

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Lake Washington School District No. 414,

NO. UE-990917

Complainant,

v.

Puget Sound Energy, Inc.,

Defendant.

PUGET SOUND ENERGY, INC.'S
ANSWER AND AFFIRMATIVE
DEFENSES TO AMENDED
COMPLAINT

Puget Sound Energy, Inc. ("PSE" or "Puget") answers the Amended Complaint of Lake Washington School District No. 414 ("District"), dated November 24, 1999, as follows.

ANSWER

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

PSE denies that it charged the District in excess of lawful rates and denies that the District is entitled to any refund of fees.

1. Site 23

PSE admits the identity and location of this project.

PSE admits that it agreed to perform and the District agreed to pay for underground utility conversion related to the project.

PSE admits that the District added some parking and a loading zone driveway along portions of the north side of the N.E. 80th arterial. However, PSE denies that the District added one full lane to the arterial. PSE further denies that the existing "overhead system [was] *required to be relocated due to* addition of one full lane or more" to N.E. 80th. Schedule 71(3)(b)(1) (emphasis added). The distribution system on N.E. 80th was located on transmission poles prior to the conversion. The transmission poles were not relocated, and the distribution system could have remained overhead notwithstanding the street work.

PSE admits that it took down distribution lines, but only on two streets adjacent to the school, buried the lines, and both removed and installed power poles. PSE admits that it owned all such lines and power poles. The converted lines were in public rights-of-way along N.E. 80th and 169th Avenue N.E. PSE denies that any underground conversion was performed along NE 83rd and 167th Avenue N.E. At that location, PSE removed existing facilities serving a bus barn and relocated overhead service by installing a new pole.

PSE admits that it charged the District \$119,313.92 for this work on or about March 1998, and that PSE received such payment through Korsmo Construction.

2. Site 24

PSE admits the identification and address of this project.

PSE admits that one full lane was added to the N.E. 116th arterial. However, PSE denies that the existing "overhead system [was] *required to be relocated due to* addition of one full lane or more" to the N.E. 116th arterial. Schedule 71(3)(b)(1) (emphasis added).

In 1996, prior to the underground conversion, PSE agreed to relocate three poles that fronted Site 24 at the District's request, and charged the District \$11,964.45 for this work. The District paid for that relocation on May 29, 1996. Once the poles were relocated, they were not required to be relocated again due to the street work.

PSE admits that it agreed to remove the overhead power lines and poles and underground the lines fronting the school, but only those on the school side of N.E. 116th Street, and the District agreed to pay for such work. PSE admits that it owned the lines and poles. PSE further admits that it charged the District \$76,293.56 for the conversion, and that the District paid this amount on July 1, 1997.

3. Bella Bottega Project

PSE denies that the Site 23 or Site 24 conversion projects are substantially similar to the Bella Bottega conversion project. PSE admits that it charged the Bella Bottega developer only 30% of the conversion costs pursuant to Tariff G, Schedule 71, and did not claim that Schedule 85 applied to Bella Bottega. However, that is because Schedule 71 applied in the case of Bella Bottega.

First, all facilities on both sides of the street were undergrounded during the project or were connected to existing underground facilities, thus "all real property on both sides of each public street [were] to receive electric service from" PSE's underground electric distribution system. That is, there were to be no remaining overhead facilities on either side of the street at the Bella Bottega site.

Second, the Bella Bottega project, located on the Woodinville-Redmond Road, involved widening the arterial along the full length of the project, from N.E. 87th to N.E. 90th Streets, such that the poles were required to be relocated due to the addition of one full lane or more to the arterial.

PSE denies that there is "no material difference" between the Bella Bottega project and the District's projects, and denies that the District should receive the same treatment as the Bella Bottega developer.

4. Contacts Made with PSE

PSE admits that on both school projects, PSE did not offer any rebates or discounts to the District for undergrounding the utilities. PSE has no knowledge regarding whether City of Redmond officials informed the District that the District might be entitled to receive a rebate from PSE for some of the costs of the conversion projects.

PSE denies that it "refused to give the District a timely or reasonable explanation" regarding Schedule 71 discounts.

The District initially only raised the question with PSE whether the District was entitled to any discounts on the projects after the projects had already been completed. PSE admits that the District raised this issue with PSE employee John Straws. PSE notes that Mr. Straws was not the project manager for Site 23 or 24. PSE admits that on or about April 28, 1999, Mr. Straws communicated the quoted statement to the District. That statement erroneously informed the District that "Schedule 85 Electric Tariff G paragraphs 3 and 16 apply." However, Mr. Straws

also stated more generally, and correctly, in that statement that the expense for undergrounding power to Sites 23 and 24 "is non-refundable."

PSE has no knowledge of communications between the District and the Commission regarding Schedule 71 prior to the District's filing of the informal complaint in this matter on June 24, 1999. PSE denies that any such contact was "the first time the District was made aware of the Schedule 71 language." The District has been receiving information regarding PSE's rates and tariffs that specifically refers to Schedule 71 each time rates have changed. In years with no rate change, the District has been receiving a bill insert that offers to provide rates information upon request. In addition, copies of PSE's tariff schedules are available, upon request, by mail and facsimile. PSE also provides copies of the entire tariff upon request, along with an annual update service, for a fee to cover the costs of reproduction and handling.

PSE admits that the District contacted Mr. Straws again after April 28, 1999, and that Mr. Straws may have stated on some later date to the District that Schedule 71 did not apply to the projects.

5. Elements of District's Claim

PSE denies that the District is entitled to a refund pursuant to Electric Tariff G, Schedule 71, or that the District meets all the criteria to receive a 70% refund of the conversion costs at both sites.

a. PSE admits that the existing overhead electric distribution lines were 15,000 volts or less and included Company-owned poles.

b. PSE admits that the sites are either zoned and used for commercial purposes (Site 23) or are in an area of Redmond which has electrical load requirements which are comparable with developed commercial areas. (Site 24).

c. PSE admits that at the time of the installation, PSE had the right to render service in the City of Redmond pursuant to a franchise.

d. PSE admits that the conversion areas at both sites were not less than two (2) contiguous city blocks in length. However, PSE denies that at either Site 23 or 24, all real property on both sides of each public street was to receive electric service from the Main Distribution System.

PSE's tariff provides that all property on both sides of the street must receive underground service for Schedule 71 to apply. In the present case, properties on the other side of the street from the District sites were not converted to underground, and continue to receive service from overhead facilities.

At Site 23, PSE admits that an underground power line crosses underneath 169th Avenue N.E. However, that line merely ties the conversion project for the District to a pole, and the property across the street continues to receive overhead service.

At Site 24, PSE admits that underground power lines cross underneath 116th. However, those lines merely tied the conversion project for the District to poles, and the properties across the street continue to receive overhead service.

e. PSE denies that at either site, the overhead electrical system was required to be

relocated due to the addition of one full lane or more to an arterial street or road.

At Site 23, PSE denies that the District added one full lane to the N.E. 80th arterial or that the existing overhead system was required to be relocated due to addition of one full lane or more to the N.E. 80th arterial.

PSE admits that one full lane was added at Site 24. But prior to the underground conversion, PSE relocated three poles that fronted Site 24. Thus, PSE's overhead system was not required to be relocated due to the lane addition.

PSE further denies that the District is only required to pay PSE **30%** of the "**charged**" or "**agreed**" costs" of the conversion projects, excluding trenching and restoration.

Application of Schedule 71:

Schedule 71, Section 3(b) only applies when Schedule 71 applies to a conversion.

Schedule 71, Section 2 provides that the conversion area must result in "all real property on both sides of each public street[] receiv[ing] electric service from the Main Distribution System."

The "Main Distribution System" is defined as the Company's "*underground* electric distribution system." Schedule 71, Section 1 (emphasis added.) Only the District receives electric service from the underground conversion projects undertaken at both sites, and properties on the other sides of the street continue to receive their service from the overhead system that predates the District's conversion projects. Thus, PSE denies that the District was entitled to pay anything less than it paid on the projects.

30% versus 70%:

Even if Schedule 71 were to apply to either site, PSE denies that the District would only be required to pay PSE 30% of the costs for either site. Under Schedule 71, Section 3(b)(1) (if Schedule 71, applied, which it does not), the District would be obligated to pay 70% of the cost of the conversions excluding trenching and restoration. A property owner must pay 30% of such costs only “when the Company’s overhead system is *required* to be relocated *due to* addition of *one full lane or more* to an arterial street or road.” Id. (emphasis added). As set forth above, neither site meets that condition. Thus, at most, the District would be required to pay the Company 70% of the costs of the conversions.

"Charged" or "Agreed" versus Actual or Total Costs:

Even if Schedule 71 applies to either site, PSE denies that the District is entitled to anything based on "charged costs" or "agreed costs" as opposed to actual or total costs. If Schedule 71 applies to either site, then it applies in its entirety. Schedule 71 provides that the Company and property owner "*shall* enter into a written contract" which "*shall* be consistent with this schedule and shall be in a form satisfactory to the Company." Schedule 71, Section 3(a) (emphasis added). Schedule 71 further provides that "[t]he Contract shall obligate said ~~B~~property owners" to pay the appropriate percentage of the "*total cost* of the conversion project, excluding trenching and restoration." Id. at Section 3(b)(1) (emphasis added). In addition, the Company's standard Schedule 71 Contract provides that "payment for the *actual* costs" for the conversion must be remitted to PSE within 30 days after completion of the work. Thus, any discount to which the District could be entitled must be calculated based on the actual or total cost to PSE of the

conversions, excluding trenching and restoration.

By contrast, because PSE charged the District for Site 23 and Site 24 on a time and materials basis rather than under Schedule 71, PSE provided an *estimate* of its costs to the District and charged the District based on this bid rather than PSE's costs. Under PSE's time and materials bid procedures, PSE generally absorbs any costs in excess of the estimate it provides to customers. Due to changes in PSE's internal systems at the time, the estimates PSE provided to the District turned out to be too low. At each site, the total cost for the conversion exceeded the estimate that PSE charged the District, as set forth below:

Site 23

Site 24

Actual/total costs of conversion

\$149,169.91

\$89,989.17

Charged to District based on time/materials bid

\$119,313.92

\$76,293.56

70% of total costs of conversion

\$104,418.94

\$62,992.42

Maximum potential refund to District even if Sched. 71 applied

\$ 14,894.98

\$13,301.14 Fundamentally, as set forth above, PSE denies that *any* refund is due on either the Site 23 or the Site 24 project.

B. PSE Failed to Notify District About Schedule 71 Discounts

PSE denies that it failed to provide the District with "timely, meaningful and adequate information" regarding available Schedule 71 discounts for underground conversions. PSE denies that it violated WAC 480-100-041 or any other regulation or statute related to PSE's

obligations to provide notice of its rates or tariffs. In particular, PSE sent the District an explanation of PSE's rates and tariffs every year PSE's rates changed in the form of a pamphlet entitled "Information about your Electricity Rates." That pamphlet specifically references Schedule 71, stating:

CONVERSION TO UNDERGROUND + NON-RESIDENTIAL

Schedules 70 and 71 provide for conversions of existing overhead electric systems to underground. Due to space limitations, details are not provided here. Specific schedules and information are available upon request.

In years with no rate change, PSE sent the District bill inserts that offer to provide rates information upon request. In addition, copies of PSE's tariff schedules are available, upon request, by mail and facsimile. PSE also provides copies of its entire tariff, along with an annual update service, for a fee to cover the costs of reproduction and handling.

PSE denies that it is estopped from requiring strict compliance with its tariff.

PSE does not have knowledge regarding whether the District could or would have made any modifications to its planning and construction of Sites 23 or 24 in connection with Schedule 71, whether such modifications would have been "relatively minor and inexpensive" or whether such modifications "would have addressed all of PSE's objections expressed later about why the projects don't qualify for any discounts under Schedule 71."

PSE denies that the District has been damaged by any nondisclosure by PSE, denies that

PSE failed to disclose Schedule 71, and denies that PSE has breached any duty to the District. **C.**

Remedy Requested

PSE denies that it charged the District excessive or exorbitant rates for the underground conversions. PSE denies that the District is entitled to any reparation, refund or damages in connection with the conversions.

Relief Requested

PSE denies that the District is entitled to any relief.

To the degree PSE's Answer has failed to address any facts or arguments set forth in the District's Amended Complaint, PSE denies the same, and denies that the District is entitled to any refund or any damages of any kind in connection with Sites 23 or 24.

AFFIRMATIVE DEFENSES

1. The District's Amended Complaint fails to state a claim upon which relief can be granted to the degree it invokes claims based on contract law or claims based in equity. Principles of statutory construction alone apply to the interpretation of tariffs.

2. The District's claims based on RCW 80.04.220 are barred by the six-month limitations period for such claims.

DATED: December 13, 1999.

PERKINS COIE LLP

By _____
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CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused Puget Sound Energy, Inc.'s ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT to be filed and served via hand delivery to:

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DATED: December ____, 1999

Pam Iverson