PUGET SOUND ENERGY

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Via electronic mail

King County Council
516 Third Avenue, Room 1200
Seattle, WA 98104

Dear King County Council Members,

Puget Sound Energy, Inc. (PSE) strongly opposes the proposed ordinance 2016-0521, including the creation of a "franchise compensation" requirement and the "forbearance payment" mechanism contained in new sections 8 and 9 of the proposed legislation. The proposal represents a major shift in county policy, with no opportunity for input from the affected parties. The legal issues raised by the proposal are significant. The fast-track timing precludes collaboration and forces our hand to aggressively oppose this legislation.

It is important to state that PSE highly values its relationship with King County. Our two organizations are collaborating on many initiatives that will reduce carbon through a transition away from coal-generated power, wastewater gas capture, and energy efficiency programs. In addition, we have been proud to work with the county and other stakeholders on what will become a regional gem—the Eastside Rail Corridor.

This proposed solution comes as a complete surprise and is wholly inconsistent with the spirit of collaboration we have previously enjoyed. PSE was alerted Monday morning (October 24, 2016) that the proposal had been walked-on to the budget committee, with a planned full council vote 14 days hence, on Monday November 7. We are still working to understand the customer impacts and legal issues, but believe they are significant and merit more careful review, analysis and discussion, including the following:

- The county's powers are granted exclusively by the state constitution or legislature. The franchise compensation and forbearance payment requirements of the proposed ordinance have not been authorized by the State.
- The state legislature has granted only to cities and towns—not to counties—the authority to license business and collect fees and taxes from those businesses.

- The forbearance payment mechanism raises potential antitrust issues that could have legal risks and implications for both the county and PSE.
- The legality of the proposed ordinance will likely be challenged by utilities, ratepayers, and other affected entities and individuals with standing.

PSE is regulated by the Washington Utilities and Transportation Commission. WUTC oversight includes review of any government taxes and fees passed along to the ratepayers.

- The WUTC is charged with determining whether rates are "unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered." RCW 80.28.020. (*Willman v. Washington Utilities & Transp. Comm'n*), 122 Wn. App. 194, 204, 93 P.3d 909, 913 (2004), aff'd, 154 Wn.2d 801, 117 P.3d 343 (2005).
- The WUTC and the Attorney General are likely to challenge the fees as a presumptively invalid tax on PSE customers, including PSE customers who are not located in the county or do not benefit from such tax.

Chief among the unknowns created by the proposed ordinance is the lack of specificity with regards to how the right-of-way might be valued and how associated fees might be set. This compounds our concern about impact to PSE and our ratepayers.

Lastly, PSE has been negotiating in good faith with the county for a franchise renewal since 2006. During this time, PSE and the county have continued to operate under the terms of the existing franchise agreement, and PSE will continue to do so until a franchise renewal is in place. PSE is fully committed to continuing its good faith negotiations with the objective that a franchise renewal be finalized as soon as possible.

For these reasons, PSE has no choice but to oppose this proposed ordinance.

Regards,

Steve R. Secrist
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