

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

<p>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,</p> <p style="text-align: center;">Complainants</p> <p>PUGET SOUND ENERGY, INC.,</p> <p style="text-align: center;">Respondent</p>	<p>No. UE-010911</p> <p>CITIES' RESPONSE TO PRELIMINARY QUESTIONS POSED TO ALL PARTIES</p>
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The City of Auburn, City of Bremerton, City of Des Moines, City of Federal Way, City of Lakewood, City of Renton, City of SeaTac, and City of Tukwila (•Cities•), for their Response to Notice Of Response Due, dated June 27, 2001, and questions therein posed by the Washington Utilities and Transportation Commission (“the Commission”), state as follows:

QUESTION ONE: Is there a dispute as to the underlying facts? May the Commission make the decisions on fully or partially agreed factual records? What facts must be found to support a decision (couched in terms of “whether”)? Which of these facts, if any, are agreed?

Generally, the Cities believe that the underlying facts are undisputed and that the facts necessary to support the decision in this matter can be stipulated. To the extent that fact-finding may be required in order to resolve the issues presented, WAC 480-09-470 encourages parties before the Commission to stipulate to all or part of the operative facts. Most of the operative facts in this case are contained in the documentary record, including the tariffs on file with the Commission and the correspondence between the parties.

The issues raised in the Cities’ Complaint are primarily legal issues that are not dependent upon specific facts:

- Whether Schedule 71 requires Cities to purchase private property for PSE’s exclusive possession and use?

- Whether the term “owners real property” in Section 4 of Schedule 71 refers to the municipalities in whose rights-of-way PSE’s facilities are located?
- Whether Schedule 71 applies to conversion to underground service required as part of a municipal project where PSE’s overhead facilities are located on private easements adjacent to the municipal right-of-way?

However, PSE’s Answer to the Cities’ Complaint and Petition for Declaratory Relief is not due until Friday, July 6, 2001. Additional disputed facts may appear after PSE files its Answer. The Cities, therefore, reserve the right to supplement this response and to submit data requests as necessary.

QUESTION TWO: When are orders needed?

The Cities of Federal Way, Des Moines, and SeaTac need an Order at the earliest possible date. The City of Federal Way is engaged in a street improvement project on 223rd Avenue South from South 319th Street to South 324th Street. The City and PSE are currently involved in a dispute over whether Schedule 71 applies to this project, and PSE refuses to enter into an undergrounding agreement until the City agrees to pay 100 % of the costs of the project. The City of Des Moines is currently in the engineering design phase of Pacific Highway South (SR 99) project. PSE has refused to execute an engineering agreement with the City and threatened to cease work on the project unless the City agreed by June 15 to acquire easements at no cost to PSE. The City of SeaTac plans to begin the bidding process for improvements on International Boulevard (also called Pacific Highway South or SR 99) within a month and requires resolution of the rights-of-way dispute with PSE prior to commencement of the bidding process.

In addition, the Cities are in the property acquisition, design, and contracting phase for street improvement projects, such as the major improvement to Pacific Highway South. The Cities’ projects cannot proceed in the absence of resolution of the issues pending before the Commission. The Cities, therefore, respectfully request that an Order issue by mid-September, which will enable these projects to move forward on schedule.

QUESTION THREE: Are these issues being considered in any other setting - for example, a rulemaking? If so, would decisions in that docket resolve the questions posed in the petition?

To the best of the Cities’ knowledge, there are no pending actions that address the issues raised in the Cities’ Complaint other than the cases already potentially subject to consolidation with

this action, particularly the City of Kent case. As the City of Kent noted in its Motion for Summary Determination, PSE apparently filed and subsequently withdrew earlier this year a proposed tariff revision that would have addressed many of these issues. See Kent Motion for Summary Determination, Docket No. UE-101778, filed June 20, 2001, at 10-11. To the best of the Cities' knowledge, that proposed tariff revision is not being pursued by PSE at this time.

QUESTION FOUR: Is a petition for declaratory order in each of these dockets an appropriate procedural mechanism? If so, what process should be employed to make a determination, and how would a declaratory order differ in form and effect from an order resolving a complaint?

The Cities seek a combination of relief, including (i) a declaratory order regarding the scope of Schedule 71 and (ii) specific orders directing PSE to enter into undergrounding agreements, to relocate its facilities underground, and to refund any amounts previously collected for purchase of private property in violation of Schedule 71.

The Commission is specifically empowered to determine, after hearing, whether any practices, acts, or services of any regulated electric company are “unjust, unreasonable, improper, insufficient, inefficient or inadequate” and may fix by order the “practices, acts or service to be thereafter furnished, imposed, observed and followed.” RCW 80.28.040. Under WAC 480-09-400, a party to an actual case or controversy “may apply to the commission for an adjudicative proceeding to secure an order resolving disputed matters.” In an adjudicative proceeding, the Commission may enter orders “resolving disputed matters.” WAC 480-09-230 specifically permits the Commission to enter declaratory orders.

The Cities believe that the same procedure will resolve both their complaint and their petition for declaratory relief. The Cities propose that the parties the dispute to the Commission upon a written stipulation of undisputed facts, declarations of disputed facts, relevant documents, briefs, and argument of counsel. The Cities believe that they would not bear the burden of proof on the petition for declaratory relief, but might bear the burden on the complaint seeking an order directing PSE to take specific actions. At the close of the proceeding, the Commission could issue an order both (i) declaring the rights of the parties with respect to Schedule 71 and (ii) ordering PSE to take specific action consistent with the Commission's interpretation of Schedule 71.

QUESTION 5: Are there common questions of law or fact such that consolidation of these docket is appropriate under WAC 480-09-610? What factors should be considered in deciding whether to consolidate?

Under WAC 480-09-610, the Commission has discretion to “consolidate two or more proceedings in which the facts or principles of law are related.” Based on the pleadings on file in the Cities’ matter (Docket No. UE-010911) and in the City of Kent’s Petition (Docket No. UE-010778), the Cities believe that it may be appropriate to consolidate those two dockets. Both complaints concern the interpretation and application of PSE’s Electric Tariff G, Schedule 71, specifically regarding whether the PSE Schedule requires municipalities to purchase private property for PSE’s exclusive use. The City of Kent brings a specific perspective to the issues at hand while the Cities may provide evidence of the broader impacts of any determination of the requirements of Schedule 71. Including all parties in one proceeding will enable the Commission’s ability to thoroughly review the issues. One factor that the Commission should consider when deciding whether to consolidate these two matters is whether separate proceedings may result in inconsistent findings on these issues. The factors of economy and efficiency also weigh in favor of consolidation.

With regard to the City of SeaTac’s petition, Docket No. UE-010891, the issues presented are different. The City of SeaTac’s complaint centers around the question of how the parties should determine whether PSE’s Schedule 70 applies to an area. The City of SeaTac maintains that such determination should be made on the character of the area, whereas PSE appears to take the position that such determination depends upon PSE equipment within the area at issue. The Cities anticipate, based on the pleadings on file, that resolution of the City of SeaTac’s petition will depend upon facts specific to the area at issue. As the case appears to have neither legal nor factual issues in common with the Cities’ petition, the Cities do not believe that the two actions should be consolidated.

DATED this 6th day of July, 2001.

PRESTON GATES & ELLIS LLP

By _____
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Attorneys for Petitioners Cities of Auburn,
Bremerton, Des Moines, Federal Way, Lakewood,
Renton, SeaTac, And Tukwila

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the CITIES' RESPONSE TO PRELIMINARY QUESTIONS POSED TO ALL PARTIES, filed by the Cities of Auburn, Bremerton, Des Moines, Federal Way, Lakewood, Renton, SeaTac, and Tukwila, upon all parties of record in this proceeding, via facsimile, followed by U.S. mail, as follows:

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DATED at Seattle, Washington, this 6th day of July, 2001.

Jo Ann Sunderlage
Secretary to Carol S. Arnold