

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Lake Washington School District No. 414,)	
)	
Complainant,)	DOCKET NO. UE-990917
)	
v.)	
)	AMENDED COMPLAINT
Puget Sound Energy, Inc.,)	OF COMPLAINANT
)	
Respondent.)	
)	

As its amended complaint, Lake Washington School District No. 414 (“District”) alleges as follows:

A. PSE Failed to Charge the District According to Schedule 71 of Electric Tariff G

This complaint is made pursuant to RCW 80.04.220-.230 for refund of fees charged by Puget Sound Energy (“PSE”) on two construction projects in 1997 and 1998 that the District believes were in excess of lawful rates at the time the charges were made.

1. Site 23

Site 23 is known as Redmond Elementary School and is located in downtown Redmond. The project address is 16800 N.E. 80th Street, Redmond. As part of the construction, the District added one full lane to the N.E. 80th arterial. The District entered into an agreement with PSE for underground utility conversion. PSE took down distribution lines on several streets adjacent to the school, buried the lines and removed power poles. The lines and power poles were all owned by PSE. The lines were in a public right of way along N.E. 80th, N.E. 83rd, 167th Avenue N.E. and 169th Avenue N.E. PSE charged \$119,313.92 for the underground conversion work at Site 23 and the District paid this amount to Korsmo Construction, the general contractor, on or about March 1, 1998.

2. Site 24

Site 24 is the Albert Einstein Elementary School that was built on a vacant site at N.E. 116th Street in Redmond. As part of the construction, the District added one full lane to the N.E.

LIVENGOOD, CARTER, TJSSEM,
FITZGERALD & ALSKOG
620 KIRKLAND WAY, SUITE 200
P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

116th arterial. As with Site 23, PSE agreed to remove the overhead power lines and poles and underground utilities fronting the school and these were all owned by the utility. PSE charged the District \$76,293.56 for the cost of undergrounding these utilities, which the District paid on July 1, 1997.

3. Bella Bottega Project

The Site 23 and 24 conversion projects are substantially similar to the Bella Bottega conversion project where PSE charged the developer only 30% of the conversion costs pursuant to Schedule 71. The Bella Bottega project was at SR 202 and also involved widening the road as required by the City of Redmond. In April 1996, PSE agreed the developer only had to pay 30% of the conversion costs pursuant to Section 3(b) of Schedule 71. PSE did not claim that Schedule 85 applied or that the developer had to pay 100% of the conversion costs because the City was requiring the road widening and undergrounding of utilities along SR 202. The District believes it should receive the same treatment as the Bella Bottega developer received from PSE. There is no material difference between the Bella Bottega project and the District's projects. The District's investigation is continuing of other projects that were granted discounts under Schedule 71 for underground conversions.

4. Contacts Made with PSE

On both school projects, PSE did not offer any rebates or discounts to Lake Washington School District for undergrounding the utilities. After the District paid PSE on the two projects, the District was informed by City of Redmond officials that the District might be entitled to receive a rebate for some of the costs of the conversion project. The District made inquiry to PSE.

Before the original complaint was filed with WUTC, PSE refused to give the District a timely or reasonable explanation of why the discounts specified in Section 3(b) of Schedule 71 did not apply to the District's projects at Sites 23 and/or 24. In 1999, the District raised the issue with PSE employee John Straws about whether the District qualified for any discounts under the electrical tariffs. On April 28, 1999, Mr. Straws stated to the District, without mentioning Schedule 71:

From my investigation into your request for reimbursement of Puget Sound Energy fees for undergrounding the power to Site 23 and 24 and the Line Extensions to each site I find the expense is non-refundable. Established in our Rates and Tariffs is the different Schedules that apply to each situation. I will send you a copy of the sections that apply. Schedule 85 Electric Tariff G paragraph 3 and 16 apply. If you have more questions please call me at . . .

The District then contacted the Commission and was directed by Commission staff to Schedule

LIVENGOOD, CARTER, TJSSEM,
FITZGERALD & ALSKOG
620 KIRKLAND WAY, SUITE 200
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71 of Electric Tariff G. This was the first time the District was made aware of the Schedule 71 language. The District then contacted Mr. Straws again to provide him with the reasons why the District believed the projects qualified for discounts under Schedule 71 and to specifically ask him to inform the District why the projects did not qualify for a reduction of fees under Schedule 71, if that was PSE's position. Mr. Straws' last message to the District dated June 3, 1999, stated:

I spoke to my supervisor about your request for a refund and about the rates and tariff that apply in this case and the information I sent you is correct. Schedule 71 does not apply to you. I do not know how much more information I can give you to satisfy this request. If you need more information, please contact our claims department, 1-888-225-5773. John Straws.

5. Elements of District's Claim

Based on its review, the District believes it is entitled to a refund pursuant to Electric Tariff G, Schedule 71, Conversion to Underground Service In Commercial Areas. The projects met all the substantive criteria to qualify the District for a 70% refund of the conversion costs at both sites:

- a. The existing overhead electric distribution lines were 15,000 volts or less and included Company-owned poles.
- b. The areas where the sites are located are either zoned and used for commercial purposes or are in an area of Redmond which has electrical load requirements which are comparable with developed commercial areas.
- c. At the time of the installation, PSE had the right to render service in the City of Redmond pursuant to a franchise.
- d. The conversion areas were not less than two (2) continuous city blocks in length with all real property on both sides of each public street to receive electric service from the Main Distribution System. At Site 23 the continuous city blocks run from 80th to 83rd Streets. Underground power lines cross under 169th through conduits to service residences across the street. At Site 24 the 116th Street arterial from approximately 180th to 182nd Avenue N.E. was converted to underground power, and is equivalent to at least two continuous city blocks in length. Underground power lines cross under 116th and services the residence at 18038.
- e. At both sites the overhead electrical system was required to be relocated

LIVENGOOD, CARTER, TJSSEM,
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P.O. BOX 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

due to the addition of one full lane or more to an arterial street or road. A lane was added at 80th street at Site 23, and at 116th at Site 24. Construction of these new lanes required the relocation of the overhead electrical system.

Pursuant to Section 3(b)(1) of Schedule 71 (issued April 10, 1997), the District believes it was only required to pay PSE 30% of the charged costs of the conversion projects, excluding trenching and restoration. PSE failed to credit the District for any discount mandated under Schedule 71, Section 3(b). On the Site 23 project, the District is entitled to a refund of 70% of the agreed cost of the conversion project, a principal dollar amount of \$83,520. On the Site 24 project, the District is entitled to a reimbursement of 70% of the agreed cost of the conversion project, which amounts to a principal dollar amount of \$53,405. The total amount of the District's claim for both projects is \$136,925, plus interest from the date of payment. In the alternative (and at a minimum), the District was entitled to a 30% discount under Section 3(b)(1) if it is finally determined that the 70% discount does not apply.

B. PSE Failed to Notify District About Schedule 71 Discounts

PSE failed to provide the District with timely, meaningful and adequate information regarding the discounts available under Schedule 71 for underground conversion costs, in violation of WAC 480-100-041 and other applicable law. To the extent PSE claims the Site 23 or 24 projects do not strictly conform to the conditions for receiving a discount under Schedule 71, PSE is estopped from asserting any alleged lack of strict compliance because of its failure to adequately notify the District of the Schedule 71 discounts before or while the construction was taking place. If PSE had disclosed the material facts regarding Schedule 71 in a timely and adequate manner, the District would have made relatively minor and inexpensive modifications during the planning and construction phases of the projects that would have addressed all of PSE's objections expressed later about why the projects don't qualify for any discounts under Schedule 71. In the event the Commission rules the District does not qualify for the 70% discounts under Section 3(b) of Schedule 71, the District will have been damaged in an amount to be proven at the hearing by PSE's material nondisclosure in breach of its duty as a regulated public utility to its customer and as a party to a contract.

The District reserves the right to amend its complaint based on any other information that becomes available to the District. The claims for refund made herein include any and all overcharges and reparations for construction costs and damages relating to the utility conversion projects at Sites 23 and 24.

C. Remedy Requested

By failing to apply the discounts applicable under Schedule 71, the rate charged by PSE for the underground conversion costs was excessive or exorbitant. As authorized by RCW

80.04.220 as a reparation, or as a refund of an overcharge pursuant to RCW 80.04.230, the District is entitled to an award of damages from PSE for the excess amount charged by PSE.

WHEREFORE, the District requests the following relief:

- 1) For an award of damages in an amount to be proven at hearing including, but not limited to, a refund of overcharges for underground conversion costs at Sites 23 and 24.
- 2) For an award of interest from the date of the overcharges.
- 3) For such other and further relief as the Commission deems appropriate.

Dated: November 24, 1999

LIVENGOOD, CARTER, TJOSSSEM,
FITZGERALD & ALSKOG, LLP

Timothy S. McCredie, WSBA #12739
Attorney for Lake Washington School District

CERTIFICATE OF SERVICE

I hereby certify that on this day I caused to be served Lake Washington School District's Amended Complaint **via hand delivery through ABC Legal Messengers, Inc. to:**

Office of the Secretary (Original and 15 copies)
Attn: Mary Taylor
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

Kirstin S. Dodge, Attorney at Law
Perkins Coie
One Bellevue Center
Suite 1800
411 – 108th Ave. N.E.

LIVENGOOD, CARTER, TJOSSSEM,
FITZGERALD & ALSKOG
620 KIRKLAND WAY, SUITE 200
P.O. Box 908
KIRKLAND, WASHINGTON 98083-0908
PHONE: (425) 822-9281 FAX (425) 828-0908

Bellevue, WA 98004-5584

And by Regular first-class mail, postage prepaid to:

Sally Johnston, Assistant Attorney General
P.O. Box 40128
Olympia, WA 98504

November 24, 1999

Jennifer Nelson