

**WHATCOM COUNTY COUNCIL AGENDA BILL**

NO. 2006-146

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	dlg	02/27/06	<b>RECEIVED</b>  <b>MAR 7 - 2006</b>  <b>WHATCOM COUNTY COUNCIL</b>	March 14, 2006	Introduction
Division Head				April 11, 2006	Public Hearing
Dept. Head:					
Prosecutor:	dlg <i>Da</i>	02/27/06			
Purchasing/Budget:					
Executive:	<i>dd</i>	<i>3/16/06</i>			

**TITLE OF DOCUMENT: PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, Franchise Ordinance [proposed]**

**ATTACHMENTS: Ordinance & Memorandum**

SEPA review required? ( ) Yes ( ) NO      Should Clerk schedule a hearing? (X) Yes ( ) NO  
 SEPA review completed? ( ) Yes ( ) NO      Requested Date: April 11, 2006

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Pursuant to RCW 36.55.040 and Whatcom County Code 12.24.051, notice is hereby given of public hearing before the County Council on a proposed ordinance that, if adopted, would grant a franchise for a period of twenty-five (25) years to the Puget Sound Energy, Inc., A Washington Corporation, to use County right-of-way in certain locations along Jackson and Aldergrove Roads for purposes of placing and maintaining water and waste water lines and associated facilities, those locations more fully described within the proposed ordinance on file with the County Council. The public hearing will be held during the County Council meeting scheduled for 7:00 p.m., April 11, 2006, in Council Chambers of the Whatcom County Courthouse, 311 Grand Avenue, Bellingham, Washington. Pursuant to RCW 36.55.050, the hearing may be adjourned from time to time by order of the County Council until action is taken by the Council upon the proposed ordinance.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

4/11/06: Adopted 6-0, McShane absent  
 Ordinance 2006-014

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

Ord. 2006-014

**Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).**



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Page: 1 of 13  
5/16/2006 11:35 AM  
FRAN \$44.00  
Whatcom County, WA

Request of: WHATCOM COUNTY COUNCIL

RETURN DOCUMENT TO:

**MARINA ENGELS**  
**WHATCOM COUNTY**  
**COUNCIL OFFICE**

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DOCUMENT TITLE:

**ORDINANCE GRANTING PUGET SOUND ENERGY, INC. A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE AND THE RIGHT, PRIVILEGE, AND AUTHORITY THEREUNDER TO CONSTRUCT, ALTER, IMPROVE, RENEW, REPLACE REPAIR, OPERATE, AND MAINTAIN WATER AND WASTEWATER LINES UPON, UNDER, ACROSS, AND ALONG CERTAIN ROADS AND RIGHTS-OF-WAY IN WHATCOM COUNTY, WASHINGTON**

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REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

***Ordinance Number: 2006-014***

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GRANTOR(S):

***Whatcom County***

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GRANTEE(S):

***Puget Sound Energy***

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ABBREVIATED LEGAL DESCRIPTION (Lot, block, plat, or section, township, range)

***None***

Additional legal description can be found on page \_\_\_\_\_ of document.

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ASSESSOR'S PARCEL NUMBER:

***None***

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SPONSORED BY: Consent

PROPOSED BY: Executive

INTRODUCTION DATE: March 14, 2005

**ORDINANCE NO. 2006-014**

**GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE AND THE RIGHT, PRIVILEGE, AND AUTHORITY THEREUNDER TO CONSTRUCT, ALTER, IMPROVE, RENEW, REPLACE, REPAIR, OPERATE, AND MAINTAIN WATER AND WASTEWATER LINES UPON, UNDER, ACROSS, AND ALONG CERTAIN ROADS AND RIGHTS-OF-WAY IN WHATCOM COUNTY, WASHINGTON.**

WHEREAS, Puget Sound Energy, Inc. (hereinafter referred to as PSE), a Washington corporation, has applied for and desires a twenty-five year non-exclusive franchise and the right, privilege, and authority thereunder to construct, alter, improve, renew, replace, repair, operate, and maintain water and wastewater lines within certain county rights-of-way in Whatcom County; and

WHEREAS, RCW 36.55, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by the County; and

WHEREAS, said application has come on regularly to be heard by the County Council on the 11th day of April, 2006, and notice of this hearing having been duly published on the 18th day of March, 2006, and the 1st day of April, 2006, in the Bellingham Herald, a daily newspaper published in Whatcom County having county-wide circulation; and

WHEREAS, it appears to the Council that notice of said application and hearing thereon has been given as required by law in RCW 36.55.040; and

WHEREAS, this Council finds, after having considered said application and being otherwise fully advised in the premises, that it is in the public interest for this Council to grant the franchise;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the

right, privilege, authority and non-exclusive franchise be, and the same are hereby given and granted to PSE, hereinafter referred to as the Grantee, for a period of twenty-five (25) years from and after the date of approval of this ordinance, subject to Grantee's acceptance of the Franchise pursuant to **Section 16** herein, to construct, alter, improve, renew, replace, repair, operate and maintain water and wastewater lines, together with all convenient appurtenances to such lines, upon, under, across and along certain county roads, rights-of-way, and county property in Whatcom County, Washington, to-wit:

Jackson Road (No. 414) located in Sections 12 and 13, Township 39 North, Range 1 West of the Willamette Meridian, and Sections 7 and 18, Township 39 North, Range 1 East of the Willamette Meridian;

Aldergrove Road (No. 641) located in Sections 7, 8, 17, and 18, Township 39 North, Range 1 East of the Willamette Meridian, and Sections 11, 12, 13, and 14, Township 39 North, Range 1 West of the Willamette Meridian.

This franchise is granted upon the following express terms and conditions, to-wit:

### **Section 1. Franchise Authority.**

1.1 Grantee shall have the right and authority to enter upon the above-mentioned roads, rights-of-way and other county property as designated hereinbefore, for the purpose of constructing its water and wastewater lines and all convenient appurtenances thereto as described hereinbefore, and for altering, improving, renewing, replacing, repairing and for operating and maintaining all such lines and facilities.

### **Section 2. County Authority.**

2.1 The County, in granting this Franchise, does not waive any rights which it now has or may hereafter acquire with respect to the area covered by the Franchise, and this Franchise shall not be construed to deprive the County of any powers, rights, or privileges which it now has, or may hereafter acquire, to regulate the use of and to control the County roads, rights-of-way, and other County property covered by the Franchise.

### **Section 3. Construction Within Area of Franchise.**

3.1 All construction and installation work along, under, or over county roads or rights-of-way or other county property outside of the corporate limits of any incorporated town and within the area covered by this franchise shall be subject to the

approval and pass the inspection of the County Engineer, and shall conform to all applicable local, state, and federal minimum standards, codes or regulations, and the County expressly reserves the right to prescribe how and where said lines shall be installed and may from time to time upon reasonable notice require the removal and replacement thereof in the public interest.

3.2 Prior to commencement of construction of any new lines or facilities, Grantee shall first file with the County Engineer its application for permit to do such work, together with plans and specifications in duplicate showing the position and location of all such lines and facilities sought to be constructed, laid, installed or erected at that time showing their relative position to existing county roads, rights-of-way or other county property upon plans drawn to scale. In preparing plans and specifications for the installation of water and wastewater lines along or across county roads and rights-of-way the Grantee shall use as a guide the standards and specifications established by the County Engineer.

3.3 The lines and appurtenant facilities shall be laid in exact conformity with said plans and specifications of definite location, except in instances in which deviation may be allowed thereafter in writing by the County Engineer pursuant to application by grantee. The plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts and road obstructions, etc. No such construction shall be commenced without the Grantee first securing a written permit from the County Engineer, including approval endorsed on one set of plans and specifications returned to the grantee. All such work shall be subject to the approval of and shall pass the inspection of the County Engineer. The Grantee shall pay all costs of and expenses incurred in the examination, inspection and approval of such work on account of granting the said permits.

3.4 In any work which requires breaking of soil of the county roads, rights-of-way or other county property subject to this franchise for the purpose of laying, relaying, connecting, disconnecting and repairing the said water and wastewater lines and facilities or making connections to other facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be governed by and conform to the general rules adopted by the officers charged with the supervision and care of such county roads, rights-or-way, and other county property; and the Grantee at its own expense and with due diligence shall complete the work for which the soil has been broken and forthwith replace the work and make good the county road, right-of-way or county property and leave the same in as good condition as before the work was commenced;

provided, however, that no such breaking of the soil on the county roads, rights-of-way or other county property shall be done prior to the obtaining of a permit issued by the County Engineer. Applications for such a permit shall be accompanied by specifications of the restoration of the county road, right-of-way or other county property to the same condition as it was in prior to such breaking, and such specifications must be approved by the County Engineer before such breaking of the soil is commenced; provided further, that the Whatcom County Engineer may require a performance bond in a sum sufficient to guarantee that such county road, right-of-way or other county property shall be restored to the same condition as it was in prior to such breaking of the soil, the amount of said bond to be fixed by the County Engineer. The Grantee shall pay all costs of and expenses incurred in the examination, inspection and approval of such restoration. The County may at any time do, order, or have done, any and all work that it considers necessary to restore to a safe condition any such county road, right-of-way or other county property left by the Grantee or its agents in a condition dangerous to life or property, and the Grantee upon demand shall pay to the County all costs of such work.

3.5 All work done under this franchise shall be done in a thorough and workmanlike manner. In the laying of water and wastewater lines and the construction of other facilities and the opening of trenches, the tunneling under county roads, rights-of-way or other county property, the Grantee shall leave such trenches, ditches and tunnels in such a way as to interfere as little as possible with public travel and shall take all due and necessary precautions to guard the same, so that damage or injury shall not occur or arise by reason of such work.

3.6 Before any work is performed under this franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement by approved monuments shall be borne by the Grantee.

A complete set of reference notes of monuments and other ties shall be filed with the County Engineer's Office.

#### **Section 4. Noninterference of Facilities.**

4.1 All construction or installation of such lines and facilities, service, repair, or relocation of the same, performed over, above, along or under the county roads, rights-of-way or other county property subject to this franchise shall be done in such a manner as not to interfere unreasonably with the construction and maintenance of other utilities, lines, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of such county roads, rights-of-way or other county property. The owners of all utilities, public or private, installed in such county roads, rights-of-way or other county property prior in time to the lines and facilities of the Grantee shall have preference as to the positioning and location of such utilities so installed with respect to the Grantee. Such preference shall continue in the event of the necessity of relocating or changing the grade of any such county road or right-of-way.

4.2 The laying, construction, operation and maintenance of the Grantee's water and wastewater lines and facilities authorized by this franchise shall not preclude Whatcom County, its agents or its contractors from blasting, grading, excavating, or doing other necessary road work contiguous to the said lines and facilities of the Grantee provided that the Grantee shall be given forty-eight (48) hours notice of said blasting or other work in order that the Grantee may protect its lines and facilities.

#### **Section 5. Relocation of Facilities.**

5.1 If at any time Whatcom County shall improve or change any county road, right-of-way or other county property subject to this franchise by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same or by constructing drainage facilities, or in the event that such county road, right-of-way or other county property subject to this franchise shall become a Primary State Highway as provided by law, the Grantee upon written notice from the County Engineer, or the Director of Highways, shall, at its sole expense and with due diligence, change the location or readjust the elevation of its water lines and other facilities so that the same shall not interfere with such county work and so that such lines and facilities shall conform to such new grades or routes as may be established.

5.2 All work to be performed by the Grantee under this section shall be subject to the direction and approval, and shall pass the inspection, of the County Engineer.

The Grantee shall pay all costs of, and expenses incurred in the examination, inspection and approval of such work.

#### **Section 6. Vacation of Area Covered By Franchise.**

6.1 If at any time Whatcom County shall vacate any county road, right-of-way or other county property which is subject to the rights granted by this franchise and said vacation shall be for the purpose of acquiring the fee or other property interest in said road, right-of-way or other county property for the use of Whatcom County, in either its proprietary or governmental capacity, then the County may at its option and by giving thirty (30) days written notice to the Grantee terminate this franchise with reference to such county road, right-of-way or other County property so vacated, and Whatcom County shall not be liable for any damages or loss to the Grantee by reason of such termination.

6.2 If at any time the County shall vacate any portion of the Franchise Area in which Facilities are installed at the time of said vacation, and said vacation shall be for the purpose of acquiring the fee or other property interest in said portion of the Franchise Area by other than the County, then the County shall, in its vacation procedure, unless otherwise waived in writing by Grantee, reserve an easement to Grantee for Grantee's Facilities.

#### **Section 7. Indemnification.**

7.1 Grantee, by acceptance of the privileges granted hereunder, does hereby agree to protect and save harmless Whatcom County from all claims, actions or damages of every kind and description which may occur to or be suffered by any person or persons, corporation or property by reason of the construction, operation and maintenance of the grantee's said water and wastewater lines and facilities. In case that suit or action is brought against Whatcom County for damages arising out of or by reason of the above-mentioned causes, Grantee will upon notice to it of the commencement of said action defend the same at its sole cost and expense, and in case judgment which is not appealed shall be rendered against Whatcom County in such suit or action, Grantee will fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined, if determined adversely to Whatcom County. Upon Grantee's failure to satisfy said judgment within the ninety (90) day period, this franchise shall at once cease and terminate. The provision for reimbursement of the County shall survive the termination of this Franchise.

7.2 Acceptance by the County of any work performed by the Grantee at the time of completion shall not be grounds for avoidance of this covenant.

#### **Section 8. Non-Exclusive Franchise.**

8.1 This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit Whatcom County from granting other franchises of a like nature or franchises for other public or private utilities, under, along, across, over and upon any of the county roads, rights-of-way, or other county property subject to this franchise, and shall in no way prevent or prohibit Whatcom County from constructing, altering, maintaining, using, or vacating any of said roads, rights-of-way, drainage structures or facilities, irrigation structures or facilities, or any other county property, or affect its jurisdiction over them or any part of them with full power to make all necessary changes, relocations, repairs, maintenance, etc., the same as the county may deem fit.

#### **Section 9. Assignment.**

9.1 Neither this franchise nor any interest herein shall be sold, transferred or assigned without the previous consent in writing of the County Council of Whatcom County, except that (a) the Grantee may mortgage this franchise to the trustee for its bond holders and (b) the County hereby consents to and approves the assignment of this franchise by the Grantee of all of the Grantee's right, title and interest in, to and under this franchise to U.S. Bank National Association, not in its individual capacity but as trustee under the trust agreement dated November 30, 1981, referenced in the Lease Agreement dated as of May 1, 1981, between such trustee, as lessor, and the Grantee, as lessee.

9.2 All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the Grantee, and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned.

#### **Section 10. Incorporation and Annexation.**

10.1 Whenever any of the County roads, rights-of-way or other county property as designated in this franchise, by reason of the subsequent incorporation of any town or city, or extension of the limits of any town or city, shall fall within the city or town

limits, this franchise shall continue in force and effect as to all county roads, rights-of-way or other county property not so included in city or town limits.

### **Section 11. Forfeiture and Termination of the Franchise.**

11.1 If the Grantee shall willfully violate or fail, through willful or unreasonable neglect, to comply with any of the provisions of this franchise for thirty (30) days after receipt of written notice from the County Council, then said Council shall have the right to declare Grantee's forfeiture of all rights hereunder and to declare this franchise terminated and of no further force or effect thereafter.

### **Section 12. Severability.**

12.1 If any term, provision, condition, or portion of this franchise be held invalid, such invalidity shall not affect the validity of the remaining portion of this franchise, which shall continue in full force and effect.

### **Section 13. Amendment and Change of Law.**

13.1 Whatcom County reserves for itself the right at any time upon thirty (30) days written notice to the Grantee, to so change, amend, modify or amplify any of the provision or conditions herein enumerated to conform to any state statute or department order or county regulation, relating to the public welfare, health, safety or highway regulation, as may hereafter be enacted, adopted or promulgated.

13.2 No privileges or rights granted hereunder shall exempt Grantee from any future uniform rent, license, tax, charge, or impost which may hereafter be required by the grantor, for revenue or as reimbursement for use and occupancy of public ways, and failure to timely remit any sums properly due thereby, shall be cause for forfeiture of rights hereunder, according to the procedure specified in Section 11 of this franchise.

13.3 Notwithstanding any language to the contrary contained herein, this Franchise is subject to the provisions of the Whatcom County Charter Section 9.30, and all rights belonging to the County and its people as set forth therein are hereby reserved thereto. This franchise shall be subject to the power of eminent domain and the right of the Council or the people acting for themselves through the initiative or referendum to repeal, amend or modify the franchise in the interest of the public.

13.4 Except as addressed in and through 13.1 through 13.3 above, this Franchise may be amended 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.

**Section 14. Insurance.**

14.1 During the term of this Franchise Grantee shall keep in effect a liability insurance policy covering all liability of Grantee to the County, including any assumed by contract between Grantee and any other party, with limits at least in the amount of \$1,000,000. In lieu of the insurance requirement of this section, Grantee may self-insure against such risks. At the time of Grantee's acceptance of this Franchise and otherwise upon the County's request, Grantee shall provide the County with certificate(s) of insurance or evidence of self-insurance reflecting the requirements of this section.

**Section 15. Locating Facilities.**

15.1 Grantee and the County acknowledge and commit to fully comply with their respective obligations, as the same may arise from time to time, under Chapter 19.122 RCW (Underground Utilities Locator Statute) or any other law applicable to determining the location of utility facilities.

**Section 16. Franchise Term.**

16.1 This Franchise is and shall remain in full force and effect for a period of twenty-five (25) years from and after the effective date of the Ordinance; provided, however, Grantee shall have no rights under this Franchise nor shall Grantee be bound by the terms and conditions of this Franchise unless Grantee shall, within sixty (60) days after the effective date of the Ordinance, file with the County its written acceptance of the Ordinance.

**Section 17. Notice.**

17.1 All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested,

postage prepaid to:

**For the County:**

**County Executive**  
Whatcom County Courthouse  
311 Grand Ave.  
Bellingham, WA 98225

**For Grantee:**


**Puget Sound Energy**  
PO Box 90868  
Bellevue, WA 98009-0868  
Attn: Community Services

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

**Section 18. Waiver.**

18.1 No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Franchise or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. No waiver shall affect or alter this Franchise, and each and every covenant, agreement, term and condition of this franchise shall continue in full force and effect with respect to other then existing or subsequent breach thereof.

ADOPTED this 11 day of April, 2006.

  
Dana Brown-Davis, Clerk of the Council  
APPROVED AS TO FORM:

Daniel L. Gibson  
Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

L. Caskey-Schreiber  
Laurie Caskey-Schreiber, Council Chair

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

Pete Kremen  
Pete Kremen, County Executive  
(  ) Approved (  ) Denied

Date Signed: 4-13-06

**Exhibit B**

**ACCEPTANCE OF FRANCHISE**

Puget Sound Energy, Inc.

The Whatcom County Council at its meeting of April 11, 2006, adopted Ordinance 2006-014 approving the petition for franchise filed by Puget Sound Energy, Inc. The petition and all related documents are available for review in the Council Office as file number AB2006-146.

Puget Sound Energy, Inc. hereby accepts, subject to all the conditions contained in Ordinance 2006-014, that certain non-exclusive franchise to construct, alter, improve, renew, replace, repair, operate and maintain water and wastewater liens, together with all convenient appurtenances to such lines, upon, under, across and along certain county roads, rights-of-way, and county property in Whatcom County, Washington, to-wit:

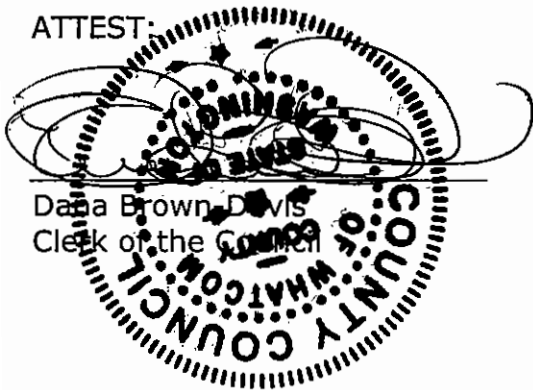
Jackson Road (No. 414) located in Sections 12 and 13, Township 39 North, Range 1 West of the Willamette Meridian, and Sections 7 and 18, Township 39 North, Range 1 East of the Willamette Meridian;

Aldergrove Road (No. 641) located in Sections 7, 8, 17, and 18, Township 39 North, Range 1 East of the Willamette Meridian, and Sections 11, 12, 13, and 14, Township 39 North, Range 1 West of the Willamette Meridian.

Granting of this franchise becomes official upon receipt from the petitioner of this signed and notarized document, and payment by petitioner of publication costs incurred by the County Council Office.

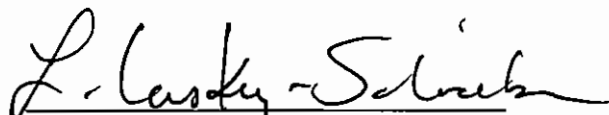
This franchise, when granted, shall be in effect for a period of twenty-five (25) years.

ATTEST:



Dana Brown Davis  
Clerk of the Council

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

  
Laurie Caskey-Schreiber  
Council Chair

Agent for the petitioner, Puget Sound Energy, Inc.:

Charles L. Morton  
Manager, Thermal Assets

Date: May 3, 2006

State of Washington     )  
  ) ss.  
County of Whatcom     )

Signed and sworn to before me on this 3 day of May 2006, by  
\_\_\_\_\_.



Kassandra McCarty Powell

Notary Public in and for the State of Washington,  
residing at Woodinville, Wa

My notary commission expires 3-18-08