ORDINANCE NO. 3096

AN ORDINANCE of the City of Kent, Washington, granting unto Puget Sound Power & Light Company, a Washington corporation, its successors and assigns, the right, privilege, authority and franchise for twenty-five years, to construct, operate, set, erect, support, attach, connect, maintain, repair, replace, enlarge and use Facilities for purposes of transmission, distribution and sale of energy for power, heat, and light, in upon, over, under, along, across and through the Franchise Area; and to charge and collect tolls, rates and compensation for such energy and such uses.

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Definitions

1.1 Where used in this franchise (the "Franchise") the following terms shall mean:


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

1.1.3 "Franchise Area" means: any, every and all of the roads, streets, avenues, alleys, highways, grounds and public
places of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, highways, grounds and public places that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended.

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 facilities and appurtenances thereto, whether the same be located over or under ground.

Section 2. Franchise Granted

2.1 All other franchises heretofore granted by the City to Puget for utilization of streets, avenues, rights-of-way, roads, alleys, lands or other public places within the City are hereby canceled.

2.2 Pursuant to the laws of the State of Washington (including, but not limited to, RCW 35A.47.040 and RCW 80.32.010), the City hereby grants to Puget, subject to the terms and conditions set forth hereinafter, a franchise for a period of twenty-five (25) years, commencing upon the effective date of this Ordinance.

2.3 Subject to the terms and conditions hereof, this Franchise grants Puget the right, privilege and authority to construct, operate, set, erect, support, attach, connect, maintain, repair, replace, enlarge and use Facilities for purposes of transmission, distribution and sale of energy for power, heat, light and any other purpose for which energy can be used, in, upon, over, under, along, across and through the Franchise Area. In addition, this
Franchise grants Puget the right, privilege and authority to charge and collect tolls, rates and compensation for such energy and such uses, subject to the limitations imposed by state and federal law.

2.4 The terms and conditions of this Franchise shall not be construed to apply to Facilities located outside of the Franchise Area.

Section 3. Compliance with Laws--Reservation of Powers and Authority.

3.1 Puget shall comply with all federal, state, and local laws or regulations applicable to the exercise of Franchise functions or Franchise obligations. Upon written inquiry, Puget shall provide a specific reference to the federal, state, or local law or the Washington Utilities and Transportation Commission ("WUTC") order or action establishing a basis for Puget's actions related to a specific Franchise issue.

3.2 This Franchise shall not limit and the City hereby reserves all lawful powers and franchise authority available to it under its general police authority.

3.3 As to matters subject to the terms and conditions of this Franchise, if the City shall determine during the term of this Franchise that the assertion of a legitimate municipal interest is prohibited by application of federal or state law, then as to such matter and such municipal interest and consistent with its legal obligations, Puget shall cooperate with the City in a good faith effort to otherwise address such municipal interest. In this context, neither party shall invoke this Franchise as a basis to assert that its consideration of a given issue is excused by operation of the doctrines of estoppel or waiver.
Section 4. Nonexclusive Franchise Grant

The City expressly reserves the right to grant other or further franchises which do not unreasonably interfere with Puget's rights under this Franchise in, along, over, through, under, below or across the Franchise Area. This Franchise shall in no way prevent or prohibit the City from using the Franchise Area in a manner consistent with this Franchise or affect its jurisdiction over the Franchise Area. The City shall at all times exercise its retained power in a manner consistent with the terms and conditions of this Franchise.

Section 5. Undergrounding of Facilities

5.1 Puget acknowledges that the City desires to adopt a policy to encourage the undergrounding of Facilities within the Franchise Area. The City acknowledges that Puget provides electrical service on a non-preferential basis subject to and in accordance with applicable rates and tariffs on file with the WUTC. Subject to and in accordance with such rates and tariffs, Puget will cooperate with the City in the formulation of policy and regulations concerning the undergrounding of Puget's Facilities within the Franchise Area.

5.2 If, during the term of this Franchise, the City shall direct Puget to underground Facilities within the Franchise Area, such undergrounding shall be arranged and accomplished subject to and in accordance with applicable rates and tariffs on file with the WUTC. This Section 5 shall govern all matters related to undergrounding of Puget's Facilities (i.e., conversion or otherwise) within the Franchise Area.
Section 6. Relocation of Puget's Facilities

6.1 Whenever the City undertakes (or causes to be undertaken at City expense) the construction of any public works improvement within the Franchise Area and such public works improvement necessitates the relocation of Puget's then existing Facilities within the Franchise Area, the City shall:

6.1.1 provide Puget, within a reasonable time prior to the City's commencement of activities requiring such public works improvement, written notice requesting such relocation; and

6.1.2 provide Puget with copies of pertinent portions of the City's plans and specifications for such public works improvement.

After receipt of such notice and such plans and specifications, Puget shall relocate such Facilities within the Franchise Area at no charge to the City.

6.2 Whenever:

6.2.1 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,

6.2.2 the City requires any person or entity to undertake work (other than work undertaken at the City's cost and expense) within the Franchise Area and such work requires the relocation of Puget's Facilities within the Franchise Area,
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.

6.3 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 connection 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 shall be a condition or requirement causing relocation of Puget's Facilities to occur subject to the provisions of subsection 6.2 above; provided, however, (i) in the event the City reasonably determines and notifies Puget that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a public works improvement project within a segment of the Franchise Area on the City's behalf, and (ii) such public works improvement is otherwise reflected in an existing City-prepared capital improvement plan, then only those costs and expenses incurred by Puget in connecting such relocated Facilities with Puget's other Facilities shall be paid to Puget by such person or entity, and Puget shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Section 6.1.

6.4 As to any relocation of Puget's Facilities whereby the cost and expense thereof is to be borne by Puget in accordance with subsection 6.1, Puget may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from Puget of such written alternatives, 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.
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. No alternative proposed by Puget shall be evaluated by the City in an arbitrary or capricious manner. In the event the City determines that such alternatives are not appropriate, Puget shall relocate its Facilities as otherwise provided in subsection 6.1.

6.5 Nothing in this Section 6 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.

Section 7. Records of Installation

Puget shall (at its expense) provide to the City, upon the City's request, copies of available drawings and specifications in use by Puget showing the location of its Facilities within the Franchise Area. As to any such drawings and specifications 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. With respect to any excavations by Puget or the City within the Franchise Area, nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

Section 8. Placement of Facilities, Permits, Coordination of Activities, Excavations

8.1 Puget shall at all times maintain its Facilities within the Franchise Area so as not to unreasonably interfere with the
free passage of traffic or the use and enjoyment of adjoining property. Puget 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.

8.2 Puget shall, in carrying out any authorized activities within the Franchise Area, comply with all applicable City ordinances, codes, regulations, standards and procedures as now or hereafter amended, and shall obtain all necessary permits or approvals; provided, however, that if any term or condition of this Franchise and any term or condition of such ordinances, codes, regulations, standards, procedures, permits or approvals are in conflict, the term or condition of this Franchise shall govern and control. In interpreting this subsection 8.2, and unless a circumstance is otherwise explicitly addressed by this Franchise, the parties intend that the specific location of Facilities within the Franchise Area (and similar facility-related matters of a specific nature requiring detailed case-by-case analysis) are matters to be determined in accordance with applicable City ordinances, codes, regulations, standards and procedures and are therefore matters beyond the scope of this Franchise.

8.3 Puget and the City shall each exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party informed of its intent to undertake such construction work. Puget and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work either may undertake within the Franchise Area.

8.4 If, at any time or from time to time, either Puget or the City shall cause excavations to be made within the Franchise Area,
the party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (a) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and (b) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.

8.5 The City may, from time to time during the term of this Franchise, adopt policies with respect to the Franchise Area which encourage joint use of utility facilities within the Franchise Area. Puget shall cooperate with the City and explore opportunities for joint use of utility facilities within the Franchise Area that are consistent with applicable law and prudent utility practices.

Section 9. Restoration after Construction

Whenever it shall be necessary for Puget, in the exercise of its rights under this Franchise, to disturb the surface of the Franchise Area, Puget shall restore the surface of the Franchise Area to at least a condition the same as it was in immediately prior to any such disturbance. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. Puget agrees to promptly complete all such restoration work at its sole cost and expense.

Section 10. Emergency Work--Permit Waiver

10.1 In the event of any emergency in which Puget's Facilities located in or under the Franchise Area break, are damaged, or if Puget's Facilities within the Franchise Area are otherwise in a condition as to immediately endanger the property, life, health or
safety of any individual, Puget shall, upon receipt of notification from the City of the existence of such condition, immediately take those actions as are necessary to correct the dangerous condition.

10.2 If and to the extent reasonable actions on Puget's part are necessary to respond to an emergency situation involving Puget's Facilities within the Franchise Area, and such action would otherwise require the issuance by the City of an authorizing permit or approval, the City hereby waives the requirement that Puget obtain any such permit or approval as a prerequisite to undertaking such activity; provided, however, Puget shall subsequently apply for any such required permit or approval within ten (10) business days from and after the date of the commencement of such actions otherwise requiring such permit or approval.

10.3 Nothing in this Section 10 is intended, nor shall it be construed, as a hindrance to Puget's ability to take such actions as it deems necessary to discharge its public service obligations in accordance with the laws of the State of Washington. Nothing in this Section 10 is intended, nor shall it be construed, as preventing the City from recovering from Puget, if otherwise so entitled in accordance with applicable law, any extraordinary costs in responding to an emergency situation involving Puget's Facilities.

Section 11. Lateral Support

Whenever construction, installation or excavation of Facilities within the Franchise Area have caused or contribute to a condition that appears to substantially impair the lateral support of the Franchise Area, the Public Works Director may direct Puget, at Puget's own expense, to take such actions as are reasonably necessary within the Franchise Area so as not to impair the lateral support thereof.
Section 12. Recovery of Costs

12.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon Puget, except that, as provided in RCW 35.21.860, Puget shall reimburse the City for all actual administrative expenses incurred by the City that are directly related to receiving and approving a permit, license and this franchise, to inspect plans and construction, or to prepare a detailed statement pursuant to Chapter 43.21C RCW. Where the City incurs actual administrative expenses for review or inspection of activities undertaken through the authority granted in this franchise (and which such expenses are not duplicative of expenses which are reflected in some other City-imposes charge or fee), Puget shall pay such expenses directly to the City.

12.2 This Franchise shall not authorize a principal use of the Franchise Area for purposes other than the transmission, distribution and sale of energy for power, heat, or light. The City acknowledges that Puget may, from time to time, make or allow incidental use of excess capacity of Facilities within the Franchise Area for other purposes.

Section 13. Indemnification

13.1 Puget shall defend, indemnify and save the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is 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 begun 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 decision.

13.2 In the event that (i) the City is required to defend a "suit or action" as referenced in subsection 13.1 and (ii) the City is determined to be without fault for the claim or demand giving rise to such "suit or action," then Puget shall reimburse the City for a percentage of the City's total defense costs. The percentage of the City's total defense costs to be so reimbursed shall be a percentage equal to the percentage (if any) of fault attributable to Puget for the claim or demand giving rise to such "suit or action."

13.3 The provisions of this section shall survive the expiration or termination of this Agreement if the basis for any such claim, demand, suit or action as referenced in subsection 13.1 occurred during the Franchise term.

Section 14. Insurance

14.1 Puget shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Puget, its agents, representatives, employees, subconsultants or subcontractors.

14.2 Before beginning work on the project described in this Agreement, Puget shall provide a Certificate of Insurance or proof of self-insurance evidencing:
14.2.1 **Automobile Liability** insurance with limits no less than $1,000,000 combined single limit per accident for bodily injury and property damage; and

14.2.2 **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 (XCU) if applicable; and employer's liability.

14.3 Any payment of deductible or self insured retention shall be the sole responsibility of Puget.

14.4 The City, its officers, officials, employees, agents and volunteers shall be named as an additional insured on the insurance policy, as respects work performed by or on behalf of Puget and a copy of the endorsement naming the City as additional insured shall be attached to the **Certificate of Insurance** or proof of self-insurance.

14.5 Puget's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

14.6 Puget's insurance shall be primary insurance as respects the City, and the City shall be given thirty (30) calendar days prior written notice by certified mail, return receipt requested, of any cancellation, suspension or material change in coverage.

14.7 In lieu of the foregoing insurance requirements, Puget may self-insure against such risks in such amounts as are
consistent with prudent utility practices. Puget shall, upon request, provide the City with sufficient evidence that such self-insurance is being so maintained.

Section 15. Moving Buildings within the Franchise Area

15.1 If any person or entity obtains permission from the City to use the Franchise Area for 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:

15.1.1 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;

15.1.2 to the extent practical, 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 Puget's business; and

15.1.3 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 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 16. Abandonment of Puget's Facilities

None of Puget's Facilities within the Franchise Area may be abandoned by Puget without the express written consent of the City. Any plan for abandonment or removal of Puget's Facilities within the Franchise Area must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work.

Section 17. Modification

17.1 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. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 13 above) shall govern and supersede and 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:
17.1.1 references this Franchise; and

17.1.2 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.

17.2 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 subsection 17.2:

17.2.1 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.

17.2.2 Within a reasonable time after receipt of the notice required by subsection 17.2.1, 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 in good faith and 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.
17.2.3 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.

17.2.4 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, each party shall bear its own costs in connection with the alteration, amendment or modification of this Franchise.

17.3 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.

Section 18. Forfeiture and Other Remedies

18.1 If Puget willfully violates or fails to comply with any of the provisions of this Franchise, or through willful or unreasonable negligence fails to heed or comply with any notice given Puget by the City under the provisions of this Franchise, then Puget shall, at the election of the Kent City Council, forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Council after a hearing held upon reasonable notice to Puget.
18.2 The right of the City to declare a forfeiture pursuant to subsection 18.1 is a remedy in addition to, and is not a limitation of, the rights, remedies or actions available to either party by reason of the other party's noncompliance with the terms and conditions of this Franchise.

Section 19. Cost of Publication

The cost of the publication of this Ordinance shall be borne by Puget.

Section 20. Acceptance

After the passage and approval of this ordinance and within sixty (60) days after such approval, this Franchise shall, if accepted by Puget, be accepted by Puget by its filing with the City Clerk an unconditional written acceptance thereof. Failure of Puget to so accept this Franchise within said period of time shall be deemed a rejection thereof by Puget, 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 21. Survival

21.1 With respect only to matters arising during the period of time this Franchise shall be in full force and effect, the parties intend that any term or condition applicable to such matters shall survive the expiration or termination of this Franchise to the extent such survival can be reasonably inferred under the circumstances presented and to the extent such an
inference is necessary to prevent substantial injustice to an injured party.

21.2 The terms and conditions of this Franchise shall be binding upon the parties' respective successors and assigns.

Section 22. 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.

Section 23. Assignment

Puget may not assign or transfer this Franchise without the written consent of the City Council of the City, which consent shall not be unreasonably withheld. Any assignee or transferee shall, at least thirty (30) days prior to the date of any assignment or transfer, file written notice of the assignment or transfer with the City, together with its written acceptance of all of the 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 24. Notice

Any notice or information required or permitted to be given to the parties under this Franchise agreement may be sent to the following addresses unless otherwise specified:

City of Kent  
Director of Public Works  
300 West Gowe  
Kent, WA 98032

Puget Sound Power and Light Company  
Attn: Manager, Kent Business Office  
620 South Grady Way  
P.O. Box 329  
Renton, WA 98057-0329

Section 25. Effective Date

This Ordinance shall take effect thirty (30) days after its execution; having first been submitted to the Kent City Attorney for approval; after one introduction by the City Council at a regular meeting; after having been published at least once in a newspaper of general circulation in the City of Kent; and finally, having been granted an approving vote of at least a majority of the City Council at a regular meeting.

DAN KELLEHER, MAYOR
ATTEST:

BRENDA JACOBER, CITY CLERK
DONNA SWAW, DEPUTY CITY CLERK

APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTORNEY

FIRST READING the 2 day of March, 1993.

PASSED the 16th day of March, 1993.

APPROVED the 17th day of March, 1993.

PUBLISHED the 5th day of March, 1993.

I hereby certify that this is a true copy of Ordinance No. 3076, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, CITY CLERK
DONNA SWAW, DEPUTY CITY CLERK

(Seal)