



9605 NE 24th Street • Clyde Hill, Washington 98004-2141
425-453-7800 • Fax: 425-462-1936 • www.clydehill.org

WE-011027
(F)

July 16, 2001

VIA FEDERAL EXPRESS

Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

Re: City of Clyde Hill v. Puget Sound Energy, Inc.
Complaint and Petition for Declaratory Relief and
Motion for Consolidation

Dear Ms. Washburn:

Enclosed are the original and 19 copies of a Complaint and Petition for Declaratory Relief and a Motion for Consolidation on behalf of the City of Clyde Hill. A 3-1/2 inch disk is also enclosed with the documents formatted as Word for Windows. Please return file-stamped copies of the Complaint and the Motion for Consolidation to us in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Very truly yours,

John D. Wallace
City Attorney

JDW/cl
Enclosures

cc: Puget Sound Energy, Inc.
Markham Quehrn-Perkins Coie LLP
Simon ffitch-Office of the Attorney General
Thomas Schooley-WUTC
Mary E. Mirante-City of SeaTac
Laura K. Clinton-Preston Gates & Ellis LLP
Carol S. Arnold-Preston Gates & Ellis LLP
The Honorable Dennis J. Moss, Administrative Law Judge

Posted

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ORIGINAL

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF CLYDE HILL, AN OPTIONAL
MUNICIPAL CODE CITY,

NO. *UE-011027*

Complainant and
Petitioner,

COMPLAINT AND PETITION FOR
DECLARATORY RELIEF

v.

PUGET SOUND ENERGY, INC.,

Respondent.

The City of Clyde Hill (City) for its Complaint and Petition for Declaratory Relief pursuant to RCW 34.05.240, RCW 80.04.110, WAC 480-09-230, 480-09-420 (5)(a), RCW 34.05.482 and WAC 480-09-500 state as follows:

I.

The name and address of the Petitioner is:

City of Clyde Hill
9605 NE 24th Street, Clyde Hill
WA 98004.
Telephone: (425) 453-7800.
Fax: (425) 462-1936.

City Administrator: Mitchell Wasserman
E-Mail address: mitch@clydehill.org

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1 II.

2 The attorneys representing petitioners are:

3 John D. Wallace, City Attorney for Clyde Hill
4 9605 NE 24th Street
5 Clyde Hill, WA 98004
6 Telephone: (425) 453-7800
7 Fax: (425) 462-1936

8 E-Mail address: jdwallace@compuserve.com

9 III.

10 The City requests the Commission to resolve a dispute between Puget Sound Energy ("PSE")
11 regarding the interpretation of PSE's Electric Tariff Fees Schedule 70 (hereinafter referred to as
12 Schedule 70) entitled "Conversions to Underground Service in Residential Areas", which sets forth
13 the terms and conditions under which PSE shall remove its existing overhead lines and poles and
14 install an underground system in areas zoned and used for residential purposes.

15 IV.

16 The City is about to commence an underground conversion of existing overhead electrical and
17 other above ground facilities in an area consisting of approximately 100 residential homes.

18 V.

19 Clyde Hill consists of approximately 2,900 residents and 1,100 households. There
20 are two commercial lots within the corporate limits of the City and certain public and private schools
21 and churches.

22 VI.

23 The Community is primarily located on a hill. As such, many of the homes enjoy and gain
24 their property values from the beautiful views offered. One obvious factor that greatly detracts from
25 these views is criss-crossing utility wires located throughout the City.
26
27

28 **000004**

1 VII.

2 On numerous occasions, the City has helped to organize neighborhood efforts to remove
3 these wires and place them underground. This has been very beneficial to the community and the
4 utility, and has been very costly.

5 VIII.

6 Throughout all of these efforts the City has been treated by PSE as a residential
7 community and the costs of conversions that have been made or the costs of burying the electric
8 utility wires have been assessed under Schedule 70.

9
10 IX.

11 Schedule 70 contains a series of definitions in Section 1. Section 2 provides that the company
12 will install Main Distribution Systems as defined in Section 1a in Schedule 70 and will remove
13 existing overhead electric distribution lines of 15,000 volts or less, and company owned poles "...in
14 areas zoned and used exclusively for residential purposes..." subject to the following provisions:

15 A. "...the company shall have adequate operating rights and..."

16 B. "...the conversion area must be not less than one (1) city block in length or in the
17 absence of city blocks, not less than six (6) continuous building lots abutting each side of the public
18 thoroughfare..." with both sides receiving service from the system.

19
20 X.

21 A neighborhood of about 100 homes in a contiguous location recently petitioned the City
22 Council to form a local improvement district (LID) for the purpose of burying the utility cable and
23 installing street lighting in the neighborhood.

24
25 XI.

26 The City paid PSE \$4,000.00 to develop a set of preliminary design plans in an effort to
27 understand the most costly portion of this project, which is the burial of the electric lines. PSE
28 completed this preliminary design and notified the City that it would attempt to invoke its

1 commercial tariff Schedule 71 on a considerable portion of the project due to the existence of three-
2 phase electrical lines in a portion of the project. This study by PSE, paid for by the City,
3 established the boundary of the proposed LID.

4
5 XII.

6 On June 12, 2001, after a public hearing, the City Council passed Ordinance No. 836 (Exhibit
7 A attached hereto and hereby incorporated by this reference) creating the Local Improvement
8 District No. 2001-01 for the conversion of overhead to underground facilities and ordering the
9 improvements to go forward.

10
11 XIII.

12 The total area within the boundary of the LID is zoned R1 Residential and is used exclusively
13 for residential purposes (see Exhibit B, copy of the City map depicting the zoning of the LID and
14 boundary).

15
16 XIV.

17 The proposed undergrounding would be within the right-of-way and PSE has a current
18 franchise agreement with the City.

19
20 XV.

21 The proposed improvement is over one City block in length and includes more than six
22 contiguous building lots abutting each side of the public thoroughfare and all real property on both
23 sides of each public thoroughfare is to receive electric service from the Main Distribution System.
24 All of this is in accordance with the provisions of PSE Electric tariff G, Schedule 70 Conversion to
25 Underground Service in Residential Areas.

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28 **000006**

1 XVI.

2 Schedule 70 is clear and unambiguous as to when it is to apply. It contains no cross-
3 references or exceptions based upon size or capacity of the system to be converted except that it be
4 15,000 volts or less.

5
6 XVII.

7 The system proposed to be converted to underground in the LID is 15,000 volts or less as
8 engineered and established by PSE.

9
10 XVIII.

11 PSE is attempting to apply Schedule 71 to the Clyde Hill project due to the fact that a
12 portion of the project involves undergrounding three phase power.

13
14 XIX.

15 There is no exception in Schedule 70 if a project contains three phase power. There is no
16 cross-reference in Schedule 70 to Schedule 71.

17
18 XX.

19 If Schedule 71 were to be applied to this project, it would add approximately \$200,000.00 to
20 the total cost or approximately \$2,000.00 per residence.

21
22 XXI.

23 The current Schedule 70 and 71 are documents proposed, drafted, and requested to be
24 imposed upon PSE by PSE.

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28 **000007**

1 XXII.

2 If Schedule 70 is applied to this project, it will have the effect of substantially and
3 detrimentally increasing the cost to the residents within the project by about \$200,000.00 and may
4 be the death knell to the project.

5
6 XXIII.

7 It appears that PSE has recognized the validity of the position of Clyde Hill and other cities
8 with respect to the applicability of tariff 70 as they have on at least one prior occasion earlier this
9 year under Docket No. UE-0101168 attempted to modify the schedule to meet their interpretations.
10 They voluntarily withdrew this earlier proceeding.

11
12 XXIV.

13 In summary, the City of Clyde Hill project meets all of the requirements and fits totally
14 within the clear and unambiguous language of Schedule 70.

15
16 XXV.

17 Relief Requested. The City of Clyde Hill respectfully requests that following the
18 appropriate proceedings the Commission issue an order as follows:

- 19
20 1. Declare that tariff 70 applies to the Clyde Hill Local Improvement District No. 2001-
21 01 underground conversion which is in a residential area that is zoned and used exclusively for
22 residential purposes, regardless of whether the electrical system in the conversion area is single phase
23 or three phase.
- 24 2. For an order directing PSE to proceed forthwith to bury the facilities within the
25 conversion area.
- 26 3. Declare that the maximum payment to PSE for such conversions to underground shall
27 be the payment set forth in Schedule 70.

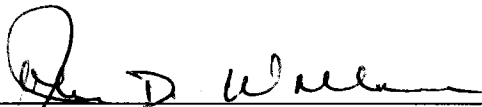
28 **000008**

1 4. Declare the City of Clyde Hill or its present LID project are vested under the now
2 existing version of Schedule 70; and

3 5 Such other further relief as may be just and equitable.

4 Dated this 16th day of July, 2001.

5 OGDEN MURPHY WALLACE, P.L.L.C.

6
7 By: 
8 John D. Wallace
9 Attorney for City of Clyde Hill

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28 **000009**

ORDINANCE NO. 836

AN ORDINANCE ORDERING THE MAKING OF CERTAIN IMPROVEMENTS CONSISTING OF THE UNDERGROUNDING OF OVERHEAD UTILITY LINES PURSUANT TO PROPERTY OWNERS' PETITION THEREFOR; ESTABLISHING LOCAL IMPROVEMENT DISTRICT NO. 2001-01 AND ORDERING THE CARRYING OUT OF THE PROPOSED IMPROVEMENTS, PROVIDING THAT PAYMENT FOR THE IMPROVEMENTS BE MADE BY SPECIAL ASSESSMENTS UPON THE PROPERTY IN THE DISTRICT, PAYABLE BY THE MODE OF "PAYMENT BY BONDS"; AND PROVIDING FOR THE ISSUANCE AND SALE OF LOCAL IMPROVEMENT DISTRICT WARRANTS REDEEMABLE IN CASH OR OTHER SHORT-TERM FINANCING AND LOCAL IMPROVEMENT DISTRICT BONDS.

WHEREAS, a petition for the creation of a local improvement district to provide for making certain improvements consisting of the undergrounding of overhead utility lines, the cost thereof to be borne by the property included in the local improvement district and benefited by those improvements, was filed with the City Clerk-Treasurer; and

WHEREAS, the City Engineer has certified the sufficiency of that petition and caused an estimate to be made of the cost and expense of the proposed improvements and certified that estimate to the City Council, together with all papers and information in its possession touching the proposed improvements, a description of the boundaries or territorial extent of the proposed local improvement district and a statement of what portion of the cost and expense of the improvements should be borne by the property within the proposed improvement district; and

WHEREAS, that estimate is accompanied by a diagram of the proposed improvements showing thereon the lots, tracts, parcels of land, and other property that will be specially benefited by the proposed improvements and the estimated cost and expense thereof to be borne by each lot, tract, and parcel of land or other property; and

WHEREAS, the City Council, by Resolution No. 335 adopted May 8, 2001, fixed June 12, 2001, at 7:00 p.m., local time, in the gymnasium of Clyde Hill Elementary School, located at

9601 NE 24th Street, Clyde Hill, Washington, as the time and place for hearing all matters relating to the proposed improvements and all objections thereto and for determining the method of payment for the improvements; and

WHEREAS, due notice of the above hearing was given in the manner provided by law and Resolution No. 335, and the hearing was held by the City Council on the date and at the time above mentioned, and all persons appearing at such hearing and wishing to be heard were heard; and

WHEREAS, a number of people spoke for and against the improvements, and all comments were duly considered by the City Council; and

WHEREAS, the City Council has determined it to be in the best interests of the City that the improvements as hereinafter described be carried out and that a local improvement district be created in connection therewith; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLYDE HILL, WASHINGTON, as follows:

Section 1. The City Engineer has examined the petition and has certified that he has determined such petition to be sufficient and that it has been signed by the owners of 61.6% of the area included in the proposed district.

Section 2. The City Council of the City of Clyde Hill, Washington (the "City"), orders the making of certain improvements consisting of the undergrounding of overhead utility lines as described in the property owners' petition therefor, to include such proper appurtenances, if any, as may be determined by the Council.

All of the foregoing shall be in accordance with the plans and specifications therefor approved by the City Engineer, as may be modified by the City Council so long as such modification does not affect the general purposes of the improvements.

The City Council, at its discretion, shall decide what particular facilities are needed, where they are to be located, the order of proceeding, and the specifications for construction and equipment. Such decisions shall be final unless revised by the Council of its own initiative.

Section 3. There is created and established a local improvement district to be called Local Improvement District No. 2001-01 of the City of Clyde Hill, Washington (the "District"), the boundaries or territorial extent of the District being more particularly described in Exhibit A attached hereto and by this reference incorporated herein.

Section 4. The total estimated cost and expense of the improvements is declared to be \$983,619, of which approximately \$833,619 of the entire cost and expense shall be borne by and assessed against the property specially benefited by such improvements included in the District that embraces as nearly as practicable all property specially benefited by such improvements. The City intends to contribute the balance of such cost and expense.

Section 5. In accordance with the provisions of RCW 35.44.047, the City may use any method or combination of methods to compute assessments that may be deemed to more fairly reflect the special benefits to the properties being assessed than the statutory method of assessing the properties.

Section 6. Local improvement district warrants may be issued in payment of the cost and expense of the improvements herein ordered to be assessed, such warrants to be paid out of the Local Improvement Fund, District No. 2001-01, hereinafter created and referred to as the Local Improvement Fund, and, until the bonds referred to in this section are issued and delivered to the purchaser thereof, to bear interest from the date thereof at a rate to be established hereafter by the City Clerk-Treasurer, as issuing officer, and to be redeemed in cash and/or by local improvement district bonds herein authorized to be issued, such interest-bearing warrants to be hereafter referred to as "revenue warrants." In the alternative, the City hereafter may provide by ordinance

for the issuance of other short-term obligations to provide interim financing pursuant to Chapter 39.50 RCW.

If the City shall authorize expenditures to be made for such improvements (other than for any cost or expense expected to be borne by the City) prior to the date that any short-term obligations or local improvement district bonds are issued to finance the improvements, from proceeds of interfund loans or other funds that are not, and are not reasonably expected to be, reserved, allocated on a long-term basis or otherwise set aside to pay the cost of the improvements herein ordered to be assessed against the property specially benefited thereby, the City declares its official intent that those expenditures, to the extent not reimbursed with prepaid special benefit assessments, are to be reimbursed from proceeds of short-term obligations or local improvement district bonds that are expected to be issued for the improvement in a principal amount not exceeding \$983,619.

The City is authorized to issue local improvement district bonds for the District that shall bear interest at a rate and to be payable on or before a date to be hereafter fixed by ordinance. The bonds shall be issued in exchange for and/or in redemption of any and all revenue warrants issued hereunder or other short-term obligations hereafter authorized and not redeemed in cash within twenty days after the expiration of the thirty-day period for the cash payment of assessments without interest on the assessment roll for the District. The bonds shall be paid and redeemed by the collection of special assessments to be levied and assessed against the property within the District, payable in annual installments, with interest at a rate to be hereafter fixed by ordinance under the mode of "payment by bonds," as defined by law and the ordinances of the City. The exact form, amount, date, interest rate, and denominations of such bonds hereafter shall be fixed by ordinance of the City Council. Such bonds shall be sold in such manner as the City Council hereafter shall determine.

Section 7. In all cases where the work necessary to be done in connection with the making of such improvements is carried out pursuant to contract upon competitive bids (and the City shall have and reserves the right to reject any and all bids), the call for bids shall include a statement that payment for such work will be made in cash warrants drawn upon the Local Improvement Fund.

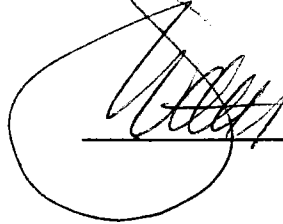
Section 8. The Local Improvement Fund for the District is created and established in the office of the City Clerk-Treasurer. The proceeds from the sale of revenue warrants or other short-term obligations drawn against the fund that may be issued and sold by the City and the collections of special assessments, interest, and penalties thereon shall be deposited in the Local Improvement Fund. Cash warrants to the contractor or contractors in payment for the work to be done by them in connection with the improvements and cash warrants in payment for all other items of expense in connection with the improvements shall be issued against the Local Improvement Fund.

Section 9. Within 15 days of the passage of this ordinance there shall be filed with the City Clerk-Treasurer the title of the improvement and District number, a copy of the diagram or print showing the boundaries of the District and the preliminary assessment roll or abstract of such roll showing thereon the lots, tracts, and parcels of land that will be specially benefited thereby and the estimated cost and expense of such improvements to be borne by each lot, tract, or parcel of land. The City Clerk-Treasurer shall immediately post the proposed assessment roll upon his index of local improvement assessments against the properties affected by the local improvement.

PASSED by the City Council of the City of Clyde Hill this 12 day of June, 2001.

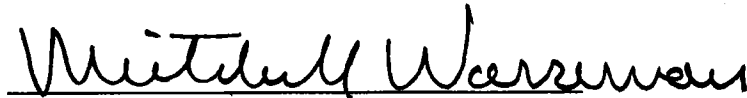
APPROVED by the Mayor of the City of Clyde Hill this 12 day of June, 2001.

CITY OF CLYDE HILL, WASHINGTON




Mayor

ATTEST AUTHENTICATED:



City Clerk-Treasurer

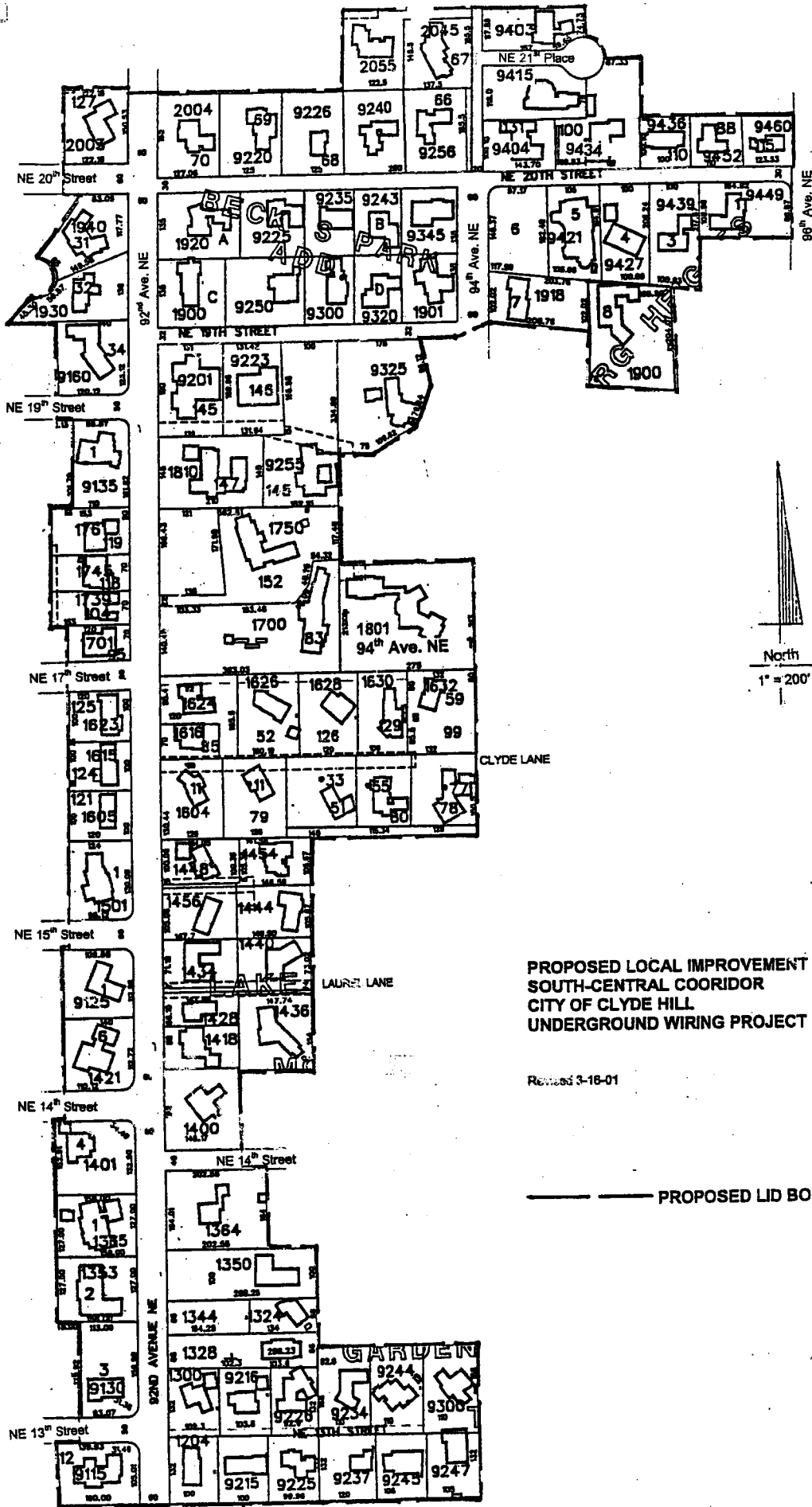
APPROVED AS TO FORM:



Bond Counsel

FILED WITH THE
CITY CLERK-TREASURER:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.:

6-7-01
6-16-01
6-21-01
836



**PROPOSED LOCAL IMPROVEMENT DISTRICT
SOUTH-CENTRAL COORIDOR
CITY OF CLYDE HILL
UNDERGROUND WIRING PROJECT**

Revised 3-16-01

— — — — — PROPOSED LID BOUNDARY

South Corporate Limit
City of Clyde Hill

000016



9605 NE 24th Street • Clyde Hill, Washington 98004-2141
425-453-7800 • Fax: 425-462-1936 • www.clydehill.org

CERTIFICATION

I, the undersigned, City Clerk-Treasurer of the City of Clyde Hill, Washington (the "City"), hereby certify as follows:

1. The attached copy of Ordinance No. 836 (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City on June 12, 2001, as that ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect five days after the publication of its summary in the City's official newspaper; and

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of July 2001.

CITY OF CLYDE HILL, WASHINGTON

A handwritten signature in cursive script, reading "Mitchell Wasserman", written over a horizontal line.

MITCHELL WASSERMAN
City Clerk-Treasurer

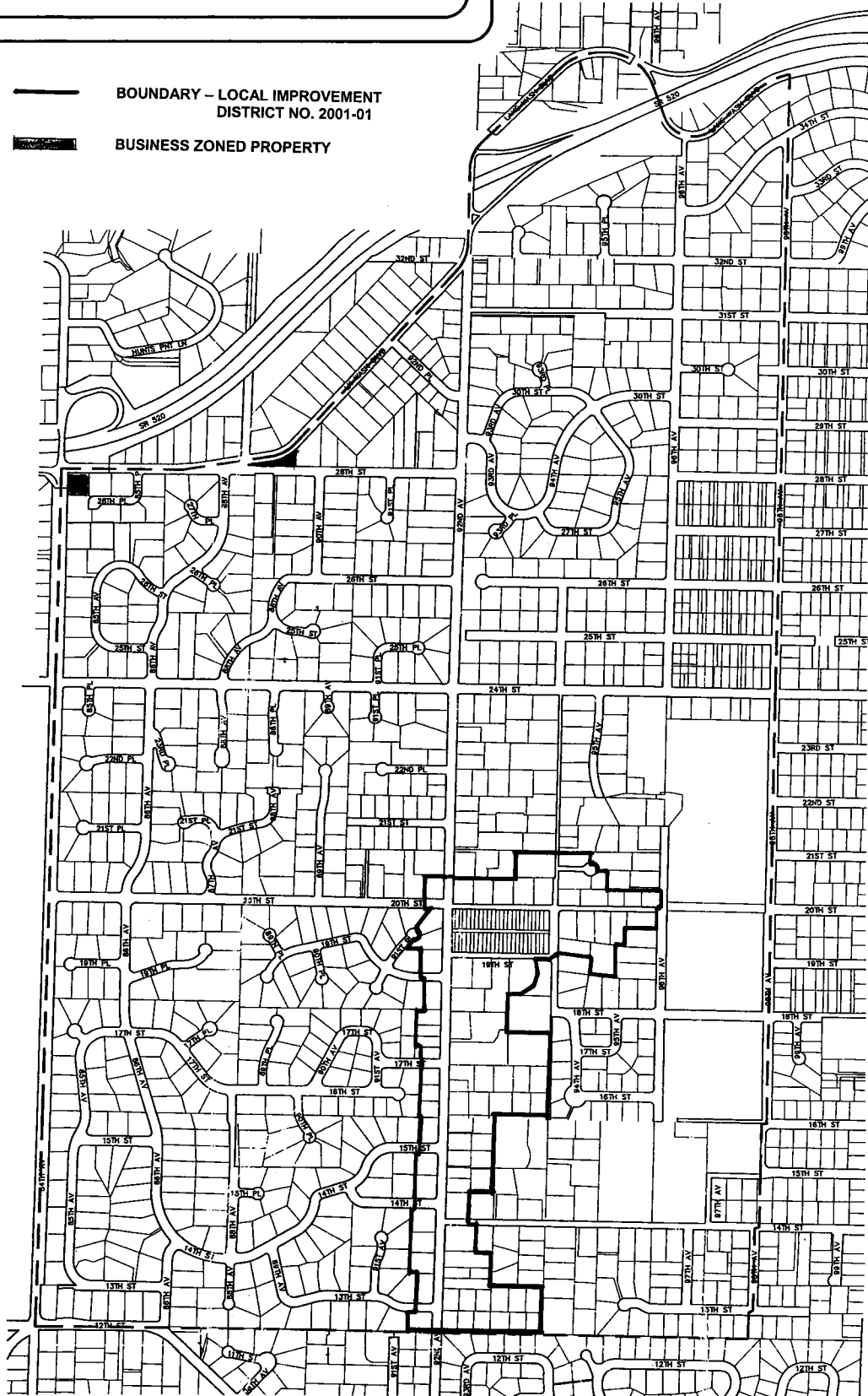
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ZONED R-1 (RESIDENTIAL)

EXHIBIT B

- BOUNDARY – LOCAL IMPROVEMENT DISTRICT NO. 2001-01
- ▬ BUSINESS ZONED PROPERTY



ORIGINAL

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF CLYDE HILL, AN OPTIONAL
MUNICIPAL CODE CITY,

Complainant and
Petitioner,

v.

PUGET SOUND ENERGY, INC,

Respondent.

NO.

MOTION TO CONSOLIDATE WITH CITY
OF SEATAC V. PSE
DOCKET NO. UE-010891

The Petitioner and Complainant, City of Clyde Hill, hereby move the Commission that this matter be consolidated with the City of SeaTac v. PSE Petition and Complaint, Docket No. UE-010891 for the reason that both cases have a common legal issue as to the applicability of Electric Tariff G Schedule 70 and 71 to residential areas that meet all of the specified requirements of Schedule 70.

This motion is based upon the petition and complaint of the City of SeaTac in Docket No. UE-010891, and the Declaration of John D. Wallace attached hereto.

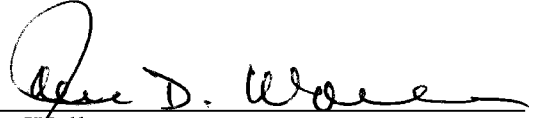
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01 JUN 18 11:11:00
OGDEN MURPHY WALLACE
P.L.L.C.
1601 5TH AVENUE
SUITE 2100
SEATTLE, WA 98101
TEL: 206-447-7000
FAX: 206-447-0215

OGDEN MURPHY WALLACE, P.L.L.C.

Dated this 16th Day of July, 2001.

By:



John D. Wallace

Attorney for Complainant/Petitioner City of Clyde Hill by John D. Wallace, City Attorney

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF CLYDE HILL, AN OPTIONAL
MUNICIPAL CODE CITY,

Complainant and
Petitioner,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

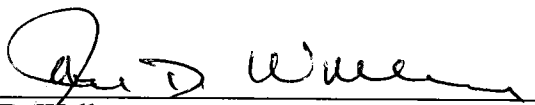
NO.

DECLARATION OF JOHN D. WALLACE IN
SUPPORT OF MOTION FOR
CONSOLIDATION WITH CITY OF
SEATAC V. PSE, DOCKET NO. UE-010891

Under penalty of perjury, I state that I am the attorney for the Petitioner/Complainant Clyde Hill in the above entitled matter. I have read the City of SeaTac v PSE Complaint and Petition for Declaratory Judgement, Docket No. UE-0108091, and state that specifically paragraph three, four, five, six, seven, and eight of that Complaint and Petition frame essentially the same legal issues facing the City of Clyde Hill. It is my belief that a consolidation of these two matters will expedite resolution of the dispute as to the scope of Schedule 70 and 71 and will benefit all of the parties hereto.

OGDEN MURPHY WALLACE, P.L.L.C.

Dated this 16th Day of July, 2001.

By: 

John D. Wallace
Attorney for Complainant/Petitioner City of Clyde Hill by John D. Wallace, City Attorney

000021

Certificate of Service

I HEREBY CERTIFY that I have sent a facsimile, followed by U.S. mail, this day the attached COMPLAINT AND PETITION FOR DECLARATORY RELIEF and MOTION FOR CONSOLIDATION and DECLARATION OF JOHN D. WALLACE upon the following:

Steven R. Secrist
Puget Sound Energy, Inc. (via facsimile followed by U.S. mail)
P.O. Box 87034
Bellevue, WA 98009-9734
Fax: 425-462-3414

Kirstin S. Dodge
Perkins Coie LLP
One Bellevue Center
411 108th Avenue NE, Suite 1800
Bellevue, WA 98004-5584
Fax: 425-453-7350

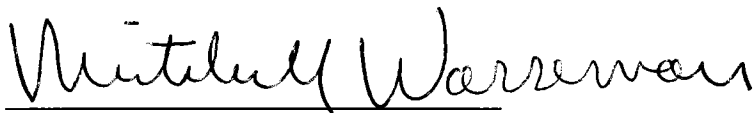
Simon ffitich . (via facsimile followed by U.S. mail)
Office of the Attorney General
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
Fax: 206-389-2058

Thomas Schooley . (via facsimile followed by U.S. mail)
Policy Research Specialist
Washington Utilities and Transportation Commission
1300 Evergreen Park Drive SW
Olympia, WA 98504
Fax: 360-586-1150

Mary E. Mirante
City of SeaTac
17900 International Blvd., Suite 401
SeaTac, WA 98188-4236
Fax: 206-433-1833

Carol S. Arnold
Laura K. Clinton
Preston Gates & Ellis LLP
701 Fifth Avenue, Suite 5000
Seattle, WA 98104-7078
Fax: 206-623-7580

Dated at Clyde Hill, Washington this 16th day of July, 2001.



Mitchell Wasserman
City Administrator

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