

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

CITY OF KENT,

Petitioner,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

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CITY OF AUBURN, CITY OF  
BREMERTON, CITY OF DES MOINES,  
CITY OF FEDERAL WAY, CITY OF  
LAKEWOOD, CITY OF REDMOND, CITY  
OF RENTON, CITY OF SEATAC, AND  
CITY OF TUKWILA,

Petitioners/Complainants,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKET NO. UE-010778  
(Consolidated)

DOCKET NO. UE-010911  
(Consolidated)

Response of Commission Staff to  
Petitioner City of Kent's Petition for  
Reconsideration of Commission's  
Third Supplemental Order

Petitioner City of Kent (Kent) filed a timely Petition for Reconsideration (petition) of the Commission's Third Supplemental Order (January 28, 2002) in these consolidated cases. By Notice dated February 21, 2002, the Commission invited responses to the petition, to be filed by March 7, 2002. Upon motion of Puget Sound Energy, the date for responses was extended to March 15, 2002. Commission Staff (Staff) submits this response to Kent's Petition for Reconsideration.

Kent raises two issues in its petition. The first is whether PSE's Tariff G, Schedule 71, allows PSE to require easements for those portions of an underground distribution system that are placed above ground. At page 2 of its petition, Kent quotes the first sentence of PSE's Schedule 71, subsection 4, Operating Rights. However, the second sentence of that subsection provides the language for PSE to require operating rights for additional equipment, whether above or below ground, as follows:

In addition, said owners shall provide to the Company adequate legal rights for the construction, operation, repair, and maintenance of *all* electrical facilities installed by the Company pursuant to this schedule, all in a form or forms satisfactory to the Company. (Emphasis added).

Therefore, it is apparent that Kent's requested modification of the language of the Commission's order is not consistent with the terms of PSE's tariff. The tariff apparently anticipated the likelihood that not every piece and part of underground electrical facilities will necessarily be underground. The electrical *system* is either basically an underground system, or one with overhead facilities. However, simply because some of the facilities of an underground electrical system are placed on the surface, rather than beneath it, does not change the overall character of the system in question. This analysis is consistent with the Commission's reasoning and decision in its Third Supplemental Order in UE-010891 and UE-011027, that the use of *the electrical facilities* running through an area was determinative of whether the area was "used exclusively for residential purposes".

Kent's concern about the language of paragraph 64 of the Commission's Order can be remedied (albeit not in the manner requested by Kent) by modifying the language to read as follows:

THE COMMISSION ORDERS That PSE has the discretion under Section 4 of Schedule 71 to require that portions of the existing overhead facilities it agrees to

convert ~~to underground facilities~~ along Pacific Highway South pursuant to that tariff shall be located on private easements that are acquired at no cost to PSE.

Staff believe that the second issue raised by Kent's petition is well taken. PSE's Schedule 71 does not address the issue of *future* relocations, only that of underground conversions. Nevertheless, PSE's sample contract unilaterally imposes the condition that the city pay for future relocations of facilities that PSE places underground at the request of the city. There is possibly also the legitimate factual question in each instance as to whether facilities, once they are placed underground, will need to be relocated in the event of future road widening or other construction, but the issue of payment for future relocations is a matter that should be subject to negotiation between the parties. Paragraph 60 of the Commission's Third Supplemental Order is more broadly worded than the language of the tariff. Staff supports Kent's motion for reconsideration, but would suggest that Paragraph 60 of the order be revised to read as follows:

(4) PSE is entitled to judgment in its favor, as a matter of law, that the disputed requirements concerning easements and rights-of-way PSE proposes to memorialize in contracts that are "in a form satisfactory to the Company," as provided in Section 3 of Schedule 71, are neither inconsistent with the requirements of Schedule 71, nor unreasonable.

(4(a) The disputed requirements concerning future relocations are not contemplated by the language of the Schedule 71. PSE does not have discretion under Schedule 71 to require, as a condition of an underground conversion agreement, a city to agree to pay for all future relocations of equipment that PSE elects to place within the right-of-way as part of the underground conversion project.

Dated this 14<sup>th</sup> day of March 2002.

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