



RESOLUTION NO. U-11415

1 A RESOLUTION related to the Department of Public Utilities, Light Division;
2 authorizing the execution of a 20-year franchise agreement with Tacoma
3 Power and the City of Fife for continued electric service to customers
4 within the City of Fife boundaries.

5 WHEREAS the City of Tacoma, Department of Public Utilities, Light
6 Division (d/b/a Tacoma Power), desires authorization to accept a new twenty-
7 year franchise from the City of Fife to use certain street rights-of-way in Fife,
8 and

9 WHEREAS in order for Tacoma Power to use street rights-of-way for
10 utility purposes outside the City of Tacoma it is necessary to obtain a franchise
11 from the local governing authority, and

12 WHEREAS effective October 23, 2003, Tacoma Power and Fife entered
13 into a twenty-year franchise, and

14 WHEREAS in exchange for waiver of permit fees, an agreement not to
15 compete in the area of the City of Fife presently served by Tacoma Power, and
16 other favorable terms Tacoma Power was assessed an administrative fee of
17 3 percent of the electric system gross revenues Tacoma Power received from
18 customers within Fife, and
19

20 WHEREAS the 3 percent administrative fee negotiated in the 2003
21 franchise was based on the amount of the gross earnings tax the City of Fife
22 imposed on other utilities, and
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24 WHEREAS the 2003 agreement specified that Fife could require
25 adjustment to the administrative fee percentage, and
26



WHEREAS in alignment with Fife's 2012 increase of its gross earnings tax to 6 percent the administrative fee charged to Tacoma Power was adjusted upward to the current percent, and

WHEREAS the existing franchise agreement expired October 23, 2023, but remains effective on its current terms until the effective date of a new franchise agreement, and

WHEREAS Tacoma Power and the City of Fife have completed negotiations to establish a new franchise agreement for Tacoma Power, and

WHEREAS the proposed franchise is substantially similar to the existing franchise, with the exception of minor updates including confirming the administrative fee of 6 percent and the addition of a clarifying statement of Fife's legal authority to levy a utility tax upon electrical utility businesses operating within the City of Fife, and

WHEREAS the proposed franchise is substantially similar to the franchises granted by the cities of Lakewood, University Place, Steilacoom and Fircrest, and

WHEREAS the new agreement will allow Tacoma Power to continue to serve electric customers within the City of Fife boundaries as of the expiration date of the existing franchise, and

WHEREAS it is in the best interest of prudent utility management to accept said franchise as recommended; Now, Therefore,



1 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

2 That the new twenty-year franchise with the City of Fife to allow Tacoma
3 Power the use certain street rights-of-way in Fife is approved and said franchise
4 may be accepted and implemented.
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6 Approved as to form:

7 _____ Chair

8 /s/ _____ Secretary
9 Chief Deputy City Attorney

10 _____ Adopted _____
11 Clerk

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Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: **Chris Robinson, Power Superintendent/COO**
MEETING DATE: November 15, 2023
DATE: November 2, 2023

STRATEGIC DIRECTIVE ALIGNMENT (select as many that apply):

Please indicate which of the Public Utility Board's Strategic Directives is supported by this action.

- | | |
|---|---|
| <input type="checkbox"/> SD1 – Equity & Inclusion | <input type="checkbox"/> SD8 – Telecom |
| <input type="checkbox"/> SD2 – Financial Sustainability | <input type="checkbox"/> SD9 – Economic Development |
| <input type="checkbox"/> SD3 – Rates | <input checked="" type="checkbox"/> SD10 – Government Relations |
| <input type="checkbox"/> SD4 – Stakeholder Engagement | <input type="checkbox"/> SD11 – Decarbonization/Electric Vehicles |
| <input type="checkbox"/> SD5 – Environmental Leadership | <input type="checkbox"/> SD12 – Employee Relations |
| <input type="checkbox"/> SD6 – Innovation | <input type="checkbox"/> SD13 – Customer Service |
| <input type="checkbox"/> SD7 – Reliability & Resiliency | <input type="checkbox"/> SD14 – Resource Planning |

SUMMARY: Tacoma Power seeks Public Utility Board approval to enter into a 20-year franchise agreement with the City of Fife. This agreement will allow Tacoma Power to continue to serve electric customers within the City of Fife boundaries. The existing franchise agreement expired October 23, 2023, but remains effective on its current terms until the effective date of a new franchise agreement.

BACKGROUND: Tacoma Power and the City of Fife entered negotiations in Q2 of 2023 to establish a new franchise agreement for Tacoma Power since the existing 20-year franchise agreement between Tacoma Power and the City of Fife was set to expire October 23, 2023. These negotiations resulted in the attached new 20-year franchise agreement. The City Council of the City of Fife held a first reading of the ordinance to adopt the new 20-year franchise agreement on October 24, 2023. The second and final reading of the ordinance to adopt the new 20-year franchise agreement is scheduled for the City Council of the City of Fife on November 14, 2023.



Board Action Memorandum

The following is a list of key changes from the existing franchise agreement.

- Section 1
 - Removed definition of “changeover date” as term is not used in new franchise agreement.
 - Updated definitions of “electric utility system” and “electric utility service.”
 - Add (i) to the definition of “gross revenue.”
- Section 3
 - Clarified that the City of Fife will provide Tacoma Power with both 1) plans and written notice and 2) copies of pertinent portions of the plans and specifications and a proposed location at least 180 days prior to commencement of construction.
 - Elaborated on steps Tacoma Power would take following such notice from the City of Fife.
- Section 4
 - Corrected section references.
- Section 5
 - Listed undergrounding of traffic signal circuits as charges that would not be Tacoma Power's responsibility.
 - Clarified that the customer must obtain an electrical permit and make necessary changes to their equipment.
 - Clarified that the provisions of this section would apply in cases where undergrounding would be required “in new or existing right of way (or both).”
 - Removed obsolete requirement for data conduit.
- Section 8
 - Added note that Tacoma Power will provide as-built plans or maps “upon the City's request.”
- Section 9
 - Corrected section reference.
- Section 19
 - The City of Fife included a note recognizing that “[t]he City also has the authority to levy a utility tax upon electrical utility business operating in the City.”
 - Updated the administrative fee from 3% to 6%. While the existing franchise agreement shows a rate of 3%, both the existing and new franchise agreements provide a mechanism to increase or decrease the administrative fee. During the term of the existing franchise, the administrative fee was increased to 6% as permitted by the existing franchise. The new franchise agreement memorializes the administrative fee already in place, and there is no actual increase in the administrative fee.
 - Removed dated information and reference to a specific form for submitting payments to the City of Fife.
 - Corrected section reference.
- Section 25
 - Corrected section references.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW IT IS TO BE COVERED.

Explain how expenditures are to be covered and if budget modifications are required.



Board Action Memorandum

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? Choose an item.

ATTACHMENTS:

- New Tacoma Power/City of Fife Franchise Agreement dated October 10, 2023
- REDLINED New Tacoma Power/City of Fife Franchise Agreement dated October 10, 2023

CONTACT:

Primary Contact: John Merrell, Assistant Section Manager, Power Utility, (253) 502-8714

Supervisor's Name: Joseph A. Wilson

Presenter (if different from primary contact):

Additional staff requiring a Zoom presentation link:

ORDINANCE NO. 1497-03

AN ORDINANCE OF THE CITY OF FIFE, WASHINGTON, GRANTING UNTO THE CITY OF TACOMA DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION, A MUNICIPAL CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TWENTY YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR AN ELECTRICAL LIGHT AND POWER SYSTEM, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF FIFE, WASHINGTON.

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ORDINANCE NO. 1497-03

WHEREAS, the City of Tacoma Department of Public Utilities, Light Division's franchise with the City of Fife granted under Ordinance No. 1497-03 expires October 23, 2023; and

WHEREAS, the City of Tacoma Department of Public Utilities, Light Division has requested that the City Council of Fife grant it a new twenty-year nonexclusive franchise; and

WHEREAS, the City Council of Fife has the authority to grant franchises for the use of its streets and other public properties (RCW 35A.47.040); NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF FIFE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Franchise Granted. Pursuant to RCW 35A.47.040, the City of Fife, a Washington municipal corporation (hereinafter the "City"), hereby grants to City of Tacoma, Department of Public Utilities, Light Division, a municipal corporation organized under the laws of the State of Washington (hereinafter "Grantee"), its successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period of twenty (20) years, beginning on the effective date of this ordinance.

This franchise grants the Grantee the right, privilege and authority to construct, operate, maintain, replace, and use all necessary equipment and facilities including ~~telecommunication~~communication infrastructure ~~therefore~~, for an electric utility system, in, under, on, across, over, through, along or below the public right-of-ways and public places located in the City of Fife, as already in existence or as may be approved under City permits issued pursuant to this franchise.

For the purposes of the franchise the following words and phrases shall have the following

meaning: _____

~~“changeover date” means the date that Grantee’s initial electric rate ordinance amendment, applying specific franchise rates on Grantee’s customers within the City of Fife, becomes effective. Said ordinance amendment shall also eliminate Grantee’s rate Schedule M (City of Fife utility tax). Effective this date, the City shall no longer levy a utility tax on Grantee.~~

“electric utility system” means all plant, facilities, and equipment, including, but not limited to: wires, conduit, vaults, meters, telecommunicationcommunication infrastructure, generation equipment, and transmission and distribution poles/structures as may be necessary to provide electric utility service for customers. It does not include cable television(non-traditional) business activities such as telecommunications including cable television, or other business activities.

“electric utility service” means all actions directly related to providing electric power and energy to retail end-use customers. It does not include (non-traditional) business activities such as telecommunications including provision of cable television service, or other business activities.

“Gross Earnings Tax” means the tax(es) imposed on Department of Public Utilities, Light Division, by the City of Tacoma based upon or calculated using the gross earnings of the Grantee.

~~“gross~~Gross revenue” means money or funds received by Grantee by reason of transaction of retail electric utility service business including sales of electric power and energy to customers within the City. Gross revenue does not include: (a) uncollected amounts; (b) amounts received from condemnation award or condemnation settlement; (c) amounts received as compensation or reimbursement of damages to or protection of any property of Grantee; (d) amounts received as compensation for or in aid to construction; (e) discounts, returns, allowances and repossessions; (f) amounts received from energy consumption, maintenance and operation for street lights to the

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City; (g) amounts received from Grantee's rental lights, and (h) repayments for conservation initiatives; and (i) any other sources of Grantee's revenue other than that from the transaction of retail electric utility service business within the City.

Section 2. Non-exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any of said right-of-ways, streets, avenues or all other public lands and properties of every type and description. Such franchise shall in no way prevent or prohibit the City from using any of said roads, streets or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-ways, thoroughfares and other public properties of every type and description. It is provided, however, City agrees not to compete with Grantee as an electric utility system or provider of electric service at retail in the current service area of the Grantee during the period of this franchise.

Section 3. Relocation of Electrical Facilities. The Grantee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street, any component of its electric utility ~~distribution~~-system when so required by the City by reason of traffic conditions or public safety, widening, relocating or improvement of existing rights-of-way, streets or avenues, or change or establishment of street grade, provided that the Grantee shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any section of electrical line or facility required to be temporarily disconnected or removed. The provisions of this section shall not be applicable if

the relocation is due to a private development, project, use or activity. Provided further that when street widening or improvement is desired by the City, that the City will acquire sufficient right-of-way or easement rights (or both) to accommodate all utilities including Grantee's ~~distribution~~electric utility system.

If the City determines that a project (other than a project due to a private development, project, use or activity) necessitates the relocation of the Grantee's then existing ~~facilities~~electric utility system, the City shall:

- ~~At~~ at least one hundred and eighty (180) days prior to commencement of construction of such project, provide ~~the~~:

- Grantee with plans and written notice requiring such relocation, unless another time period for the notice is agreed to by the parties for a particular project.

- ~~Provide the~~ Grantee with copies of pertinent portions of the plans and specifications for such project and a proposed location for the Grantee's facilities so that the Grantee may relocate its facilities in other City right-of-way in order to accommodate such project.

After receipt of such notice and such plans and specifications, the Grantee shall finalize a design, obtain approval of the City, and then commence and complete relocation of its facilities at no charge or expense to the City (except as hereinafter provided) so as to accommodate the project construction schedule.

The Grantee may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives are suitable to accommodate the work, that would otherwise necessitate relocation of the Grantee's facilities. If so requested

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by the City, the Grantee shall submit additional information to assist the City in making such an evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration. In the event the City ultimately determines in its sole discretion that there is no other reasonable alternative, the Grantee shall relocate its facilities as otherwise provided in this Section. Provided, however, the parties agree to exercise good faith, reasonable and timely decision making especially when issues arise in the field pertaining to relocations. The provisions of this Section shall survive the expiration or termination of this franchise.

The provisions of this Section shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are due to a private development, project, use or activity, provided that such arrangements do not unduly delay a City construction project.

The City on occasion will be constructing, reconstructing and/or relocating roads, streets, public ways, areas or facilities within the right-of-way or property which will require Grantee to install and/or relocate part of its electric utility system. Grantee will be relying on the alignment, lines and grades as set forth in City's ~~approval~~approved plans wherein Grantee thereafter constructs or reconstructs its electric utility system in accordance with City's requirements and City standards. Therefore, if City thereafter again adjusts and/or revises the alignment, line or grade for a road, street, public way or area, before this part of the Grantee's electric utility system has been in place for fifteen (15) years (commencing with the initial City revision), then City agrees to reimburse Grantee a pro rata share of the total relocation costs based on fifteen (15) year life expectancy for the portion of Grantee's electric utility system that is affected by the City revision unless differently agreed to in writing by City and Grantee at the time of the installation

or relocation. This Section is not applicable to a conversion when the existing electric utility system is overhead and it is desired to convert to underground, as such conversions are covered by Section 5 herein, or by other arrangements as mutually agreed.

Section 4. Consideration for Franchise. (a) The consideration for this franchise includes, but is not limited to, the mutual and individual benefits of this franchise that allow each of the parties the ability to make long term planning decisions in light of the provisions set forth herein, the waiver of permit fees, as provided in Section ~~4+1~~2 of this franchise, the non-competition provisions as provided in ~~Section 18~~Sections 2 and 19 of this franchise, and any fees that may be charged pursuant to RCW 35.21.860(b).

(b) If the City grants to any other retail electric or energy provider a franchise or allows any other retail electric or energy provider to operate under terms that are over-all more favorable than those set forth herein, Grantee shall have the right to initiate negotiations with the City to modify the provisions of this franchise that Grantee believes are over-all less favorable to it than those authorized or allowed to said providers.

(c) If there is a substantial change in the law or circumstances beyond the control of either party hereto that substantially adversely affects said party, including without limitation a change in state or federal law that would allow the City the opportunity to tax and assess additional revenue from the Grantee for the Grantee's operations under this franchise, then said party may initiate negotiations of the provisions of this franchise to address the terms affected by the change in the law or circumstances, and the parties agree to negotiate in good faith to address said concerns and to accomplish the original intent of both parties.

Any modification to the provisions of this franchise pursuant to this Section 4 shall be by mutual agreement of the parties.

Section 5. Undergrounding of Facilities. (a) In any area of the City in which there are no aerial facilities, or in any area in which telephone, electric power wires and cables have been placed underground, the Grantee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City. Provided that, except for high voltage lines, (i.e., greater than 15 kV), the electric service and distribution lines in areas that are to be served by the Grantee and that were not previously served by the Grantee shall be undergrounded.

(b) Whenever the City may desire the undergrounding of the aerial utilities in an area of the City, the Grantee agrees to cooperate with the City in its efforts to obtain funding therefore, including any City proposal to create a Local Improvement District (L.I.D.) to provide such funding, as follows:

(1) Seventy percent (70%) of the total actual cost of converting the Grantee's existing overhead primary electrical distribution system (i.e. 15 KV and less) and data lines to underground shall be provided by the City, including without limitation funds from assessments against the property owners within the L.I.D. Assessments will be in accordance with applicable law;

(2) Thirty percent (30%) of the total actual cost of converting the Grantee's existing overhead primary electrical distribution system and data lines to underground shall be provided for by the Grantee;

(3) Any project charges for the undergrounding of items other than the electrical distribution system covered under this franchise, such as secondary electrical services, telephone, fire alarm, cable TV, and street lighting and traffic signal circuits, will not be included when determining the amount to be paid by the Grantee;

(4) Conversion of the secondary electrical service on private property is not to be included in the computation of the allocation of payments to be made by the Grantee. The customer must obtain an electrical permit and make necessary changes to their equipment (electric panel, meter cabinet, etc.) and supply and install the secondary conductor, and power conduit ~~and Grantee's data conduit~~ from the meter to the secondary electrical service box located near the property line;

(c) Whenever the City may desire the undergrounding of the aerial utilities in an area of the City in conjunction with a City Public Works Improvement Project (street widening, sewer installation, curb and sidewalk installation, street lighting, traffic signal, etc.) and more than 50% of these aerial facilities are affected by or must be relocated as a result of such Public Improvement Project, the Grantee agrees to cooperate with the City's proposal to underground the aerial facilities as follows:

(1) Fifty percent (50%) of the total actual cost of converting the Grantee's existing overhead primary electrical distribution system and data lines to underground shall be provided by the City. (Total actual cost shall include trenching, vaults, conduit, cable, data conduit and cable, switch gears, transformers, restoration, etc.)

(2) Fifty percent (50%) of the total actual cost of converting the Grantee's existing overhead primary electrical distribution system and data lines to underground shall be provided by the Grantee. (Total actual cost shall include trenching, vaults, conduit, cable, data conduit and cable, switch gears, transformers, restoration, etc.)

(3) Any project charges for the undergrounding of items other than the electrical distribution system covered under this franchise, such as secondary electrical services, telephone, fire alarm, cable TV, and street lighting and traffic signal circuits, will not be

included when determining the amount to be paid by the Grantee;

(4) Conversion of the secondary electrical service on private property is not to be included in the computation of the allocation of payments to be made by the Grantee. The customer must obtain an electrical permit and make necessary changes to their equipment (electric panel, meter cabinet, etc.) and supply and install the secondary conductor, and power ~~conduit and Grantee's data~~ conduit from the meter to the secondary electrical service box located near the property line.

In the event sufficient right-of-way is not available to allow relocation of the Grantee's existing aerial system due to the requirements of a City Public Works Project and undergrounding in existing or new right-of-way (or both) is therefore required, then all of the above provisions (Subsection (c)(1) - (4)) shall apply.

(d) Grantee may elect to install conduit for data use in trenches where existing overhead data lines are not present for no additional share of trenching costs. The City may elect to have Grantee install conduit in Grantee's trenches for the City's use, provided the City agrees to reimburse Grantee for the incremental cost difference. The incremental cost shall be the actual cost of the conduit plus the labor to install it, without profit markup.

Notwithstanding anything to the contrary in this Section, this Section 5 shall not apply where wetlands or other obstructions make undergrounding impractical, or to electric lines of greater than 15 kV.

Section 6. Transmission Facilities.

Wherever existing transmission line poles are subject to relocation as necessary for a City Public Works Improvement Project (street widening, sewer installation, curb and sidewalk installation, street lighting, traffic signal, etc.), the Grantee agrees to cooperate with the City's proposal to have Grantee install alternate structures (typically tubular steel poles) rather ~~than~~than Grantees standard

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wood poles, provided the City agrees to reimburse Grantee for the incremental cost difference. The incremental cost shall be the difference between the estimated cost of wood pole construction and alternate structure construction, without profit markup.

Section 7. The Grantee's Maps, Records and Plans. After construction of any electrical work is complete, and at a reasonable time thereafter, upon the City's request, the Grantee shall provide to the City at no cost, a copy of all as-built plans ~~and~~or maps.

Section 8. Excavations. (a) During any period of relocation, construction or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public right-of-ways and other public properties so as to interfere as little as practicable with the free passage of traffic and the free use of adjoining property, and the Grantee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington.

(b) Whenever the Grantee shall excavate in any public right-of-way or other public property for the purpose of installation, construction, repair, maintenance or relocation of its cable or equipment, it shall apply to the City for a permit to do so and upon obtaining a permit shall give the City at least twenty-four (24) hours written notice during the normal work week of the Grantee's intent to commence such work. In no case shall any work commence within any public right-of-way or other public property without a permit, except as otherwise provided in this franchise ordinance. During the progress of the work, the Grantee shall not unnecessarily obstruct the passage or proper use of the right-of-way or other public property, and upon the City's request, shall file as-built plans or maps with the City showing the proposed and final location of its facilities.

(c) If either the City or the Grantee at any time plans to make excavations in any area covered by this franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, the first opportunity to use such excavation at no additional cost, provided that:

(1) Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;

(2) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties;

(3) Either party may deny such request for safety reasons; and

(4) If either party increases the size of the original excavation, said party shall be responsible for the extra cost associated with the additional excavation.

The provisions of this Section shall survive the expiration, revocation or termination by other means of this franchise.

Section 9. Restoration after Construction. The Grantee shall, after abandonment approved under Section ~~4516~~ herein, or installation, construction, relocation, maintenance, or repair of electrical facilities within the franchise area, restore the surface of the street, right-of-way or public property to at least the same condition the property was in immediately prior to any such installation, construction, relocation, maintenance or repair, unless other arrangements are mutually agreed to by both parties for a particular project. The Public Works Director shall have final approval of the condition of such streets, rights-of-way and public places after restoration. All concrete encased monuments that have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. The Grantee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work

to the franchise area or other affected area at its sole cost and expense. The provisions of this Section shall survive the expiration, revocation or termination by other means of this franchise.

Section 10. Emergency Work -- Permit Waiver. In the event of an emergency in which any of the Grantee's facilities located in or under any street are broken, damaged, or if the Grantee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, the Grantee shall immediately take the proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve the Grantee from the requirement of obtaining any permits necessary for this purpose, and the Grantee shall apply for all such permits not later than the next succeeding day during which the City offices are open for business.

Section 11. Dangerous Conditions, Authority for City to Abate. Whenever construction, installation or excavation of facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct the Grantee, at the Grantee's own expense, to take actions to restore such lateral support, and/or protect the public, adjacent public places, City property or street utilities; and such action may include compliance within a prescribed time.

In the event that the Grantee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, adjacent streets, or street utilities; or to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Grantee shall be liable to the City for the

costs thereof. The provisions of this Section shall survive the expiration, revocation or termination of this franchise.

Section 12. Permits and Fees. Grantee shall be required to obtain all permits from the City necessary for work in the City and/or in the City's rights-of-way. In consideration of this franchise, including the factors set forth in Section 4, and the payments by Grantee provided in Section 19 hereof, Grantee shall not further be subject to any permit fees associated with Grantee's activities (except those undertaken due to a private development, project, activity or use) through the authority granted in this franchise ordinance or under the laws of the City.

The Grantee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency caused by the negligence of the Grantee. City agrees to process Grantee's and Grantee's contractors' permits in the same expeditious manner as other permit applicants' permits are processed. Permits may be processed by facsimile or electronic mail.

Section 13. City's Reservation of Rights. Pursuant to RCW 35.21.860, the City is precluded from imposing a franchise fee on an electrical energy business, except for administrative expenses directly related to receiving and approving a permit, and to inspecting plans and construction.

The City hereby reserves its right to impose a franchise fee on the Grantee for purposes other than to recover its administrative expenses, if the Grantee's operations as authorized by this franchise change so that not all uses of the franchise are those of an electrical energy business or, if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that the Grantee obtain a separate franchise for its change in use, which franchise may include provisions intended to regulate the Grantee's operations, as allowed

under applicable law. Provided however, if a franchise fee is desired to be imposed, the City and Grantee agree to renegotiate this franchise as further set forth in Section 4, so to preserve the original intent of the parties.

Section 14. Indemnification. The Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the Grantee's own employees to which the Grantee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property, monetary losses, including refunds of charges or fees paid by customers, of which it is alleged or proven that the acts or omissions of the Grantee, its agents, servants, officers or employees in performing this franchise caused or contributed thereto, including claims arising against the City by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the Grantee's exercise of the rights granted herein, including payment of any monies to the City, or by virtue of the City's permitting the Grantee's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by the Grantee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise.

Inspection or acceptance by the City of any work performed by the Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the Grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of the Grantee, then the Grantee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the City, its officers, employees and agents, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence unless otherwise provided by law. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this Section shall survive the expiration, revocation or termination of this franchise.

Section 15. Insurance. Grantee is currently self-insured and has excess insurance coverage for potential liability in excess of its self-insured retention amounts. To the extent that Grantee is legally obligated by this franchise, Grantee's self-insurance fund and/or insurance policies shall provide protection to City in amounts equivalent to the levels set forth hereinbelow. Grantee's general comprehensive liability policy that includes automobile liability coverage (if such a policy continues to be obtained), shall have an endorsement naming City and its officers and employees as additional insureds for their actions pursuant to this franchise.

The amounts of insurance coverage that the Grantee shall maintain, whether by self insurance or insurance policies shall not be less than the following, or the equivalent thereof:

- A. Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per accident for bodily injury and property damage; and
- B. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground; and employer's liability.
- C. The coverage amounts set forth in A and B above shall be reviewed no less frequently than once every five (5) years, and such coverage amounts shall be adjusted as necessary to reflect inflation, changes in standards of liability, higher damage awards or other relevant changes in circumstances.

Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductible or self-insured retention shall be the sole responsibility of the Grantee.

Any insurance policy(ies) obtained by the Grantee to comply herewith shall name the City (its officers, employees and volunteers,) as an additional insured with regard to activities performed by or on behalf of the Grantee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the

insurer's liability. The Grantee's insurance shall be primary insurance with respect to the City, its officers, officials, employees and volunteers. Any insurance policy or policies obtained by the Grantee to comply with this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except with the prior written agreement of the City.

Any failure to comply with the insurance reporting provisions of the policies required herein shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

Section 16. Abandonment of the Grantee's Facilities. No electrical system facility located within the public right-of-way by the Grantee may be abandoned by the Grantee without the express written consent of the City. Underground conduit or wires may be left in place when abandoned by Grantee. Any plan for abandonment or removal of the Grantee's facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. The provisions of this Section shall survive the expiration, revocation or termination of this franchise.

In the event the Grantee has a joint pole agreement with another party, pursuant to which Grantee may remove its portion of the pole, prior to removing its portion of any pole located in the City, the Grantee shall notify the City of its intention to remove its portion of the pole.

Section 17. Street Vacations. City may have occasion to vacate certain streets, public ways or areas that have Grantee's lines and facilities located thereon. City agrees to notify Grantee of such an occurrence and to reserve an easement for Grantee's lines and facilities when a street, public way or area is vacated. If it is not feasible for City to reserve an easement for Grantee's line(s) and facilities, the proponents of the vacation shall be required (by City) as part of land use

or other permitting approvals, to reimburse Grantee all costs to relocate said line(s) and facilities.

Section 18. Modification and Annexation. The City and the Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification. In the event of a City annexation or change in boundaries, City agrees to provide Grantee's Power Superintendent written notice of any such annexation or boundary change 60 days prior to the effective date thereof. After Grantee's Power Superintendent receives notification of said annexation or change in boundaries, Grantee agrees to make any necessary adjustments to Grantee's internal documents and customer records in order to reflect said annexation or boundary modifications.

The parties' respective chief operating or administrative officer may by letter agree to procedures or plans to implement the terms of this franchise.

Section 19. Exercise of City Authority. The parties acknowledge that the City has authority to operate its own electric utility and also has authority to contract with other public or private entities for the purchase of electrical energy. Grantee's long range planning would be improved, and its rate structure stabilized if the City did not elect to exercise its authority in the service area of the Grantee. The City also has the authority to levy a utility tax upon electrical utility businesses operating in the City. Therefore, Grantee agrees that for and in consideration of the City not exercising its authority to operate its own electric utility in the service area served by Grantee, and ~~not levying a Utility Tax~~utility tax, or not contracting with other public or private entities for the purchase of electrical energy in said service area, and the other factors of consideration set forth in Section 4 of this franchise, Grantee shall pay to the City an amount equal to ~~threesix~~ percent (36%) of the total gross revenues Grantee receives from Grantee's electric utility service customers located within the City that are served from Grantee's electric utility

system. The payments to the City shall be made quarterly, in four equal payments each year, on or before March 31, June 30, September 30, and December 31 of each year during the term hereof.

~~Except as provided below, such~~Such payments shall be based on the gross revenues received by Grantee in the preceding year, ~~and such payments shall be calculated and submitted to the City using the form appended hereto as Attachment 1.~~ It is further provided that nothing herein shall be deemed to impair the authority of the City to exercise its governmental powers.

~~Until the changeover date (as defined in Section 1), application of the City's existing utility tax will continue and payment will be made on Grantee's revenues accrued prior to said date. After the changeover date, the quarterly payments due to the City through 2003 shall be based on the gross revenues received by Grantee each quarter. For the first franchise administration fee payment, the gross revenues will commence to accrue as of the changeover date and will continue until the end of the initial quarter. During 2003, franchise administration fee payments shall be made within 30 days of quarter end. (i.e. changeover date of May 31, revenues accrued from May 31 through June 30 will have the franchise administration fee applied and franchise administration fee payment would be made on or before July 30. If changeover date occurred in second quarter, the third quarter 2003 payment would be on revenues from July 1 through September 30 and paid on or before October 30). In 2004, franchise administration fee payments will be based on total gross revenues received from Grantee's customers from within the City for 2003, less amounts paid to the City for the Fife Municipal Tax accrued prior to the changeover date.~~

After appropriate action by the City Council of Fife that shall include at least one year notice to Grantee (for implementation), the City may require that Grantee adjust the franchise administration fee amount to a higher or lower percentage of gross revenues, provided however, the percentage shall not exceed the percentage amount of tax that a municipality may impose on a

private electric utility pursuant to RCW 35.21.865 and RCW 35.21.870 (as may be amended).

Whenever during the term of this franchise the City of Tacoma imposes on Grantee a Gross Earnings Tax for retail electrical service in excess of ~~three~~six percent (~~3-6~~%), Grantee shall give the City written notice of such increase, and on and after the effective date that such increase is reflected in Grantee's rates, the percentage of gross revenues paid by the Grantee to the City pursuant to this Section ~~18~~19, may be increased, at the request of the City, to equal the percentage of the Gross Earnings Tax.

Section 20. Forfeiture and Revocation. In the event of a violation or failure by Grantee to perform any material obligation or material duty hereunder or to comply with any material provision of this franchise, the City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Grantee to comply with the provisions of this franchise, and to recover damages and costs incurred by the City by reasons of the Grantee's failure to comply or perform.

If the Grantee willfully violates or fails to comply with any material provision of this franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given the Grantee by the City under the provisions of this franchise, then the Grantee shall, at the election of the Fife City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing is held with reasonable notice to the Grantee.

Section 21. Remedies to Enforce Compliance. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force the Grantee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach

of the conditions herein.

Section 22. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any facilities by the Grantee, and the Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law. The City acknowledges that if it adopts an ordinance requiring the undergrounding of Grantee's overhead electric utility system (in whole or part), that Grantee's cost reimbursement for such conversion may be in increased electric rates applicable to Grantee's customers within the City.

In order that electric utility related requirements, including, but not limited to the electric code, energy code, customer service policies, etc., be uniform within Grantee's service area, for Grantee's customers within the City, the City agrees to acknowledge the Grantee's authority to enforce its codes and policies and the City agrees to adopt by ordinance the Grantee's codes and policies, and subsequent versions, on said subjects as those adopted or promulgated by Grantee's legislative and/or other appropriate authority.

Section 23. Cost of Publication. The cost of the publication of this franchise shall be borne by the Grantee, provided that if such cost exceeds \$1,000, the excess amount may be deducted from the administrative fee to be paid to City.

Section 24. Acceptance. Within sixty days after the passage and approval of this franchise, this franchise may be accepted by the Grantee by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Grantee to so accept this franchise within

said period of time shall be deemed a rejection thereof by the Grantee, and the rights and privileges herein granted shall, after the expiration of the sixty day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose

Section 25. Survival. All of the provisions, conditions and requirements of Sections 3, Relocation of Electrical Transmission Facilities; ~~4011~~, Dangerous Conditions; ~~4314~~, Indemnification; and ~~4516~~, Abandonment of the Grantee's Facilities, of this franchise shall be in addition to any and all other obligations and liabilities the Grantee may have to the City at common law, by statute, or by contract, and shall survive this franchise to the Grantee, and any renewals or extensions thereof (however, such survival period extends only through the applicable statute of limitations period). All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the successors, legal representatives and assigns of the Grantee and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its successors, legal representatives and assigns equally as if they were specifically mentioned wherever the Grantee is named herein.

Section 26. Severability. If any section, sentence, clause or phrase of this franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise. In the event that any of the provisions of this franchise are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this franchise and may amend, repeal, add, replace or modify any other provision of this franchise, or may terminate this franchise.

Section 27. Assignment. This franchise may not be assigned or transferred without the written approval of the City, which approval shall not be unreasonably withheld. In the event

Grantee desires to assign this franchise to a successor, Grantee shall pay the reasonable cost for the City's review of the creditworthiness, service capability, and business practices of the proposed assignee.

Section 28. Notice. Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

City of Fife
5411 23rd Street East
Fife, WA 98424
Attn: City Manager

Tacoma Power
3628 South 35th Street
Tacoma, WA 98409-3115
Attn: Power Superintendent

Section 29. Replacement and Termination of Prior Franchise. This ordinance supersedes and replaces the franchise granted by Ordinance No. 1497-03.

Section 30. Effective Date. This Ordinance has first been submitted to the Fife City Attorney; granted an approving vote of at least a majority of the City Council at a regular meeting after initial introduction on August 12, 2003October 24, 2023, and beenshall be published in summary at least once in a newspaper of general circulation in the City of Fife- prior to becoming effective. This franchise ordinance shall be effective thirty (30) days after execution and pursuantupon publication of the ordinance summary. Pursuant to RCW 80.32.040, this ordinance is subject to referendum under the general laws of this state.

ADOPTED by the City Council this _____ day of _____, 20032023.

CITY OF FIFE

Attest: Kim Roscoe, Mayor

Brodie Rota, City Clerk

Approved as to Form:

Gregory F. Amann, City Attorney

Published:

Effective Date: _____, 2023