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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENT,  
  
Petitioner,

DOCKET NO. UE-010778  
(Consolidated)

v.

PUGET SOUND ENERGY, INC.,  
  
Respondent.

.....  
CITY OF AUBURN, CITY OF  
BREMERTON, CITY OF DES MOINES,  
CITY OF FEDERAL WAY, CITY OF  
LAKEWOOD, CITY OF REDMOND, CITY  
OF RENTON, CITY OF SEATAC, AND  
CITY OF TUKWILA,  
  
Petitioners/Complainants,

DOCKET NO. UE-010911  
(Consolidated)

v.  
PUGET SOUND ENERGY, INC.,  
  
Respondent.

AMENDED COMPLAINT AND  
PETITION FOR DECLARATORY  
RELIEF

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”) filed a Complaint and  
Petition for Declaratory Relief pursuant to RCW 34.05.240 and WAC 480-09-230 (“Complaint and

1 Petition”) with the Commission on or about June 21, 2001. Since the filing of the Complaint and  
2 Petition, Puget Sound Energy (“PSE”) has raised several new issues with the Cities regarding the  
3 interpretation of PSE Schedule 71. In addition, the City of Redmond wishes to join the Complaint  
4 and Petition. The Cities are filing this Amended Complaint and Petition to address these matters.

5 For their Amended Complaint and Petition, the Cities state as follows:

6 1. The names and addresses of complainants are:

7 Michael J. Reynolds  
8 City of Auburn  
9 25 W. Main Street  
10 Auburn, WA 98001-4998  
11 Business: (253) 931-3054  
12 Fax: (253) 931-3053

13 W. Eugene Sampley, P.E.  
14 City of Bremerton  
15 Department of Public Works and Utilities  
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17 Bremerton, WA 98310-4799  
18 Business: (360) 478-5315  
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20 Gary McLean  
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City of SeaTac  
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SeaTac, WA 98188-4236  
Business: (206) 433-1800  
Fax: (206) 433-1833

Robert F. Noe  
City of Tukwila  
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Tukwila, WA 98188-2599  
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2. The attorneys representing petitioners are:

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Laura K. Clinton  
Preston Gates & Ellis LLP  
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Seattle, WA 98104-7078  
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3. The Cities request that the Commission issue a declaratory order resolving their dispute with Puget Sound Energy, Inc. (“PSE”) over the interpretation of PSE’s Electric Tariff G, Schedule 71 (“Schedule 71”). Schedule 71, entitled “Conversion to Underground Service In Commercial Areas,” states the terms under which PSE shall remove its existing overhead lines and poles and install an underground system. Schedule 71 requires PSE and the municipality having jurisdiction over the underground conversion area to enter into an agreement for the installation of

1 the underground system. PSE has refused to enter into agreements with the Cities unless the Cities  
2 agree to purchase private property for PSE for the exclusive use of its facilities. Such a demand is  
3 contrary to Schedule 71, is inconsistent with PSE’s franchise agreements with the Cities, and  
4 violates the Washington Constitution.

5 4. Under the terms of most City franchise agreements and ordinances, PSE is permitted  
6 to locate its facilities in municipal rights-of-way. *See, e.g.,* City of Des Moines Ordinance No. 947,  
7 Declaration of Maiya I. Andrews (“Andrews Decl.”), Exhibit A. Washington law authorizes cities to  
8 grant electric franchises for the use of the public right-of-way and for placement of electric facilities  
9 “above or below the surface of the ground.” RCW 35A.47.040.

10 5. In Washington, when municipal street improvements require relocation of utility  
11 facilities to prevent interference with the public’s use of the streets, utilities must relocate their  
12 facilities at their own expense. *Auburn v. Qwest*, 247 F.3d 966 (9<sup>th</sup> Cir. 2001); *Washington Natural*  
13 *Gas Co. v. City of Seattle*, 60 Wn.2d 183, 186, 373 P.2d 133, 135-136 (1962); *State v. Public Utility*  
14 *Dist. No. 1 of Clark County*, 55 Wn.2d 645, 349 P.2d 426 (1960). Absent a tariff, the utility must  
15 pay all the costs of necessary underground relocation. *General Telephone Co. v. City of Bothell*, 105  
16 Wn.2d 579, 716 P.2d 879 (1986).

17 6. The Cities are currently undertaking major street improvements to widen city streets  
18 and add traffic lanes in commercial areas. In order to accommodate these changes, the Cities have  
19 directed PSE to relocate their electric facilities, remove aerial electric wires and poles that obstruct  
20 the street, and replace these with underground facilities within the City rights-of-way. However,  
21 PSE refuses to agree to relocate its facilities underground pursuant to Schedule 71 unless the Cities  
22 purchase private property in PSE’s name for its exclusive use.

23 7. PSE’s refusal to enter into an agreement with the City of Des Moines pursuant to  
24 Schedule 71 illustrates the seriousness of the dispute. PSE operates in the City of Des Moines  
25 pursuant to a franchise. Andrews Decl., Exhibit A. For several years, Des Moines has been  
26

1 planning a major street improvement project on Pacific Highway South. The project requires that  
2 PSE's facilities be moved and placed underground so the street can be widened. There is adequate  
3 space for all of PSE's underground wires and related aboveground vaults, junction boxes, and  
4 transformers on existing and future City rights-of-way. Andrews Decl., Exhibit B.

5 8. PSE has refused to comply with Des Moines' directives as to the location and  
6 placement of PSE equipment on City rights-of-way. Andrews Decl., Exhibit C. Instead, PSE has  
7 insisted that Des Moines purchase private property in PSE's name for exclusive use by PSE.  
8 Andrews Decl., Exhibit D. Des Moines has assured PSE that if additional space is needed outside  
9 the existing rights-of-way, the City would acquire easements in the City's name, but would not pay  
10 to acquire property for PSE's exclusive use. Andrews Decl., Exhibit E. Des Moines also agreed to  
11 sign an engineering agreement for relocation and undergrounding of PSE facilities within the City  
12 rights-of-way. Andrews Decl., Exhibit F. On May 31, 2001, PSE threatened to cease work on the  
13 underground project unless the City agreed by June 15 to acquire private property at no cost to PSE.  
14 Andrews Decl., Exhibit G.

15 9. Schedule 71 does not give PSE the option to refuse to relocate its facilities  
16 underground or to discontinue work unless the Cities agree to acquire private property for PSE's  
17 exclusive use. To the contrary, Schedule 71 provides:

18 Subject to availability of equipment and materials, the Company will provide and  
19 install a Main Distribution System and will remove existing overhead electric  
20 distribution lines of 15,000 volts or less together with Company-owned poles  
21 following the removal of all utility wires therefrom in those portions of municipalities  
22 which are zoned and used for commercial purposes (and in such other areas of such  
23 municipalities which have electrical load requirements which are comparable with  
24 developed commercial areas), provided that at the time of such installation the  
25 Company shall have the right to render service in such municipalities pursuant to a  
26 franchise in a form satisfactory to the Company, and provided further, that the  
Conversion Area must be not less than two (2) contiguous city blocks in length with  
all real property on both sides of each public street to receive electric service from the  
Main Distribution System.

Schedule 71, Sheet No. 71 (emphasis added).

1           10.     The Cities have agreed to provide PSE adequate space and rights to locate their  
2 underground and related aboveground facilities in City rights-of-way. (*See, e.g., Andrews Decl., ¶ 6,*  
3 *Ex. E.*) Schedule 71 requires only that the Cities contract with PSE to remove and relocate its  
4 facilities underground “consistent with this schedule,” not that the Cities will purchase private  
5 property for PSE’s exclusive use.

6           11.     PSE’s interpretation of Schedule 71 further violates Article VIII, sec. 7 of the  
7 Washington Constitution, which prohibits gifts of public property. This section states:

8                   No county, city, town or other municipal corporation shall hereafter give any money,  
9 or property, or loan its money, or credit to or in aid of any individual, association,  
10 company or corporation, except for the necessary support of the poor and infirm, or  
11 become directly or indirectly the owner of any stock in or bonds of any association,  
12 company or corporation.

13           Wash. Const. art. VII, § 7.

14           12.     Payment of the cost of relocating utility facilities has been held to constitute a  
15 prohibited gift of public funds. *Washington State Highway Commission v. Pacific Northwest Bell*  
16 *Telephone Co.*, 59 Wn.2d 216; 367 P.2d 605 (1961). PSE’s demand that the Cities purchase  
17 property in PSE’s name clearly violates the constitutional prohibition. If PSE wants to relocate its  
18 facilities on private property (assuming such location is even permissible), PSE – not the Cities –  
19 must pay for that property.

20           13.     In addition, PSE has refused to comply with Schedule 71 when the Cities have  
21 directed conversion to underground where PSE’s existing aerial facilities are located on private  
22 property adjacent to and along City rights-of-way. Nothing in Schedule 71 limits PSE’s obligations  
23 where its existing aerial facilities are located on private property rather than on public rights-of-way.

24           14.     Since the filing of the Complaint and Petition, PSE has also advised the City of  
25 SeaTac that Schedule 71 requires the City to pay 70% of the costs of underground conversion in  
26 cases where – in PSE’s sole judgment – poles and aerial facilities are not required to be relocated  
horizontally. Schedule 71 provides by its terms that the City is required to pay only 30% of the

1 underground conversion costs when the Company’s overhead system “is required to be relocated due  
2 to addition of one full lane or more to an arterial street or road.” Nothing in Schedule 71 restricts  
3 this provision in the way PSE contends.

4 15. Schedule 71 requires PSE and the Cities to enter in contracts for the installation of  
5 underground systems. Since the filing of the Complaint and Petition, several disputes have arisen  
6 between PSE and various Cities regarding particular terms and conditions of such contracts. PSE  
7 has insisted on terms and conditions for underground conversion that the Cities consider to be unjust  
8 and unreasonable. For example, although Schedule 71 requires Cities and PSE to share the costs of  
9 underground conversion, PSE has refused to agree to document costs so Cities can determine  
10 whether the costs are reasonable and appropriate. The Cities are attempting to negotiate with PSE  
11 regarding these matters. In the event the parties cannot agree, however, the Cities request that the  
12 Commission assist in the mediation or adjudication of these particular terms and conditions.

13 16. Major street projects in Des Moines and other Cities are in jeopardy because PSE  
14 refuses to agree to relocate its facilities pursuant to Schedule 71. Local communities depend upon  
15 adequate streets for their economic well-being: a major employer recently cited traffic congestion as  
16 one of the reasons for moving its corporate headquarters out of the Puget Sound area. Unless the  
17 dispute with PSE is resolved expeditiously, construction projects in Des Moines and other Cities will  
18 be delayed, the public will be inconvenienced, traffic hazards will threaten the public safety, and the  
19 Cities could be exposed to monetary claims for delay damages. For this reason, the Cities request  
20 expedited resolution of this controversy.

21 17. The Cities respectfully request that the Commission issue an order: (1) declaring that  
22 Schedule 71 does not require Cities to provide private property for PSE’s exclusive use; (2)  
23 requiring PSE to enter into contracts and proceed expeditiously to relocate its facilities pursuant to  
24 Schedule 71; and (3) refunding any amounts that may have already been paid by Cities to purchase  
25 rights-of-way for PSE’s private use.

1 18. The Cities suggest that the Commission determine this matter in a brief adjudicative  
2 proceeding pursuant to RCW 34.05.482 and WAC 480-09-500. A quick resolution of the dispute is  
3 in the public interest, the public interest does not require the Commission to give notice and an  
4 opportunity to participate to persons other than the parties, and a brief adjudicative hearing would be  
5 adequate to permit the Commission to consider the matter and issue a prompt and sound decision.

6 RELIEF REQUESTED

7 The Cities respectfully request that following a brief adjudicative proceeding pursuant to  
8 RCW 34.05.482 and WAC 480-09-500, the Commission issue an order:

- 9 1. Declaring that nothing in Schedule 71 requires Cities to provide private property for  
10 PSE's exclusive use;
- 11 2. Directing PSE to enter into just and reasonable contracts for underground conversion  
12 and proceed expeditiously to relocate its facilities pursuant to Schedule 71;
- 13 3. Directing PSE to refund any amounts collected in the past from Cities for purchase of  
14 private property for PSE's use in violation of Schedule 71;
- 15 4. Directing PSE to limit its requirements for conversion to undergrounding to the terms  
16 and conditions set forth in Schedule 71; and
- 17 5. For all other just, equitable, and proper relief.

18 DATED this 18th day of July, 2001.

19 PRESTON GATES & ELLIS LLP

20 By \_\_\_\_\_  
21 Carol S. Arnold, WSBA # 18474  
22 Laura K. Clinton, WSBA # 29846  
23 Attorneys for Petitioners/Complainants  
24 Cities of Auburn, Bremerton, Des Moines, Federal  
25 Way, Lakewood, Redmond, Renton, SeaTac, And  
26 Tukwila



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the Amended Complaint and Petition for Declaratory Relief of Cities of Auburn, Bremerton, Des Moines, Federal Way, Lakewood, Redmond, 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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Dennis J. Moss, Administrative Law Judge  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
P. O. Box 47250  
Olympia, WA 98504-7250

DATED at Seattle, Washington, this \_\_\_\_\_ day of July, 2001.

\_\_\_\_\_  
Jo Ann Sunderlage  
Secretary to Carol S. Arnold