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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

NO. UE-010911

Complainants,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

In the Matter of the Petition of

NO. UE-010778

CITY OF KENT,

PUGET SOUND ENERGY, INC.'S
RESPONSE TO CITY OF KENT'S
MOTION FOR RECONSIDERATION

For Declaratory Relief Interpreting
Schedule 71 of Electric Tariff G.

I. INTRODUCTION

PUGET SOUND ENERGY, INC.'S RESPONSE TO
CITY OF KENT'S MOTION FOR
RECONSIDERATION - 1

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1. Puget Sound Energy, Inc. ("PSE") hereby submits its response in opposition to Petitioner City of Kent's ("Kent's") Petition for Reconsideration of the Commission's January 28, 2002 Third Supplemental Order ("Petition").

2. Kent's Petition suggests what it claims are a few "limited" changes to the Commission's Third Supplemental Order: Declaratory Order on Motions for Summary Determination ("Order"). However, Kent's proposed changes would gut the Commission's Order, and are without merit. The Commission should deny Kent's Petition.

II. ARGUMENT

A. Kent's Claim that Pad-Mounted Electrical Facilities are not "Underground" Facilities Is A Creative Attempt to Completely Undermine the Commission's Order.

3. Having obtained a declaratory order from the Commission that it does not like, Kent now seeks to significantly weaken the Order by arguing a new point that it failed to make in its summary determination briefing. Kent claims that pad-mounted facilities such as transformers and switches are not "underground" facilities, so Schedule 71 does not permit PSE to require such facilities to be placed on private property on easement. Petition at 2-4.

4. Section 1.c of PSE's form Schedule 71 Underground Conversion Agreement ("Form Agreement") was before the Commission in this proceeding. Stipulated Exhibit 16. It clearly refers to pad-mounted electrical facilities, including transformers and switches. Form Agreement, § 1.c, Stipulated Exhibit 16 at 3. Yet, Kent never claimed that pad-mounted facilities were outside the scope of the term "underground" in Schedule 71, Section 4. *See* Comprehensive Issues List; Petitioner City of Kent's Amended Motion for Summary Determination ("Kent's Brief") at 1-2, 6.

PUGET SOUND ENERGY, INC.'S RESPONSE TO
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5. In any case, Kent's argument has no merit. Schedule 71 concerns conversion of overhead electric distribution systems (i.e. aerial systems located on poles) to "underground electric distribution system[s]." Schedule 71, §§ 1.a., 1.b.; Schedule 71, § 2 (conversion includes removal of poles and wires). Underground electrical systems include pad-mounted facilities, as is amply demonstrated through the evidence that is before the Commission in this proceeding. *See, e.g.*, Declaration of Lynn F. Logen ("Logen Decl.") at ¶ 4 ("PSE intends to design its underground system for the Pacific Highway South projects so that facilities other than cable and conduit are placed on private property, including pad-mounted facilities"), ¶ 9 ("Least-cost principles do not support installation of total underground equipment just so that facilities can be placed in public rights-of-way, as the Cities suggest, because that equipment is significantly more expensive than pad-mounted equipment."), ¶ 23 ("pad-mounted transformers or switches" are "the most complicated and expensive type of underground facility to install and relocate"); Declaration of Mike Copps ("Copps Decl.") at ¶ 19 (comparing relocation costs of underground systems versus overhead systems, with examples of relocation costs for pad-mounted transformers versus relocation costs for poles with transformers); Declaration of Andy Lowrey ("Lowrey Decl.") at ¶ 4 (describing placement of pad-mounted equipment on easements in conversions), ¶¶ 12-15 (discussing use of pad-mounted equipment versus "submersible" or "total underground" equipment in underground conversions); Declaration of Greg Zeller at ¶ 5 (Zeller ensured that junior engineers "were placing our pad-mounted facilities on private property on easements as a rule" in underground conversions), ¶¶ 11-12 (same). It is unusual for PSE's underground systems to make use of "submersible" or "total underground" facilities due to the high cost and decreased reliability of such equipment as compared to pad-mounted facilities. *See* Logen Decl. at ¶ 9; Copps Decl. at ¶ 19; Lowrey Decl. at ¶ 14.

PUGET SOUND ENERGY, INC.'S RESPONSE TO
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6. Comparison of Schedule 71 with Schedule 70 further demonstrates that the "underground" facilities referred to in Schedule 71 include pad-mounted facilities. Schedule 70 includes an option for installation of an underground system utilizing "subsurface-mounted transformers" (but not switches), at significantly higher cost to the requesting customer than installation of "surface-mounted transformers." Schedule 70, Section 3.b(1). Schedule 71 does not provide this option to customers. Underground systems installed pursuant to Schedule 71 include pad-mounted facilities, and are not excluded from Section 4 of Schedule 71.

7. Furthermore, Kent fails to provide any reason why its proposed interpretation of Schedule 71 makes sense, or is just or reasonable. The Commission has determined that PSE's cost-based rationale for requiring certain facilities to be placed on private property is not unreasonable, and that it is "unreasonable for the cities to expect PSE to bear a significant share of undergrounding costs under Schedule 71 . . . , and to agree to terms that would potentially leave the Company liable for the costs of future relocation of the same facilities." Order at ¶ 32. Kent's Petition does not challenge this determination. Why should PSE have the discretion to require location of submersible transformers or switches on private property, but not pad-mounted transformers or switches? It would be unreasonable to interpret Schedule 71 such that PSE would have discretion to require total underground facilities used in its underground systems to be placed on private property on easement, but not pad-mounted facilities used in PSE's underground systems.

8. Kent claims that if the Commission does not "modify" paragraph 64 of its Order "to more explicitly address" this issue, "PSE may continue to exceed its discretion." Petition at 3. However, as described above, the Commission has determined that PSE is acting within its discretion when it requires facilities associated with a new underground system to be placed on private property on easement.

PUGET SOUND ENERGY, INC.'S RESPONSE TO
CITY OF KENT'S MOTION FOR
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Order at ¶ 32. The Commission has also recognized that "there must be contract provisions that reflect the practical consequences of that exercise of discretion." Id. at ¶ 33. Because PSE's underground systems in commercial areas utilize pad-mounted transformers and switches almost universally, rather than total underground transformers and switches, Kent's Petition amounts to a creative attempt to completely undercut the Commission's Order and PSE's discretion to place facilities on private property on easement as part of a commercial conversion.

9. For these reasons, the Commission should deny Kent's petition to modify paragraph 64 of the Order.

B. Kent's Arguments Regarding Future Relocations Merely Repeat Matters that the Commission has Already Considered and Correctly Decided

10. Kent claims that the Order "does not address the specific 'future relocation cost' charges imposed by PSE in Section 1.e of PSE's underground conversion agreement." Petition at 4. Kent is incorrect. The parties' briefing presented extensive argument regarding future relocation issues, including Kent's and the Cities' challenge to Section 1.e of PSE's Form Agreement. Kent's Brief at 2, 5-6, 14-15; Cities' Motion for Summary Determination and Memorandum in Support ("Cities' Brief") at 32; PSE's Response to Motions for Summary Determination and Cross Motion for Summary Determination ("PSE's Brief") at 34-38. The Order notes that PSE will agree to place some facilities on the public rights-of-way as part of a conversion "only if the Company is indemnified against having to bear the expense of any future relocation of the underground facilities." Order at ¶ 24. The Order also notes the Cities' arguments that "nothing in Schedule 71 allows PSE to insist on a contract term committing the cities to pay 100 percent of any future relocation of facilities PSE would prefer to place on private easements but agrees to place within public rights-of-way." Order at ¶ 25. The Commission ultimately concluded that the challenged provisions are consistent with Schedule 71. Order at

PUGET SOUND ENERGY, INC.'S RESPONSE TO
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¶¶ 20, 34-35, 60, 64. Clearly, the Commission addressed PSE's requirements regarding future relocation costs, and declared that such requirements are consistent with Schedule 71.

11. Kent further claims that PSE's requirements regarding future relocations are contrary to common law and existing franchises. Petition at 4-7. These arguments were also fully briefed to the Commission and decided in PSE's favor. Kent's Brief at 14-15; Cities' Brief at 21, 32; PSE's Brief at 36-38; Order at ¶¶ 14, 23-25, 32-35, 59-60, 64-65. As described in PSE's briefing on summary determination, Kent's arguments fail to recognize the fundamental distinction between relocation of overhead facilities to new overhead locations versus replacement of overhead facilities with a new underground system. *See* PSE's Brief at 9-10, 37; Order at ¶ 14.

12. Finally, Kent suggests that Section 1.e of the Form Agreement, combined with the Order, will permit PSE to unilaterally place facilities in the public rights-of-way, whether or not a city wants to accept the condition of such placement (i.e., responsibility for the costs of future relocation of such facilities). Petition at 8-9. Kent's argument misreads Section 1.e. The Form Agreement provides that facilities that would have been placed on private property will only be placed in the public rights-of-way if, among other things,

the governmental authority owning or controlling the rights-of-way *has agreed* to pay one hundred percent (100%) of the cost of any future relocation of facilities located on rights-of-way under this provision....

Form Agreement, § 1.e. (emphasis added). PSE has developed a separate "perpetuity agreement" for documenting such agreement. PSE's judgment with respect to placement of facilities in the public rights-of-way relates to PSE's ability to refuse to agree to such placement. Nothing in Section 1.e provides that PSE may unilaterally place facilities in the public rights-of-way and then demand that a city pay for future relocation, absent the city's agreement to do so. If a city does not wish to agree to pay future relocation costs as provided in Section

PUGET SOUND ENERGY, INC.'S RESPONSE TO
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1.e, then alternate arrangements would have to be made or the conversion will not go forward.

13. Having built a straw man with respect to the foregoing argument, Kent then proceeds to burn the straw and the barn around it through its suggested modification to paragraph 60 of the Order. Kent suggests that the Commission add the following language:

(2) Although PSE may engage in mutual *quid pro quo* negotiation with cities over costs of hypothetical future facility relocations, PSE does not have discretion under Schedule 71 to *require* as a condition of undergrounding that a City agree to pay for all future relocations of equipment that PSE elects to place within right of way as part of the undergrounding project.

Petition at 11. Kent's proposed modification would gut the Commission's determinations that PSE has a right to insist on indemnification for future relocation costs as a condition of performing conversions, and that PSE is not required to perform a conversion if "cities refuse to execute contracts that include such terms." Order at ¶¶ 32-35.

III. CONCLUSION

14. The Commission and parties spent months litigating and deciding these consolidated proceedings because the cities refused to execute PSE's Form Agreement, but claimed that PSE was nevertheless required to perform underground conversions for them. Among other things, the cities challenged the easement and relocation provisions in the Form Agreement. Ultimately, the Commission issued a declaratory order in PSE's favor on these issues. The Commission should reject Kent's effort to undermine and reverse its Order, and deny the Petition.

PUGET SOUND ENERGY, INC.'S RESPONSE TO
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DATED: March ____, 2002.

PERKINS COIE LLP

By _____
Kirstin S. Dodge
Attorneys for Puget Sound Energy, Inc.

PUGET SOUND ENERGY, INC.'S RESPONSE TO
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RECONSIDERATION - 8

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by overnight mail, postage prepaid, to:

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Dated at _____, Washington, this _____ day of _____, 2002.

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