

November 2, 1994

Introduced By: BRUCE LAING
GREG NICKELS

CLT:lm

Proposed No: 94 - 738

ORDINANCE NO. **11609**

AN ORDINANCE approving a franchise for Washington Natural Gas Company to construct, operate and maintain a natural gas system in all King County Council Districts except 2, 4 and 10, and authorizing the Executive to execute the franchise agreement.

STATEMENT OF FACTS:

1. Washington Natural Gas Company has filed an application for a franchise in all council districts except 2, 4 and 10 to construct, operate and maintain a natural gas system to serve all of unincorporated King County in accordance with R.C.W. 36.55.010.

2. Washington Natural Gas' existing franchise Number 607, as extended by King County Council Motion 9260, expires on December 31, 1994.

3. Washington Natural Gas' franchise application was referred to the relevant county departments for review.

4. King County and Washington Natural Gas Company have negotiated a mutually acceptable franchise agreement which has the approval of the department of public works, roads division and the prosecuting attorney's office.

5. The King County executive has recommended approval of the franchise.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The granting of a franchise to the Washington Natural Gas Company to construct, operate and maintain a natural gas system within King County is hereby approved. The King County executive is authorized to enter into and execute the natural gas system franchise, which by this reference is fully incorporated herein. Said franchise shall include all of the general and special conditions required by the county.

UTILITIES

FRANCHISE NO. _____

In the matter of the application for a franchise to operate, maintain, repair, and construct transmission and service lines and appurtenances in, over, along, and under County roads and rights-of-way in King County, Washington.

The application of WASHINGTON NATURAL GAS COMPANY for a franchise to operate, maintain, repair and construct transmission, distribution and service lines and appurtenances in, over, along, and under County roads and rights-of-way located within the area described in attached Exhibit "A" has been heard on this 19th day of December, 1994. All of the property described in Exhibit "A" lies outside the limits of any incorporated Town or City.

Legal notice of the franchise application and of the hearing has been given as is required by law.

The King County Council, having considered the interests proposed and advanced, and finding that the granting of this franchise is in the public interest, ORDERS that a natural gas system franchise be granted to WASHINGTON NATURAL GAS COMPANY, the Grantee. This franchise grants the right, privilege, authority and franchise to operate, maintain, repair, and construct transmission, distribution and service lines and appurtenances as a part of its transmission and distribution system in, over, along, and under County roads and rights-of-way located within the area described in Exhibit "A."

11609

This franchise is granted subject to all of the terms and conditions contained within, and shall expire in 25 years on December 19, 2019.

Dated this _____ day of _____, 19____.

KING COUNTY, WASHINGTON

BY _____

TITLE _____

The undersigned accept all the rights, privileges, and duties of this franchise subject to all terms, conditions, stipulations, and obligations contained within.

GRANTEE

BY _____

TITLE _____

Dated this _____ day of _____, 19____.

Exhibit "A"

That portion of King County, Washington, described as follows:

Beginning at a point where the common line between Snohomish and King Counties meet at a common line between King and Kitsap Counties, said point being the TRUE POINT OF BEGINNING; thence east along the common line between King and Snohomish Counties to the northeast corner of Section 1, Township 26 North, Range 8 East, W.M.; thence south along the east line of Range 8 through Townships 26 North, 25 North, 24 North, to the southeast corner of Section 36, Township 24 North, Range 8 East; thence east along the north line of Sections 6, 5, 4, 3 and 2, Township 23 North, Range 9 East; thence south along the east line of Sections 2, 11, 14, 23, 26 and 35, Township 23 North, Range 9 East to the southeast corner of said Section 35; thence west along the south line of Sections 35, 34, 33, 32 and 31, Township 23 North, Range 9 East to the southwest corner of said Section 31; thence south along the east line of Township 22 North and 21 North to the southeast corner of Section 36, Township 21 North, Range 8 East, W.M.; thence west along the south line of Range 8 East, 7 East and 6 East, and continuing along the south line of Section 36, Township 21 North, Range 5 East to a point 600 feet measured at right angles from the Auburn-Enumclaw Highway; thence northwesterly along said line to the west line of the Northwest Pipeline Corporation's pipeline; thence northerly along said westerly line to the north line of Section 27, Township 21 North, Range 5 East; thence west along the north line of Section 27 to the northwest line of said Section 27; thence south along the west line of said Section 27 to the centerline of State Highway SR 164; thence southeast along said centerline to a point where the centerline of SR 164 meets the centerline of Section 27; thence South to the common line between King and Pierce Counties; thence westerly along said common line and northerly to the point of said common line between King and Pierce Counties meet the common line between King and Kitsap Counties; thence continuing northerly along said common line to the TRUE POINT OF BEGINNING.

TERMS AND CONDITIONS APPLICABLE TO
UTILITIES FRANCHISES GRANTED BY KING COUNTY

THIS FRANCHISE is subject to the following terms and conditions:

1. DEFINITIONS

County Road Rights-of-Way. The term "County Road Rights-of-Way" includes any road, street, avenue, or alley located within the area described in the attached Exhibit "A".

Council. The term "Council" refers to the King County Council, acting in its official capacity.

Director. The term "Director" refers to the chief executive of the King County Department of Public Works.

Grantee. The term "Grantee" refers to WASHINGTON NATURAL GAS COMPANY, its officers, agents, employees, contractors and sub-contractors, its successors and those assignees approved pursuant to paragraph 16 herein.

King County. The term "King County" includes its elected officials, officers, employees and agents.

Other Governing Body. The term "Other Governing Body" refers to any public official or other public board or body as may have the power and jurisdiction to permit or regulate the installation and maintenance of utilities and other facilities in, under, over, across, and along any of the County property described in Exhibit "A".

Utility. The term "Utility" refers either to the Grantee or, depending on the context, to any other person, firm, or corporation, public or private, which may hold a franchise to maintain and operate similar facilities in, under, over, across, and along any of the County property described in Exhibit "A".

2. ACCEPTANCE BY GRANTEES OF TERMS AND CONDITIONS

The full acceptance of this franchise and all of its terms and conditions shall be filed with the Clerk of the Council within thirty (30) days from _____, 19____, by the Grantee. Full acceptance of this franchise is a condition precedent to its taking effect, and unless this franchise is accepted within the time specified, this grant will be null and void and have no force or effect.

3. NON-EXCLUSIVE FRANCHISE

This franchise is not exclusive. It does not prohibit King County from granting franchises for other public or private utilities, in, under, over, across, and along any County property, including County Road Rights-of-Way.

This franchise does not prevent or prohibit King County from constructing, altering, maintaining or using any County Road Rights-of-Way covered by this franchise. King County retains full power to make all changes, relocations, repair, maintenance, etc., as it may deem fit.

4. JURISDICTION

This franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which King County has an actual interest. It is not a warranty of title or of interest in County Road Rights-of-Way.

Whenever any of the County Road Rights-of-Way 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 until such time as the incorporation and/or annexation is complete according to applicable State law, after which time the County will no longer have any responsibility for maintenance of any County roads, rights-of-way or other County property within the area of annexation/incorporation.

None of the rights granted to the Grantee shall affect the jurisdiction of King County over County Road Rights-of-Way or the County's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating.

All of the rights herein granted shall be subject to and governed by this franchise; provided, however, that nothing in this franchise may be construed in any way as limiting King County's rights to adopt ordinances which are necessary to protect the health, safety and welfare of the general public.

5. REGULATION OF USE AND CONTROL

This franchise does not deprive King County of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the County Road Rights-of-Way covered by this franchise.

6. EMINENT DOMAIN

This franchise and the limited rights and interests for the operation, maintenance, repair, and construction of Grantee's transmission, distribution and service lines and appurtenances are subject to the exercise of eminent domain. In the event of an exercise of eminent domain by King County, the value to be attributed to all the rights and interests granted under this franchise shall not exceed the actual amount the Grantee paid to King County in obtaining this franchise.

7. ENFORCEMENT

Failure of King County to enforce any provision of this agreement does not constitute a waiver of its right to enforce that provision or any other provision of this agreement.

8. INDEMNITY AND HOLD HARMLESS

In consideration for the benefits conferred upon the Grantee by this franchise, the Grantee agrees to defend, indemnify and hold King County harmless as follows:

(a) Full indemnification together with costs of defense for claims, suits and judgments arising from allegations of injury due to the sole negligence of the Grantee.

(b) Indemnification together with costs of defense for claims, suits and judgments arising from allegations of injury due to the concurrent negligence of King County and the Grantee, but only to the extent of the Grantee's negligence.

(c) Indemnification together with costs of defense for claims, suits and judgments arising from allegations of injury to the Grantee's employee(s) alleged to be caused by the concurrent negligence of King County and the Grantee. However, this section (c) is valid and enforceable only to the extent of the Grantee's negligence.

The Grantee understands that these indemnity provisions shall apply to claims from which the Grantee would otherwise be able to claim immunity under Title 51, RCW, and that this understanding has been mutually negotiated by the parties.

In the event that King County incurs costs to enforce any provision of this indemnification/hold harmless agreement, they shall be recoverable in full from the Grantee.

For the purposes of this section the terms "costs" include reasonable attorney's fees and all expenses incurred in

anticipation of and/or in proceeding with litigation; and "injury" includes death, injury to person and damage to property.

9. VACATION

If at any time King County, in accordance with RCW Chapter 36.87, and as hereinafter amended, vacates any County Road Rights-of-Way covered by this franchise, King County will not be held liable for any damages or loss to the Grantee by reason of such vacation. King County may, after giving thirty (30) day's written notice to the Grantee, terminate this franchise with respect to any County Road Rights-of-Way vacated. Alternatively, King County, at its sole discretion, may in its vacation proceedings reserve an easement for the Grantee pursuant to the terms and conditions of this franchise.

10. REPAIR, REMOVAL OR RELOCATION

The Grantee hereby covenants, at its own expense, to repair, remove or relocate existing facilities including all appurtenant facilities and service lines connecting its services to users within County Road Rights-of-Way if such repair, removal, or relocation is required by King County for any County road purpose. Such repair, removal or relocation shall not be unreasonably required.

On any King County road project, should the Grantee become aware of federal, state or other financial assistance available to defray the costs of utility displacement or relocation, King County agrees, upon written notice from the Grantee of such availability, to apply for such assistance funding on behalf of the Grantee so long as such funding obtained will not reduce the amount of federal, state or other funds provided to King County for the affected road project. In the event the County applies for and receives assistance funds specifically for utility relocation from a granting agency, the Grantee shall be reimbursed to the extent of those assistance funds received. In such event, the Grantee agrees to be bound to all grant conditions as reflected in any agreements between King County and the granting agency executed for that purpose.

11. REQUIREMENT OF CONSTRUCTION PERMITS

The Grantee, its successors or assigns, has the right, privilege and authority to enter the County Road Rights-of-Way for the purpose of operating, maintaining, repairing, or constructing its transmission, distribution and service lines, and appurtenances, on the condition permits approved by the Director and Property Services Division are obtained. Applications for work permits shall be presented to the Property Services Division, which may require copies of plans, blueprints, cross-sections, or further

detailing of work to be done. In the event of an emergency, the Grantee may immediately commence the necessary work and shall apply the next business day for the work permit. Any work done, whether by Grantee, its contractors, or third parties will include necessary paving, patching, grading, and any other reasonably necessary repair or restoration to the County Road Rights-of-Way. All work shall be done to the reasonable satisfaction of the Director.

All equipment, lines and appurtenances which are used in the operation, maintenance, repair or construction of the Grantee's service and which are located within the County Road Rights-of-Way shall be considered to be part of the Grantee's system and shall be the responsibility of the Grantee. All permits for the operation, maintenance, repair or construction of said system shall be applied for and given in the name of the Grantee, who will be responsible for all work done under the permit. The Grantee remains responsible whether the work is done by the Grantee, its contractors, or by third parties.

If requested by King County, the Grantee shall post and maintain a bond to King County in the amount sufficient for any road repair or restoration. The amount of the bond shall be set by the Director and must be filed with the Property Services Division before a permit will be issued.

12. RESTORATION OF COUNTY ROAD RIGHTS-OF-WAY

After work on, over, under or adjacent to County Road Rights-of-Way, the Grantee is responsible for and will leave all County Road Rights-of-Way in as good a condition as they were before any work was done. In the event that the Grantee, its contractors, or third parties working under permit should fail to restore County Road Rights-of-Way to the satisfaction of the Director, King County may make such repairs or restorations as are necessary to return the County Road Rights-of-Way to their pre-work condition. Except in the case of an emergency, however, King County shall first notify the Grantee of the needed repairs or restoration and provide an opportunity for the Grantee to perform the repairs or restoration before King County does the work. Upon presentation of an itemized bill for repairs or restorations, including the costs of labor and equipment, the Grantee will pay the bill within thirty (30) days. If suit is brought upon the Grantee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of King County, then the Grantee shall pay all of the actual costs, including interest from the date the bill was presented, disbursements, and attorney's fees and litigation related costs incurred.

13. PERFORMANCE OF WORK

The Grantee covenants that in consideration for the rights and privileges granted by this franchise, all work performed by the Grantee on County Road Rights-of-Way shall conform to all County requirements including, but not limited to, the requirements of the current edition of the County Road Standards in force when the work is performed and all traffic control shall also conform to the current edition of the manual of Uniform Traffic Control Devices in force when the work is performed.

14. BLASTING REQUIREMENTS

The right to operate, maintain, repair and construct Grantee's transmission, distribution and service lines and appurtenances granted by this franchise, does not preclude King County, its agents or contractors from blasting, grading, or doing other road work contiguous to the Grantee's lines, and appurtenances. When practical, the Grantee will be given ten business days written notice of any blasting so that the Grantee may protect its lines and appurtenances. In no event will the Grantee be given less than two days written notice of any blasting. Notification of any excavation shall be provided through the One-Call System as provided by RCW 19.122, as hereinafter amended.

15. SURVEY MARKERS AND MONUMENTS

It shall be the responsibility of the Grantee performing any construction work in the County rights-of-ways to restore any survey markers or monuments disturbed by such construction in accordance with RCW 58.09.130, and as hereinafter amended.

16. ASSIGNMENT

The Grantee shall not have the right to assign this franchise without consent of the King County Council given by Motion. No assignment shall be effective unless an acceptance by the assignee of all rights, conditions, terms, provisions, and responsibilities contained within the franchise, as well as surety bonds which the Council deems necessary to be posted are received. Council approval of the assignment may be made subject to the assignee's acceptance of new or modified terms of the franchise.

17. RESERVATION OF RIGHTS

King County specifically reserves for itself the right to impose a utility tax on the Grantee if such taxing authority is granted by the State of Washington and the local option is exercised by the King County Council.

King County also specifically reserves the right to exercise authority it has or may acquire in the future to secure and receive fair market compensation for the use of its property. If King County elects to exercise such authority, the fair market compensation requirement shall be imposed by ordinance not less than one hundred eighty (180) days after written notice ("Compensation Notice") is delivered to the Grantee, said Compensation Notice identifying with specificity the definition, terms and/or formula to be used in determining such fair market compensation. Acceptance of King County's definition, terms and/or formula identified in the Compensation Notice will occur if the Grantee accepts in writing within thirty (30) days of receipt of the Compensation Notice; or, if Grantee takes no action in writing within thirty (30) days of receipt of the Compensation Notice; in which case the applicable ordinance that the King County Council passes will be determinative. Nothing in this section shall be construed as an agreement by the Grantee of King County's right to exercise authority it has or may acquire in the future to secure and receive fair market compensation for the use of its property. Nothing in this section shall be construed to prohibit the Grantee from challenging, in King County Superior Court or a court of competent jurisdiction, the legality of such right.

Grantee's rejection of the definition, terms, and/or formula identified in the Compensation Notice will only occur if such rejection is in written form, identifying with specificity the grounds for such rejection, and delivered to King County within thirty (30) days after receipt of the Compensation Notice, in which case the below identified arbitration terms will apply:

- A. The Grantee and King County will select one arbitrator each, and the two selected arbitrators will select a third arbitrator. If the two arbitrators have not selected a third arbitrator within thirty (30) days after the selection of the last selection of the two, either the Grantee or King County may apply to the presiding judge of the King County Superior Court for the appointment of a third arbitrator. Each arbitrator will be a member of the American Institute of Real Estate Appraisers, of the Society of Real Estate Appraisers, of some equivalent body, or an attorney licensed to practice law in the State of Washington. Any appraiser arbitrator shall be licensed as an appraiser by the State of Washington. The three arbitrators will determine the method for determining the fair market compensation for the County property used by the Grantee. The

decision of a majority of the arbitrators will bind both the Grantee and King County. At the conclusion of the arbitration, the arbitrators will submit written reports to the Grantee and King County which shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion.

- B. The cost of the arbitration will be divided equally between the Grantee and King County. In the event that the question of fair market compensation is not resolved prior to the effective date specified by the ordinance authorizing said compensation, the arbitration decision will be applied retroactively to the effective date in the ordinance. The Grantee will pay the retroactive sum plus interest in the amount of twelve percent (12%) per annum.

18. EXPIRATION AND RENEWAL

To the extent described in Exhibit "A," all rights granted by this franchise to County Road Rights-of-Way outside incorporated towns and cities apply to all existing County Road Rights-of-Way improved and unimproved and to all County Road Rights-of-Way acquired by King County during the term of this franchise.

If the Grantee has not applied for a renewal of this franchise before it expires, King County has the right to remove or relocate any lines and appurtenances of the Grantee as is reasonably necessary for the public's health, welfare, safety, or convenience including, but not limited to, the safe operation of County roads, franchise holders, or for the construction, renewing, altering, or improving of any County Road Rights-of-Way, or for the installation of lines and/or facilities of other franchise holders.

Grantee shall be liable for the costs incurred in any removal or relocation of its lines and appurtenances under this section. Costs include the expense of labor and equipment, provided that any removal is effected within two (2) years from the expiration date of this franchise.

Upon expiration of this franchise, the grantee shall continue to be responsible for the operation and maintenance of existing facilities in the County Road Rights-of-Way but shall not have the right to provide additional services.

19. COMPLIANCE WITH LAWS

Grantee shall conform to all applicable federal, state and local laws and regulations including but not limited to the State Environmental Policy Act and King County environmental standards and ordinances.

20. NON-DISCRIMINATION CLAUSE

In all hiring or employment made possible or resulting from this franchise agreement, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

No person shall be denied, or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this agreement on the grounds of sex, sexual orientation, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

Any violation of this provision shall be considered a violation of a material provision of this agreement and shall be grounds for cancellation, termination or suspension in whole or in part, of the agreement by the County and may result in ineligibility for further County agreements.

The Grantee shall make the best efforts to make opportunities for employment and/or contracting services available to women and minority persons. The Grantee recognizes that King County has a policy of promoting affirmative action, equal opportunity and has resources available to assist Grantee in these efforts.

21. PENALTY FOR VIOLATION OF CONDITIONS

If the Grantee shall violate or fail to comply with any of the material terms, conditions or responsibilities of this franchise through neglect or failure to obey or comply with any notice given the Grantee under the provisions of this franchise, the Council may revoke the franchise. King County shall provide the Grantee by written notice of its intent to revoke this franchise. A public hearing shall be scheduled within 45 days following the notification. The decision to revoke this franchise will become effective 90 days following the public hearing if the County, by ordinance or motion, finds the revocation of this franchise to be

in the public interest. During the forty-five days following the notification, the Grantee shall have the opportunity to remedy the failure to comply.

22. RIGHT OF APPEAL

Decisions, requirements, or approvals of the Director are binding on the parties to this franchise. Appeals from the Director's determinations will be made by filing a complaint with the King County Superior Court.

23. CONFORMANCE WITH COUNTY CODE

This franchise does not authorize the Grantee to engage in any activities regulated by Chapter 6.27A of the King County Code. If the Grantee wants to engage in any such activities, it must first obtain from King County a separate franchise which conforms to the requirements of K.C.C. 6.27A.

24. SEVERANCE

This franchise gives effect to purposes and uses which are consistent with economical and efficient services rendered in the public interest. If any provision of this franchise, or its application is determined to be invalid by a court of law, then the remaining provisions of this franchise shall continue and remain valid unless the dominant purpose of the franchise would be prevented or the public interest is no longer served.

25. PERIODIC MEETINGS

From time to time, King County may have questions concerning the Grantee's activities in the County, and the Grantee shall continue to answer such questions in a prompt, professional and responsive manner. In addition, when requested by King County, the Grantee and King County shall meet: (a) so that the County's general service issues, road and facility construction, and growth management plan can be coordinated with the terms of this franchise; and (b) to reply to questions the County Council or County residents may have regarding the Grantee's operations within the County or its performance under the terms of this franchise.