection 11.2, the City and Puget shall, at a mutually agreeable time and place, commence negotiations to alter, amend or modify the terms and conditions of this Franchise. The City and Puget shall conduct such negotiations with due regard to all pertinent facts and circumstances; provided, however, that neither the City nor Puget shall have any obligation to agree to any proposed alteration, amendment, or modification; provided further, however, that no rights or privileges granted by this Franchise shall be prejudiced, impaired or otherwise affected by the failure of the City or Puget to agree to any proposed alteration, amendment or modification.

11.4 Neither the City nor Puget shall be obliged to continue negotiations after the expiration of ninety (90) days from the date such negotiations are commenced; provided, however, the City and Puget may agree to continue such negotiations for an additional time period.

11.5 Any alteration, amendment or modification agreed to by the City and Puget shall be submitted to the Council of the City as a proposed ordinance. The ordinance so proposed shall expressly provide that unless Puget files a written notice of acceptance with the Clerk of the City within sixty (60) days of its effective date, the ordinance shall have no force or effect and this Franchise shall not be altered, amended or modified. To the extent permitted by law, the party proposing the alteration, amendment or modification shall bear all actual administrative cost directly related to approval thereof.

## **Section 12. Nonexclusive Franchise**

12.1 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 which do not interfere with Puget'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 13. Franchise Term**

13.1 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 this ordinance, provided, however, Puget shall have no rights under this Franchise nor shall Puget be bound by the terms and conditions of this Franchise unless Puget shall, within sixty (60) days after the

effective date of the ordinance, file with the City its written acceptance of the ordinance. Nothing herein prevents the alteration, amendment, or modification of the terms and conditions of this Franchise per the provisions of Section 11 above.

#### **Section 14. Assignment**

14.1 Puget 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, Puget shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits and privileges in and under this Franchise to the Trustee for its bondholders.

#### **Section 15. Miscellaneous**

15.1 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. 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.

15.2 This Franchise may be amended only in accordance with Section 11 and 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. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Subsection 6.1 above) shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by Puget of any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

15.2.1 references this Franchise; and

15.2.2 states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

15.3 This Franchise is subject to the provisions of any applicable tariff now or hereafter on file with the Washington Utilities and Transportation Commission or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

15.4 Puget shall use no pesticides or herbicides within the Franchise Area without obtaining prior City approval and complying with all applicable laws, rules, and regulations governing the application and use of pesticides or herbicides.

15.5 **Charge for Administrative Costs.** There may be imposed upon Puget by the City a fee or charge to recover the actual administrative expenses incurred by the City which are directly related to receiving and approving this Franchise. Nothing herein shall preclude the City from recovering any administrative costs incurred by the City in the approval of permits or in the supervision, inspection or examination of all work by Puget in the Franchise Area as prescribed in accordance with applicable ordinances or laws.

#### **Section 16. Dispute Resolution**

16.1 The parties agree that, to the extent permitted by applicable law and subject to the provisions of this Section 16, any dispute as between the parties concerning:

16.1.1 the interpretation of, or a determination of the applicability of, the parties' respective rights and obligations arising under this Franchise, or

16.1.2 the due and proper implementation of this Franchise in accordance with its terms,

(any such dispute being hereinafter referred to as an "Interpretative Question") may be submitted to nonbinding mediation.

16.2 During the term of this Franchise, either party may request, in writing, that the other party meet and confer to resolve an Interpretative Question.

16.3 Within a reasonable time after a party's receipt of a written request made in accordance with Subsection 16.2 above, the parties shall, at a mutually agreeable time and place, meet and confer with respect to an Interpretative Question. The parties shall undertake such effort in good

faith and with due regard to pertinent facts and circumstances.

16.4 If an Interpretative Question cannot be resolved to the parties' mutual satisfaction within ninety (90) days after the commencement of meetings in accordance with Subsection 16.3, then a party may, prior to the expiration of such ninety (90) day period, notify the other party in writing of its desire to submit the Interpretative Question to nonbinding mediation. In such event, such mediation shall be undertaken, at a date or dates reasonably convenient to both parties, at the local offices of the Judicial Arbitration and Mediation Services, Inc. ("J.A.M.S.") or, if J.A.M.S. shall cease to exist, at the local office of a substitute mediation service agreed to by the parties.

16.5 Unless the parties otherwise agree in writing, such mediation shall be undertaken in accordance with the applicable J.A.M.S. rules therefor. If the parties are unable to agree upon a mediator from the J.A.M.S. (or the substitute mediation service) panel, then the parties shall request that J.A.M.S. (or the substitute mediation service) submit to them a list of three available mediators and each party shall strike one name from the list so submitted. The remaining individual shall serve as the mediator. Each party shall bear its own costs in connection with such mediation. The cost of retaining J.A.M.S. (or the substitute mediation service) shall be born equally by the parties.

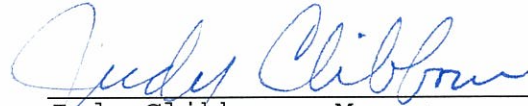
16.6 The provisions of this Section 16 are in addition to, and not a limitation of, any and all other rights and remedies available to the parties arising under this Franchise or applicable law. If the preservation of any such right or remedy would, through the exercise of reasonable prudence, require the commencement of any action (e.g., judicial, administrative or otherwise) prior to the exhaustion of the dispute resolution procedures provided by this Section 16, the failure to so exhaust such procedures shall not operate as a bar to the commencement, prosecution or defense of any such action. A party's exercise of, or a party's failure to exercise, the dispute resolution procedures provided by this Section 16 shall not relieve or release either party of or from their respective obligations arising under this Franchise.

#### **Section 17. Effective Date**

17.1 This Ordinance shall take effect on January 25, 1994, having been: (i) introduced to the City Council not less than five days before its passage; (ii) first submitted to the City Attorney on December 1, 1993; (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 Mercer Island by a majority of the whole of such legislative body on January 10, 1994.

PASSED by the City Council of the City of Mercer Island, Washington on the 10th day of January, 1994.

  
\_\_\_\_\_  
Judy Clibborn, Mayor

ATTEST:

  
\_\_\_\_\_  
Candice Stephens, Associate City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ronald Dickinson, City Attorney

Publication Date: Jan. 19, 1994