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7 BEFORE THE WASHINGTON STATE
8 UTILITIES AND TRANSPORTATION COMMISSION

9 In the Matter of the Petition of

10 PUGET SOUND ENERGY, INC.

11 For a Declaratory Order on Schedule 74 and
12 the Schedule 74 Design Agreement between
13 Puget Sound Energy, Inc. and the City of
14 Tumwater

No. UE-061626

CITY OF TUMWATER'S MOTION TO
STRIKE PUGET SOUND ENERGY'S
REPLY TO TUMWATER'S ANSWER

15 **I. INTRODUCTION**

16 The City of Tumwater ("City") moves to strike the reply of Puget Sound Energy Inc.
17 ("PSE") to the City's answer to PSE's petition for review of the Commission's Initial
18 Declaratory Order. PSE does not meet the requirements of WAC 480-07-825(5)(b).
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20 **II. ARGUMENT**

21 The Commission's rules adopted in WAC 480-07-825(5)(b) allow a reply only where the
22 matters raised in the answer were not reasonably anticipated. In its motion to submit a reply,
23 PSE claims that it could not have anticipated three aspects of the City's answer. Yet each part of
24 the City's answer to which PSE seeks permission to reply (PSE Motion to Submit a Reply,
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CITY OF TUMWATER'S MOTION TO STRIKE
PUGET SOUND ENERGY'S REPLY TO
TUMWATER'S ANSWER - 1

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1 October 24, 2007 at 3) should have been anticipated. PSE's assertion to the contrary is not
2 credible.

3 A. Adoption of Schedule 74

4 The interpretation of Schedule 74 is the issue in this proceeding. It was PSE that again
5 argued that the Commission's Initial Order did not accurately reflect the history of Schedule 74's
6 adoption and disregarded the *City of Kent* proceeding. (PSE Petition For Review, August 16,
7 2007, at 19-23.) It is hardly surprising therefore that in its Answer the City once again
8 documented the facts surrounding the *City of Kent* case and the hearings which led to the
9 Commission's adoption of Schedule 74. Nothing here should have been unanticipated.

11 B. State v. Public Utility District No. 1 of Clark County

12 The City's citation in its Answer to *State v. Public Utility District No. 1 of Clark County*,
13 55 Wn.2d 645, 349 P.2d 426 (1960) and its recent reaffirmation by the Washington Supreme
14 Court in *Scoccolo Construction, Inc. v. Renton*, 158 Wn.2d 506, 145 P.3d 371 (2006) should
15 likewise have been anticipated by PSE. The Commission's Initial Declaratory Order cited *State*
16 *v. Public Utility District No. 1 of Clark County* in support of its determination that RCW
17 35A.14.900 cancelled PSE's easement. (Initial Declaratory Order, May 25, 2007, at 10, n.20.)
18 Yet PSE's Petition for Review studiously ignored *State v. Public Utility District No. 1 of Clark*
19 *County* and the ALJ's reliance on it. (PSE Petition for Review at 9-12.) It is hardly surprising
20 therefore that in its Answer the City once again discussed the import of that case.

23 C. New York case law

24 PSE's Petition for Review cited a New York case, *In re Algonquin Gas Transmission*
25 *Co.*, 2 Misc.2d 997, 157 N.Y.S.2d 748 (1956), at two different points in its brief as well as citing
26

1 other foreign jurisdiction cases that later cited *Algonquin* (PSE Petition for Review at 10, 13-14).
2 It is hardly surprising therefore that in its Answer the City discussed a subsequent, parallel case
3 from the State of New York that specifically discussed and criticized *Algonquin*. For PSE now
4 to claim that it could not have anticipated the City's citation to and analysis of *Colonial Pipeline*
5 *Company v. State*, 366 N.Y.S.2d 949, 81 Misc.2d 696 (1975) – a case that PSE itself chose not to
6 bring to the attention of the Commission – is just not credible.
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8 **III. CONCLUSION**

9 PSE should have reasonably anticipated each of the three parts of the City's Answer to its
10 Petition for Review of which it now claims surprise. Accordingly, PSE has not met the standard
11 required by WAC 480-07-825(5)(b). The City therefore requests that PSE's Motion to Submit a
12 Reply to the City's Answer be denied, and that PSE's Reply to the City's Answer be stricken.
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14 RESPECTFULLY SUBMITTED this 25th day of October, 2007.

15 FOSTER PEPPER PLLC

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19 Attorneys for the City of Tumwater
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CITY OF TUMWATER'S MOTION TO STRIKE
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