

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.

DOCKET UE-061626

REPLY OF COMMISSION STAFF  
TO PUGET SOUND ENERGY'S  
MOTION FOR ORAL ARGUMENT  
AND MOTION TO REPLY IN  
SUPPORT OF PETITION FOR  
REVIEW

**I. STAFF REPLY TO MOTION FOR ORAL ARGUMENT**

1 Puget Sound Energy, Inc. ("PSE" or "the Company") requests oral argument with  
respect to its Petition for Review of the Initial Declaratory Order. Commission Staff  
believes that all parties have had ample opportunity to argue their respective positions  
regarding the tariff interpretation issues in this case and, therefore, that oral argument is not  
necessary.

2 However, the Commission may still have questions of the parties regarding the  
issues that they have already briefed. Thus, Staff has no objection to oral argument if oral  
argument would assist the Commission in its resolution of this matter.

**II. STAFF REPLY TO MOTION TO REPLY IN SUPPORT OF PETITION FOR  
REVIEW**

3 The Company asks for permission to reply to three aspects of Staff's answer to the  
Company's Petition for Review of the Initial Declaratory Order. The Commission's rules  
allow such a reply only to respond to "new matters raised in the answer [that were] were not

reasonably anticipated.”<sup>1</sup> In addition, the party seeking to reply must demonstrate “why a reply is necessary.”<sup>2</sup> PSE has failed to satisfy each of these standards and, thus, its motion to reply to Staff should be denied.

4 First, the Company seeks to reply to Staff’s agreement that RCW 35A.14.900 does not extinguish PSE’s easement in the Tumwater Boulevard right-of-way.<sup>3</sup> PSE ignores, however, Staff’s ultimate position that, despite its agreement, PSE’s electric facilities are still located inside a public right-of-way, and pursuant to rights granted previously by the City by franchise and by easement.<sup>4</sup> There is nothing about that position that is new or unanticipated. It has been Staff’s position from the outset.<sup>5</sup>

5 Second, the Company claims that Staff raises a “discrete and misleading” argument by asserting that the City is the “Grantor” of the easement because it succeeded to the Port of Olympia in the same way that PSE succeeded to Puget Sound Power & Light Company.<sup>6</sup> The precise argument raised by Staff was already addressed by the City.<sup>7</sup> Thus, there is nothing about the argument that is new or should not have been anticipated by the Company.

6 Third, the Company alleges it could not have anticipated Staff’s “inconsistent position” to rely on the Project Design and Construction agreements executed by PSE and the City, but to disregard PSE’s use of extrinsic evidence regarding the City’s pre-litigation interpretation of Schedule 74.<sup>8</sup> Again, there is nothing about Staff’s position that is new or

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<sup>1</sup> WAC 480-07-825(5)(b).

<sup>2</sup> *Id.*

<sup>3</sup> PSE Motion at 2:1-17 and Reply at 2:2-25.

<sup>4</sup> Staff Answer at ¶29.

<sup>5</sup> Staff Response to Motions for Summary Determination.

<sup>6</sup> PSE Motion at 2:19-31 and Reply at 2:29-39.

<sup>7</sup> City of Tumwater’s Cross Motion for Summary Determination at ¶53.

<sup>8</sup> PSE Motion at 2:33-41 and Reply at 2:41-3:23.

that should not have been anticipated by the Company since the City referenced at the outset these same agreements and their import.<sup>9</sup>

7           Moreover, there is a dramatic difference between the deposition testimony discussed by PSE, and the Project Design and Construction agreements referenced by Staff and the City. The former is irrelevant to the proper interpretation of Schedule 74 by the Commission, while the latter are specific requirements of Schedule 74 itself.<sup>10</sup> Thus, there is no inconsistency on Staff's part for PSE to now claim is new or unanticipated.

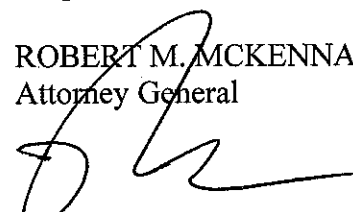
8           Finally, the Company has failed to demonstrate why its reply is necessary. Each of the points raised by PSE merely repeats an argument it has raised from the outset. Its reply does nothing more than burden the record, the Commission and the parties.

9           The Commission should deny the Company's Motion to Submit a Reply in Support of Petition for Review.

DATED this 26<sup>th</sup> day of October, 2007.

Respectfully submitted,

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Attorney General



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<sup>9</sup> City of Tumwater's Cross Motion for Summary Determination at ¶45.

<sup>10</sup> Schedule 74, Original Sheet No. 74, section 2.