

## Electric Franchise User Notes

Electric utilities in Washington state fall into two broad categories for purposes of franchising: privately-owned and publicly-owned. The privately-owned utilities are regulated by the Washington Utilities and Transportation Commission (WUTC), while publicly-owned utilities are not. The critical difference in terms of franchising is that regulated utilities must file tariffs with the WUTC that set out the company-specific rules and regulations governing the service provided by each company. Under Washington law, “[o]nce a utility's tariff is filed and approved, it has the force and effect of law.” *General Telephone Co. of Northwest, Inc. v. City of Bothell*, 105 Wn.2d 579, 585, 716 P.2d 879, 883 (1986).

One important step in franchising a regulated utility is to examine the utility’s WUTC tariff, particularly those regarding cost allocations for undergrounding or relocating the utility’s facilities. Cities often require such work as part of a public works project, and normal franchise provisions, which under the common law may put the full cost of the work on the utility, could be invalidated by a conflict with the tariff.

For non-regulated, public electric utilities, a city may negotiate any relocation/undergrounding mutually agreeable to the parties. As noted above, “the general rule in this state and elsewhere that ‘public utility companies operating under a franchise must bear the cost of removing and of relocating their facilities, as it is made necessary by highway improvements.’” *General Telephone Co. of Northwest, Inc. v. City of Bothell*, 105 Wn.2d 583 (quoting *State v. PUD 1*, 55 Wn.2d 645, 650-51, 349 P.2d 426 (1960)). This common law duty can be contracted away or “may be changed by statute so that relocation expenses in certain cases are borne by the state, or the municipality.” *Id.* (quoting 12 E. McQuillin, *Municipal Corporations* § 34.74(a), at 183-84 (3d ed. 1970), 20 (1984 Cum.Supp.)).

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### State and Federal Statutes

#### Washington Statutes

- RCW Chapter 80.32, Electric franchises and rights of way
- RCW 35A.47.040, Franchises and permits — Streets and public ways.

Every code city shall have authority to permit and regulate under such restrictions and conditions as it may set by charter or ordinance and to grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for ... poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy ... The power hereby granted shall be in addition to the franchise authority granted by general law to cities. ...

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## Regulatory Agencies

- Federal Energy Regulatory Commission (FERC) - for interstate transmission electricity and hydropower projects.
- Washington Utilities and Transportation Commission (WUTC).

Only privately-owned electricity providers that offer service to the public in Washington are regulated by the WUTC. See the [WUTC Website](#) for information on regulated providers and the applicable tariffs for those providers.

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## Additional and Altered Paragraphs for the Franchise Form

**Section 00.** The City reserves the right to acquire, construct, own, operate and maintain a municipal electric utility to serve all or any portion of the City, at any time during the term of this Franchise and to fully exercise such right in accordance with applicable law.

[For WUTC regulated utilities only]

**Section 00.** “Tariff” means tariff as that term is defined in WAC 480-80-030(3), or such similar definition describing rate schedules, rules and regulations relating to charges and service as may hereinafter be adopted by the regulatory authority with jurisdiction, under the laws of the State of Washington, over public service companies.

**Section 00.** All new Facilities, of 34.5 kV or less, installed within the Franchise Area during the term of this Franchise shall be located underground; provided that installation of cabinet enclosed switches, transformers and similar equipment will be permitted and installed pursuant to the provisions of any applicable City codes, ordinances, regulations, standards and procedures as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise [and subject to and accordance with any applicable Tariffs on file with the WUTC]. [For WUTC regulated utilities only]

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**Section 00.** If, during the term of this Franchise, the City shall direct Franchisee to underground existing Facilities (of 34.5 kV or less) within the City, such undergrounding shall be arranged and accomplished subject to and in accordance with applicable Tariffs on file with the WUTC.

[For WUTC regulated utilities only]

**Section 00.** If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to the terms of this franchise, the City shall bear the entire cost of such subsequent relocation.

**Section 00.** City Use of Facilities

A. During the term of this Franchise, and with respect to poles that are owned by Franchisee (in whole or in part), the City may, subject to Franchisee's prior written consent, which shall not be unreasonably withheld, install and maintain City-owned communications equipment, wires and/or fiber. The City's use of such wires or fibers shall be for non-commercial municipal communications purposes and such use will be administered under a Joint Facilities Use Agreement between Franchisee and the City.

B. Installation and maintenance shall be done by the City at its sole risk and expense, in accordance with all applicable laws, and subject to such reasonable requirements as Franchisee may specify from time to time including, without limitation, requirements accommodating Franchisee's Facilities or the facilities of other parties having the right to use Franchisee's Facilities.

C. Franchisee shall have no obligation arising under the indemnity and insurance provisions of this Franchise as to any circumstances directly or indirectly caused by or related to such City-owned communications equipment, wires and/or fiber or the installation or maintenance thereof.

D. Franchisee shall not charge the City a rental fee for the use of the poles provided, however, that nothing herein shall require Franchisee to bear any cost or expense in connection with any such installation and/or maintenance by the City. Franchisee may charge the City an administrative fee for the purposes of reviewing such joint facility installations.

#### **Section 00. Vegetation Management Plan**

A. The Parties recognize that any appropriate vegetation management plan should adequately balance safety, reliability, vegetation health and community aesthetic concerns and the clearance between vegetation and Franchisee's Facilities necessary for public safety and operational reliability.

B. Franchisee will coordinate its vegetation management activities within and/or adjacent to the Franchise Area with appropriate City departments, including Transportation, Fire and Parks. On an annual basis Franchisee will provide to the City a proposed vegetation management plan. Thereafter, upon the request of the City, and no more often than quarterly, Franchisee will meet with the City to coordinate the implementation of the plan; provided however that such commitment to coordinate with the City shall not limit Franchisee's right under this Franchise or duty under law to remove or trim vegetation which, due to proximity to Franchisee's Facilities, poses an imminent risk to public safety.

C. Trimming and removal of vegetation within and/or adjacent to the Franchise Area will be performed using standard practices accepted by the International Society of Arboriculture addressing vegetation health and aesthetics and consistent with practices contained in a Memorandum of Understanding mutually agreed to by, and from time to time amended by mutual agreement of, the Parties.

D. Franchisee will, in coordination with City staff, identify vegetation species appropriate for location in proximity to Franchisee Facilities and shall cooperatively act with the City to promote use of such identified species in proximity to those Facilities.

**Section 00. Moving Buildings Within the Franchise Area**

A. If any person or entity other than the City obtains permission in the form of a permit from the City to use the Franchise Area for the 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 Franchisee for the temporary adjustment of Franchisee's wires to accommodate the moving or removal of such building or other object. Such necessary arrangements with Franchisee shall be made, to Franchisee's satisfaction, not less than fourteen (14) days prior to the moving or removal of said building or other object.

B. In such event, Franchisee 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:

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 Franchisee's business; and

2. The person or entity other than the City obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and hold Franchisee 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.

[For WUTC regulated utilities only]

**Section 00. Notice of Tariff Changes**

Franchisee shall, when making application for any changes in tariffs affecting the provisions of the Franchise, notify the City in writing of the application and provide City with a copy of the submitted application within five (5) days of filing with the WUTC. Franchisee shall further provide the City with a copy of any actual approved tariff(s) affecting the provision of this Franchise.

- [General Franchise Form](#)