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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE PETITION OF:

PUGET SOUND ENERGY, INC.

For a Declaratory Order on Schedule 74 and
the Schedule 74 Design Agreement Between
Puget Sound Energy, Inc. and the City of
Tumwater

No. UE-061626

PUGET SOUND ENERGY, INC.'S
MOTION TO SUBMIT A REPLY IN
SUPPORT OF PETITION FOR REVIEW

PUGET SOUND ENERGY, INC.'S MOTION TO
SUBMIT A REPLY IN SUPPORT OF PETITION
FOR REVIEW

07772-0220/LEGAL13665303.1

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3 **I. INTRODUCTION**

4 Puget Sound Energy, Inc. ("PSE") hereby moves the Washington Utilities and
5 Transportation Commission (the "Commission") pursuant to WAC 480-07-825(5)(b), for
6 leave to file a reply in support of its Petition for Review of the Initial Declaratory Order
7 ("PSE's Petition"). The reply is necessary to respond to new arguments raised by the City of
8 Tumwater ("City") and Commission Staff ("Staff") and to complete the record in this matter.
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15 **II. ARGUMENT**

16 **A. Standard**

17 WAC 480-07-825(5)(b) allows a party to seek leave to file a reply in support of a
18 petition for review, "citing new matters raised in the answer and stating why those matters
19 were not reasonably anticipated and why a reply is necessary." Accordingly, PSE seeks
20 leave to file a reply that addresses certain arguments raised by the City and Staff in their
21 answers which were not reasonably anticipated by PSE. Additionally, a reply will allow
22 PSE to address certain problems and inconsistencies in those arguments and thus provide the
23 Commission with a full and complete briefing on all pertinent issues.
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33 **B. A Reply Is Necessary and Helpful**

34 The answers of Staff and the City to PSE's Petition raise a number of points that are
35 inaccurate, irrelevant, or inconsistent. However, PSE limits its reply to those issues that
36 were not reasonably anticipated by PSE and that will benefit the Commission's
37 understanding of this matter. Accordingly, PSE seeks to reply to only five arguments raised
38 in the answers.
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1 **1. Staff's New and Unanticipated Arguments**

2 First, Staff has now reversed its position that annexation automatically extinguished
3 PSE's 1981 easement (the "Easement"). Despite Staff's assertions that its reversal does not
4 alter its ultimate conclusion that Schedule 74 requires PSE to bear a portion of conversion
5 costs, Staff's argument on this point is logically inconsistent. Once it is admitted that the
6 Easement is an existing property right, the only reasonable conclusions are that PSE's
7 operating rights derive from the Easement and the City must bear 100% of conversion costs
8 under Schedule 74. PSE should be afforded the opportunity to address this reversal of
9 position by Staff.
10

11 Second, Staff raises a discrete and misleading argument when it asserts that the City
12 is the "Grantor" of the Easement because it succeeded in position to the Port of Olympia the
13 same way that PSE succeeded its predecessor, Puget Sound Power & Light Company
14 ("Puget Power"). This argument was not anticipated by PSE, and PSE should be afforded
15 the opportunity to point out the faulty logic in that analogy—mainly, that the City and the
16 Port are distinct legal entities that entered into a land transfer, while PSE is a successor
17 entity to Puget Power.
18

19 Third, Staff has objected to PSE's use of extrinsic evidence to illustrate the parties'
20 prelitigation agreement that Schedule 74 requires the City to pay 100% of the cost of
21 conversion, but in its answer Staff relies on extrinsic evidence to support its view of what
22 the parties intended Schedule 74 to mean. This inconsistent position was unanticipated and
23 PSE should be allowed to address it.
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1 **2. The City's New and Unanticipated Arguments**

2 First, the City's argument as to why the Easement is a public property right relies on
3 a number of misstatements that could not be anticipated by PSE and to which PSE should be
4 allowed to respond. In particular, the City's citation to testimony that surrounded the
5 implementation of Schedule 74 as to what constitutes a public thoroughfare is irrelevant.
6 The Commission should fully understand that it is not the definition of public thoroughfare
7 that is at issue in this case, but whether PSE's *operating rights* have been "granted" by the
8 City or otherwise do not stem from a franchise—regardless of where PSE's facilities are
9 located. Second, the City's citation of *State v. Public Utility District No. 1 of Clark County*,
10 55 Wn.2d 645, 649-50, 349 P.2d 426 (1960), is inapposite. The City's reliance on a 1960
11 case that discusses *police power* and *franchise agreements*—issues not present in this case—
12 is confusing and should be addressed. Third, the City suggests that PSE was negligent in
13 not citing case law subsequent to *In re Algonquin Gas Transmission Co.*, 157 N.Y.S.2d 748,
14 750 (N.Y. Sup. Ct. 1956), that distinguish *Algonquin*. PSE should be allowed the
15 opportunity to explain to the Commission that it did not omit any relevant subsequent law
16 and to explain that the only proposition PSE relied on in *Algonquin* is still true today.
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32 Second, the City has made an argument not anticipated by PSE that *Clark County*, 55
33 Wn.2d at 649-50, somehow supports its argument that the annexation statute, RCW
34 35A.14.900, includes "easement" even though the plain language says only "franchise[s]" or
35 "permit[s]." PSE should be allowed to respond to this point and explain to the Commission
36 that *Clark County* predates the annexation statute and that the legislature was presumed to
37 know of *Clark County* when it enacted the statute. That is, *Clark County* cannot amend or
38 alter a later-existing statute.
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III. CONCLUSION

For the reasons set forth above, PSE respectfully requests that it be allowed to submit a limited reply as to the discrete points mentioned above. In accordance with WAC 480-07-825(5)(b), a copy of the reply is submitted herewith.

RESPECTFULLY SUBMITTED this 24th day of October, 2007.

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