☐ EXPEDITE
☐ No hearing is set
☒ Hearing is set
Date: September 22, 2006
Time: 9:00 a.m.
Judge/Calendar: Richard Strophy

THE HONORABLE RICHARD STROPHY

SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

CITY OF TUMWATER, a Washington municipal corporation,

Plaintiff,

v.

PUGET SOUND ENERGY, INC., a Washington corporation,

Defendant.

NO. 06-2-00697-3

DECLARATION OF KIRSTIN S. DODGE IN SUPPORT OF MOTION TO STAY PROCEEDINGS

1. I, Kirstin S. Dodge, hereby declare under penalty of perjury under the laws of the State of Washington that the following are true and correct:

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

2. I am a partner with the law firm Perkins Coie LLP. I am the former lead counsel for Puget Sound Energy, Inc. ("PSE") in the above-captioned proceeding.

3. Attached as Exhibit A to my declaration is a true and correct copy of the Complaint (without Exhibits) filed in this Case by the City of Tumwater ("City").

4. Attached as Exhibit B to my declaration is a true and correct copy of the Answer and Counterclaim (without Exhibits) filed in this Case by PSE.

5. In my experience, the WUTC and its Staff have extensive experience reviewing and determining the terms and conditions under which PSE converts its electrical facilities from overhead to underground. That expertise includes consideration of the technical details and public policy considerations inherent in such conversions.

6. I was co-counsel for PSE in its 2001 General Rate Case, WUTC Docket Nos. UE-011570 and UG-011571, in which the Washington Utilities and Transportation Commission ("WUTC") reviewed and approved a new Schedule 74 to PSE's tariff WN U-60, Electric Tariff G ("Schedule 74"). Schedule 74 replaced PSE's former Schedule 71, and sets forth the terms and procedures under which PSE will convert overhead electrical facilities to underground facilities at the request of government entities. At the same time, a new related Schedule 73 replaced former Schedule 70. Attached as Exhibit C to my declaration is a true and correct copy of Schedule 73.

7. Schedule 74 was developed during the course of PSE's 2001 General Rate Case in order to settle ongoing disputes and litigation between PSE and several cities regarding PSE's conversion of electrical facilities to underground facilities. Attached as Exhibit D to my declaration is a true and correct copy of Schedule 74, the WUTC's approval order and the relevant section of the settlement stipulation between the parties to PSE's 2001 general rate case (*WUTC v. PSE*, Docket Nos. UE-011570 and UG-011571, Twelfth Supp.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

Order (June 20, 2002) ("Twelfth Supp. Order") *with* Exhibit I to Settlement Stipulation, Settlement Terms for Relocation and Underground Conversions (Cities)). The Schedule 74 settlement is discussed at pages 18-19 of the Twelfth Supp. Order.

8. A part of Schedule 74's requirements is the form Schedule 74 Underground Conversion Project Design Agreement ("Design Agreement"). A true and correct copy of the Schedule 74 Design Agreement between the City and PSE is attached to my declaration as Exhibit E.

9. The Staff of the WUTC participated in the collaborative negotiations leading to development of the agreed Schedule 74 and was a party to the settlement that the WUTC approved. *See* Exhibit D (Ex. I to Settlement Stipulation, pp. 1, 4).

10. Prior to development of the Schedule 74 settlement, the WUTC extensively addressed the topic of PSE's conversions of overhead electrical facilities to underground in several proceedings that were initiated by complaints brought before the WUTC by several cities. I was lead counsel for PSE in those proceedings. Additional information about the background and nature of these proceedings is described in the WUTC's orders that resolved the proceedings. *See City of Kent et al. v. PSE*, WUTC Docket Nos. UE-010778 and UE-010911, Third Supp. Order: Declaratory Order on Motions for Summary Determination, 2002 Wash. UTC LEXIS 4 (Jan. 28, 2002) (attached as Exhibit F); *City of Sea Tac et al. v. PSE*, WUTC Docket Nos. UE-010891 and UE-01102, Third Supp. Order: Declaratory Order on Motions for Summary Determination, 2002 Wash. UTC LEXIS 6 (Jan. 28, 2002) (attached as Exhibit G). These WUTC orders were on appeal at the time of the 2001 general rate case settlement, and the appeals were withdrawn by the cities as a result of that settlement.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

Executed this 8th day of September, 2006, at Bellevue, Washington.

Kirstin S. Dodge

CERTIFICATION

I certify under penalty of perjury under the laws of the State of Washington that I caused to be ~~delivered/mailed/faxed (original/~~ copy) of this document.

to Counsel of record

on the 11th day of Sept, 2006.

Signed: Cathi Schleh

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

EXHIBIT A

☐ **EXPEDITE**
☐ Hearing is set:
Date:
Time:
Judge/Calendar: _____

SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

CITY OF TUMWATER, a Washington municipal corporation,

Plaintiff,

v.

PUGET SOUND ENERGY, a Washington corporation,

Defendant.

The Honorable

No. 06-2-00697-3

COMPLAINT FOR DECLARATORY JUDGMENT AND RETURN OF PAYMENTS

I. Nature of the Action

1. The City of Tumwater (City) asks the Court to declare that the 1985 franchise agreement under which Puget Sound Energy (PSE) provides retail electric service in the City requires PSE to pay for 100% of any relocation required by road improvements in the City and 60% of any overhead to underground conversion pursuant to Schedule 74 of PSE's approved tariff from the Washington Utilities and Transportation Commission. The City further asks the Court to order repayment from PSE to the City of any payments and costs related to the Tumwater Boulevard Widening Project that are in excess of the City's legal responsibilities to pay for 0% of any relocation cost and no more than 40% of any costs related to conversion of PSE facilities from overhead to underground.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206)-447-7900

II. Parties

2. Plaintiff, City of Tumwater, is a Washington municipal corporation, formed as a mayor-council plan of government pursuant to Chapter 35A.12, RCW.

3. Defendant, Puget Sound Energy, is a Washington corporation, providing retail electric and gas service in parts of the State of Washington.

III. Authority for PSE to provide retail service in the City

4. PSE provides retail electric service in the City pursuant to a 1985 franchise adopted as Ordinance No. 1034, effective June 19, 1985. (Exhibit A.)

5. PSE, through its predecessor, Puget Sound Power & Light Company, accepted the franchise on July 11, 1985. (Exhibit B.)

6. The franchise has a term of 30 years. (Exhibit A, § 9.1.)

7. The Franchise Area includes, without qualification, "any, every and all of the roads, streets, avenues, alleys, highways, grounds and public places of the City as now laid out, platted, dedicated or improved; and any, every and all of the roads, streets, avenues, alleys, highways, grounds and public places that may hereafter be laid out, platted, dedicated or improved within the present limits of the city and as such limits may be hereafter extended." (Exhibit A, § 1.1.3.)

IV. PSE's requirement to relocate its facilities at its own expense

8. Under the terms of its franchise agreement with the City, PSE is required to relocate its facilities at its own expense as set forth in Section 4.2: "Whenever the City cause the grading or widening of the Franchise Area [for purposes other than accommodating private development] and such grading or widening requires the relocation of Puget's Facilities, . . . Puget shall relocate its Facilities at no charge to the City in a timely manner." (Exhibit A, § 4.2.)

9. The only exception to PSE's requirement to relocate its facilities at no charge to the City to accommodate a City (rather than private) development is when the City requires a

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206)-447-7900

subsequent relocation of the same facilities within 5 years of the first relocation. (Exhibit A, § 4.2.)

V. The costs for conversion of PSE's facilities are governed by its WUTC tariff

10. At the time PSE accepted the franchise agreement with the City in 1985, conversions from overhead to underground service required by a government entity were governed by Puget's tariff from the Washington Utilities and Transportation Commission (WUTC). The WUTC conversion tariff now in effect is PSE Electric Tariff G, Schedule 74. (Exhibit C.)

11. Schedule 74 provides that PSE is to pay 60% of the total cost of conversion from overhead to underground and the government entity is to pay the remaining 40%. (Exhibit C, § 2.b.(1).)

VI. The City's expansion into areas of unincorporated Thurston County

12. Over a number of years, the City has expanded its corporate boundaries to include areas previously located within unincorporated Thurston County.

13. One of the areas annexed into the City is the area encompassing the Tumwater Boulevard Widening Project from which this Complaint arises.

14. Tumwater Boulevard was formerly called "Airdustrial Way," a street right-of-way located on Port of Olympia property.

15. The Port of Olympia conveyed the Airdustrial Way street right of way to the City pursuant to a Dedication Deed dated January 21, 1987. (Exhibit D.)

VII. The City's incorporation of new streets extended PSE's franchise to the same area

16. Pursuant to the terms of PSE's 1985 franchise, the same terms and provisions apply to any new area incorporated into the City subsequent to the date of the franchise agreement. (Exhibit A, § 1.1.3.)

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1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206)-447-7900

17. As a consequence, Tumwater Boulevard (formerly Airdustrial Way) is a City. right of way that since 1987 has been included within the terms and conditions of PSE's franchise.

18. Under the terms of the franchise, PSE is required to bear 100% of any relocation costs required by the City for a road widening project in any area covered by the franchise. (Exhibit A, § 4.2.)

VIII. PSE's acceptance of the franchise agreement supersedes any prior agreements.

19. PSE's predecessor, Puget Sound Power & Light Company, secured an easement from the Port of Olympia in 1981 to run electric lines along right of way established by the Port, including Airdustrial Way. (Exhibit E.)

20. The easement granted by the Port of Olympia is a standard grant to an electric utility to utilize road right of way for the purpose of running electric lines. It reserves to the Grantor (the Port of Olympia) the right to use the street Right of Way for such purposes, except for construction of buildings on the right of way, and blasting within 300 feet without prior consent. (Exhibit E, § 4.)

21. When PSE's predecessor, Puget Sound Power & Light Company, accepted the franchise from the City in 1985, no reservation of rights was made with regard to this easement grant from the Port of Olympia to use its right of way, nor with regard to any other easement.

22. PSE, without reservation, agreed to be bound by the franchise terms for any right of way subsequently incorporated into the City. (Exhibit A, § 4.2.)

23. Those franchise terms extended to Tumwater Boulevard (Airdustrial Way) when the Port of Olympia transferred control of that right of way to the City in 1987.

IX. PSE recognized the applicability of its franchise terms to Tumwater Boulevard.

24. PSE entered into a Schedule 74 Underground Conversion Project Design Agreement covering the Tumwater Boulevard Widening Project in May 2004. (Exhibit F.)

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206)-447-7900

25. The Underground Conversion agreement recognized that PSE's rights to operate on Tumwater Boulevard derive from "its franchise or other rights from the Government Entity." (Exhibit F, Recital A.)

26. The "Government Entity" in this Underground Conversion agreement is defined to be the City of Tumwater. (Exhibit F, 1st Paragraph.)

27. No reservation of rights from any other government entity nor any reference to a government entity other than the City is contained in this Underground Conversion agreement.

28. The Underground Conversion agreement incorporates the cost provisions of Schedule 74 of PSE's tariff with the WUTC. (Exhibit F, Recital D.)

29. The Underground Conversion agreement was signed by the City's Mayor on April 21, 2004 and approved as to form by the City Attorney. (Exhibit F, Signatures, p. 7.)

X. A subsequent agreement purporting to supersede both PSE's franchise and the Underground Conversion agreement is based on a material misrepresentation.

30. Subsequent to the Underground Conversion agreement signed by PSE in May 2004, PSE purported to enter into a different cost agreement with the City regarding both underground conversion and relocation on Tumwater Boulevard, titled "Facility Relocation Agreement – Tumwater Boulevard Improvements," dated December 16, 2004. (Exhibit G.)

31. In this purported agreement, PSE states in Exhibit A that "PSE's operating rights are derived from an easement document recorded on December 8, 1981 under Thurston County Auditor's file No. 8112080070. All facilities are on private easement so this work is 100% billable to the city." (Exhibit A to Exhibit G.)

32. In addition, the purported agreement states in Section 7.3 that the City would be responsible for 100% of all PSE's costs and expenses for both underground conversion and relocation on Tumwater Boulevard.

33. This agreement thus purports to supersede both the franchise agreement (Exhibit A) and the Underground Conversion agreement (Exhibit F).

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206)-447-7900

34. The statement in Exhibit A of the purported agreement (Exhibit A to Exhibit G.), however, represents a material misrepresentation by PSE.

35. PSE in 1985 had agreed, without reservation, to be bound by the terms of the franchise agreement in any subsequently acquired area. (Exhibit A.)

36. PSE in May 2004 had agreed, without reservation, that its authority to operate in the City and specifically in relation to the Tumwater Boulevard Widening Project came entirely from the City. (Exhibit F.)

XI. The purported Facility Relocation Agreement is *ultra vires.*

37. The cost of relocation of existing underground PSE facilities and underground conversion of existing overhead PSE facilities each far exceeds $10,000.

38. Chapter 2.14 of the Tumwater Municipal Code requires that all contracts over $10,000 be authorized by motion of the City Council and approved by the Mayor or Mayor pro-tem. (TMC Chapter 2.14 is attached as Exhibit H.)

39. The Tumwater City Council never adopted a motion approving the purported Facility Relocation Agreement.

40. Neither the Mayor nor the Mayor pro-tem signed the purported Facility Relocation Agreement.

41. The Public Works Director therefore was without authority to override PSE's 1985 franchise agreement (Exhibit A) and the May 2004 Schedule 74 Underground Conversion Project Design Agreement (Exhibit F).

42. Not only is PSE bound to know the law regarding who in the City has the authority to sign agreements, but PSE had actual knowledge that the May 2004 Schedule 74 Underground Conversion Project Design Agreement (Exhibit F) was both signed by the Mayor and approved as to form by the City Attorney before PSE executed that agreement – whereas the purported Facility Relocation Agreement has neither the Mayor's nor the City Attorney's signature.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206)-447-7900

43. The purported Facility Relocation Agreement is both *ultra vires* and void.

XII. Dispute resolution procedures have been followed.

44. The May 2004 Schedule 74 Underground Conversion Project Design Agreement (Exhibit F) contains a dispute resolution section that requires a two part consultation process relating to any dispute concerning the agreement: 1) a 10-business day period for staff to consult with one another, and 2) a 20-business day period for senior management to attempt to resolve the dispute. (Exhibit F, § 16(a).)

45. The City informed PSE of the level 1 consultation on January 6, 2006, and elevated the dispute to level 2 on January 31, 2006.

46. More than 20 business days have elapsed since the senior management of PSE was notified of the unresolved dispute regarding the material misrepresentations contained in the purported Facility Relocation Agreement, and the *ultra vires* nature of that agreement.

47. The dispute relating to the obligations under PSE's 1985 franchise agreement with the City, and the *ultra vires* nature of the Facility Relocation Agreement is not the type of design related disputes for which binding arbitration is required under Section 16(b) of the May 2004 Schedule 74 Underground Conversion Project Design Agreement (Exhibit F, § 16(b)).

48. Pursuant to Section 16(d) of the May 2004 Schedule 74 Underground Conversion Project Design Agreement, the parties are obligated to perform their respective obligations during the pendency of any dispute. (Exhibit F, § 16(d).)

49. In addition, Section 4 of the 1985 franchise agreement requires PSE to relocate its facilities in a timely manner upon request of the City. (Exhibit A, § 4.)

XIII. Reservation of Rights

50. As a result of the January 31, 2006, level 2 conference, PSE and the City realized that they would not be able to resolve this dispute before construction of the Tumwater Boulevard Widening Project began.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206)-447-7900

51. PSE, however, is required by the WUTC to have a Facility Relocation Agreement and a Schedule 74 Construction Agreement in place before it can proceed to do work on the Project.

52. Accordingly, PSE and the City entered into a Reservation of Rights Agreement dated February 23, 2006 (Exhibit I) in which the parties agreed that approval of these WUTC required agreements by the Tumwater City Council and execution of the agreements by the City would not affect the parties' rights in any judicial determination of the issue of payment responsibility for PSE's relocation and conversion expenses related to the Tumwater Boulevard Widening Project. (Exhibit I, §§ 1.1; 1.2.)

53. The Reservation of Rights Agreement also provides that the City is entitled to a refund from PSE, together with interest at an agreed upon rate, should the City prevail in this dispute. (Exhibit I, §§ 1.1; 1.3.)

IX. Request for relief

54. The City requests that the Court declare that the 1985 franchise agreement with PSE (Exhibit A) is in full force and effect, and that the franchise agreement requires PSE to pay 100% of all relocation costs for the Tumwater Boulevard Widening Project.

55. The City requests that the Court declare that, in addition, it would be unconstitutional for the City to pay any of PSE's relocation costs for the City's actions to improve the Tumwater Boulevard right of way in accordance with the Washington Supreme Court holding in *Washington State Highway Comm. v. Pacific NW Bell*, 59 Wn.2d 216, 224, 367 P.2d 605 (1961).

56. The City requests that the Court declare that the purported Facility Relocation Agreement (Exhibit G) is *ultra vires* and has been superseded by the Reservation of Rights Agreement of February 23, 2006. (Exhibit I.)

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206)-447-7900

57. The City requests that the Court declare that PSE's Tariff G, Schedule 74, (Exhibit C, § 2.b.(1)) requires PSE to pay 60% of all overhead to underground conversion costs for the Tumwater Boulevard Widening Project.

58. The City requests that the Court order repayment from PSE to the City of any payments and costs, related to the Tumwater Boulevard Widening Project previously paid by the City for any relocation costs, together with interest on any amounts previously paid as provided in of the Reservation of Rights Agreement. (Exhibit I, §§ 1.1; 1.3.)

59. The City requests that the Court order repayment from PSE to the City of any payments and costs related to the Tumwater Boulevard Widening Project previously paid by the City for any overhead to underground conversion costs that are in excess of 40% of the costs of conversion, together with interest on any such amounts previously paid as provided in the Reservation of Rights Agreement. (Exhibit I, §§ 1.1; 1.3.)

60. The City requests that the Court order PSE to pay the City its fees and costs in bringing this action and its reasonable attorney fees.

61. The City further requests that the Court order any additional remedies on behalf of the City it deems just and proper under the circumstances.

Dated this 13th day of April, 2006.

FOSTER PEPPER PLLC

By: _____

William H. Patton WSBA # 5771

Attorneys for Plaintiff
City of Tumwater
1111 Third Avenue, Suite 3400
Seattle, WA 98104-3299
(206) 447-7898
pattw@foster.com

TUMWATER CITY ATTORNEY

Christy A. Todd

Christy A. Todd WSBA # 27234

Attorney for Plaintiff
City of Tumwater
555 Israel Road SW
Tumwater, WA 98501
(360) 754-4121
ctodd@ci.tumwater.wa.us

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206)-447-7900

EXHIBIT B

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THE HONORABLE RICHARD STROPHY

SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

CITY OF TUMWATER, a Washington municipal corporation, Plaintiff, v. PUGET SOUND ENERGY, INC., a Washington corporation, Defendant.	NO. 06-2-00697-3 DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM FOR DECLARATORY JUDGMENT

ANSWER

PUGET SOUND ENERGY, INC. ("PSE") answers the Complaint For Declaratory Judgment And Return Of Payments of Plaintiff CITY OF TUMWATER ("the City") dated

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

April 13, 2006, as follows, with section headings and in paragraphs numbered to correspond to the section headings and paragraph numbers in said Complaint:

I. Nature of the Action

1. Paragraph 1 of the Complaint sets forth a summary of the City's request for relief. PSE denies that the City is entitled to the relief that it seeks with respect to the costs for relocation or underground conversion of PSE's electric facilities that are involved in the Tumwater Boulevard Widening Project. PSE further denies that its 1985 franchise agreement with the City (the "Franchise") extinguished or supersedes the property rights that were granted to PSE prior to its acceptance of the Franchise in the form of easements that grant permission to PSE to install electric facilities in areas that were or may now be located within the City's boundaries.

II. Parties

2. Answering paragraph 2, PSE admits the allegation on information and belief.

3. PSE admits the allegations in paragraph 3.

III. Authority for PSE to provide retail service in the City.

4. Answering paragraph 4, PSE admits that the City adopted a franchise applicable to PSE's predecessor, Puget Sound Power & Light Company, as Ordinance No. 1034, effective June 19, 1985, a copy of which was provided as Exhibit A to the Complaint (the "Franchise"). PSE denies that it "provides retail electric service in the City pursuant to" the Franchise. The terms of the Franchise speak for themselves.

5. PSE admits the allegation in paragraph 5.

6. Answering paragraph 6, the terms of the Franchise speak for themselves.

7. Answering paragraph 7, the terms of the Franchise speak for themselves.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

IV. PSE's requirement to relocate its facilities at its own expense.

8. Answering paragraph 8, the terms of the Franchise speak for themselves.

9. Answering paragraph 9, the terms of the Franchise speak for themselves.

V. The costs for conversion of PSE's facilities are governed by its WUTC tariff.

10. Paragraph 10 contains legal conclusions for which an answer is inappropriate and is therefore denied. PSE further states that the conversion of its electric facilities from overhead to underground is currently governed by PSE's tariff WN U-60, Electric Tariff G, Schedules 73 and 74, which has been approved by the Washington Utilities and Transportation Commission ("WUTC").

11. Answering paragraph 11, the terms of Schedule 74 speak for themselves. PSE denies that the cost sharing formula of Schedule 74 that is paraphrased in paragraph 11 applies to all underground conversions involving a government entity.

VI. The City's expansion into areas of unincorporated Thurston County

12. PSE admits the allegations in paragraph 12.

13. PSE admits the allegations in paragraph 13.

14. PSE admits the allegations in paragraph 14.

15. Answering paragraph 15, PSE admits the existence of the Dedication Deed dated January 21, 1987, a copy of which is provided with the Complaint as Exhibit D ("Dedication Deed"). The terms of the Dedication Deed speak for themselves. PSE denies any implied allegation in paragraph 15 that the Port of Olympia conveyed to the City any greater property rights than the rights the Port of Olympia was legally entitled to convey. PSE further states that at the time of the conveyance set forth in the 1987 Dedication Deed, the property the Port of Olympia conveyed to the City was burdened by a pre-existing easement that the Port of Olympia granted, conveyed and warranted to PSE's predecessor,

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
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Fax: (425) 635-2400

Puget Sound Power & Light Company, on November 3, 1981 for the construction, operation, maintenance, repair, replacement and enlargement of electric facilities ("PSE's Easement"), which was duly recorded in Thurston County on or about December 8, 1981.

VII. The City's incorporation of new streets extended PSE's franchise to the same area.

16. Answering paragraph 9, the terms of the Franchise speak for themselves.

17. Paragraph 17 contains a legal conclusion for which an answer is inappropriate and is therefore denied. PSE further denies any implied allegation in paragraph 17 that the extension of the City's boundaries to encompass the former Airdustrial Way extinguished or superseded PSE's Easement.

18. Paragraph 18 contains a legal conclusion for which an answer is inappropriate and is therefore denied. PSE further denies that it is required to bear any relocation costs for its facilities along the former Airdustrial Way that are located in PSE's Easement.

VIII. PSE's acceptance of the franchise agreement supersedes any prior agreements.

19. Answering paragraph 19, PSE admits that on November 3, 1981, the Port of Olympia granted, conveyed and warranted to PSE's predecessor, Puget Sound Power & Light Company, a perpetual easement for the construction, operation, maintenance, repair, replacement and enlargement of electric facilities in an area that included Airdustrial Way ("PSE's Easement"). PSE further admits that a partial copy of PSE's Easement (excluding exhibits referenced in PSE's Easement) was provided with the Complaint as Exhibit E. The terms of PSE's Easement speak for themselves.

20. Paragraph 20 contains legal conclusions for which an answer is inappropriate and is therefore denied. The terms of PSE's Easement speak for themselves.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
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21. Paragraph 21 contains legal conclusions for which an answer is inappropriate and is therefore denied. The terms of the Franchise speak for themselves. PSE further states that no reservation of rights was required to preserve its existing property rights as set forth in PSE's Easement or any of PSE's other easements in or around the City.

22. Paragraph 22 contains legal conclusions for which an answer is inappropriate and is therefore denied. PSE further specifically denies that it agreed that the Franchise superseded or extinguished any of its property rights.

23. Paragraph 23 contains legal conclusions for which an answer is inappropriate and is therefore denied. PSE further specifically denies that the transfer of Airdustrial Way by Port of Olympia to the City in 1987 did or could have extinguished the property rights that the Port of Olympia had already granted to PSE through the PSE Easement in 1981.

IX. PSE recognized the applicability of its franchise terms to Tumwater Boulevard.

24. PSE admits the allegation in paragraph 24.

25. PSE denies the allegation that the Schedule 74 Underground Conversion Project Design Agreement referenced in Paragraph 24 and provided as Exhibit F to the Complaint (the "Schedule 74 Design Agreement") is an "Underground Conversion agreement" as stated in Paragraph 25. For an underground conversion to proceed under Schedule 74, PSE and a Government Entity must first enter into a Design Agreement in order to develop details regarding the scope of work, project plan and estimated costs and cost sharing for a conversion. After such information has been developed per the terms of and the schedule set forth in the Design Agreement, PSE and the Government Entity must then also enter into a Schedule 74 Construction Agreement for the underground

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
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conversion. PSE further denies the implication that the Schedule 74 Design Agreement contains any waiver of PSE's rights under PSE's Easement or any "recognition" that the Franchise extinguished those rights. To the contrary, PSE informed the City of PSE's superior rights and the City's obligation to pay 100% of the costs for relocation or underground conversion of PSE's facilities both prior to and after execution of the Schedule 74 Design Agreement and the City acknowledged PSE's rights and its payment obligations. The rest of Paragraph 25 contains legal conclusions for which an answer is inappropriate and is therefore denied. The terms of the Schedule 74 Design Agreement speak for themselves, and must be read in the context of the purpose of a Design Agreement within Schedule 74 as well the structure of Schedules 73 and 74 within PSE's Electric Tariff G.

26. Answering Paragraph 26, PSE incorporates by reference its answer to paragraph 25 as if fully set forth herein.

27. Answering Paragraph 27, PSE incorporates by reference its answer to paragraph 25 as if fully set forth herein.

28. Answering Paragraph 28, PSE incorporates by reference its answer to paragraph 25 as if fully set forth herein. PSE further specifically denies that Recital D of the Schedule 74 Design Agreement has any bearing on the cost responsibilities associated with a potential underground conversion project.

29. PSE admits the allegations in paragraph 29 except as to the characterization of the Schedule 74 Design Agreement as an "Underground Conversion agreement," which PSE denies.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

X. A subsequent agreement purporting to supersede both PSE's franchise and the Underground Conversion agreement is based on a material misrepresentation.

30. PSE admits that it entered into the Facility Relocation Agreement – Tumwater Boulevard Improvements dated December 16, 2004, that was provided with the Complaint as Exhibit G (the "Relocation Agreement"). PSE denies each other or different allegation in paragraph 30. PSE specifically denies that the Relocation Agreement applies to underground conversion work related to the Tumwater Boulevard Widening Project and denies that the Relocation Agreement was intended to or did supersede the Schedule 74 Design Agreement as to such underground conversion work.

31. Answering Paragraph 31, the terms of the Relocation Agreement speak for themselves.

32. Answering Paragraph 32, the terms of the Relocation Agreement speak for themselves. PSE specifically denies that Section 7.3 of the Relocation Agreement makes any reference to or applies to underground conversion work related to the Tumwater Boulevard Widening Project.

33. PSE denies that its Schedule 74 Design Agreement with the City was an "Underground Conversion agreement" as stated in Paragraph 33 and further denies that the Relocation Agreement has any applicability to underground conversion work related to the Tumwater Boulevard Widening Project. The balance of paragraph 33 contains legal conclusions for which an answer is inappropriate. PSE admits that it is PSE's position that the City's obligation to pay 100% of the costs for relocating or converting to underground PSE's electric facilities along Tumwater Boulevard is not excused or relieved by the Franchise or the Schedule 74 Design Agreement.

34. PSE denies the allegation in paragraph 34.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

35. Answering paragraph 35, PSE incorporates by reference its answer to paragraphs 21 through 23 as if fully set forth herein.

36. Answering paragraph 36, PSE incorporates by reference its answer to paragraphs 24 through 29 as if fully set forth herein.

XI. The purported Facility Relocation Agreement is ultra vires.

37. PSE admits the allegations in paragraph 37.

38. Paragraph 38 contains legal conclusions for which an answer is inappropriate and is therefore denied.

39. PSE has insufficient information to admit or deny the allegations of paragraph 39 and therefore denies these allegations.

40. PSE admits the allegations in paragraph 40.

41. Paragraph 41 contains legal conclusions for which an answer is inappropriate and is therefore denied.

42. Paragraph 42 contains legal conclusions for which an answer is inappropriate and is therefore denied. To the extent paragraph 42 recites who signed or did not sign the referenced agreements, the agreements speak for themselves.

43. Paragraph 43 contains legal conclusions for which an answer is inappropriate and is therefore denied.

XII. Dispute resolution procedures have been followed.

44. Answering Paragraph 44, the terms of the Schedule 74 Design Agreement speak for themselves.

45. Responding to paragraph 45, PSE admits that the City and PSE sought to resolve this dispute, in part through meetings conducted in January 2006.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

46. Answering Paragraph 46, PSE admits that more than 20 business days have elapsed since the City notified senior management of PSE of the unresolved dispute regarding relocation and underground conversion costs for PSE's electric facilities related to the Tumwater Boulevard Widening Project. PSE denies each other or different allegation in Paragraph 46.

47. Answering Paragraph 47, PSE admits that this dispute does not require binding arbitration under the Schedule 74 Design Agreement.

48. Answering Paragraph 48, the terms of the Schedule 74 Design Agreement speak for themselves.

49. Answering Paragraph 49, the terms of the Franchise speak for themselves.

XIII. Reservation of Rights

50. PSE denies the allegations in paragraph 50 except that PSE admits that the parties realized they would not be able to resolve this dispute before construction of the Tumwater Boulevard Widening Project began.

51. Paragraph 51 contains legal conclusions for which an answer is inappropriate and is therefore denied.

52. To the extent paragraph 52 contains legal conclusions for which an answer is inappropriate, PSE denies the allegations in paragraph 52. PSE admits that PSE and the City entered into the Reservation of Rights Agreement dated February 23, 2006 that is provided with the Complaint as Exhibit 1 ("Reservation of Rights Agreement"). PSE denies each other or different allegation in paragraph 52.

53. Answering Paragraph 53, the terms of the Reservation of Rights Agreement speak for themselves.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

XIV. Request for relief

54. Paragraph 54 contains legal conclusions and a request for relief for which an answer is inappropriate and is therefore denied. PSE further denies that the City is entitled to any relief from PSE related to the Tumwater Boulevard Widening Project.

55. Paragraph 55 contains legal conclusions and a request for relief for which an answer is inappropriate and is therefore denied. PSE further denies that the City is entitled to any relief from PSE related to the Tumwater Boulevard Widening Project.

56. Paragraph 56 contains legal conclusions and a request for relief for which an answer is inappropriate and is therefore denied. PSE further denies that the City is entitled to any relief from PSE related to the Tumwater Boulevard Widening Project.

57. Paragraph 57 contains legal conclusions and a request for relief for which an answer is inappropriate and is therefore denied. PSE further denies that the City is entitled to any relief from PSE related to the Tumwater Boulevard Widening Project.

58. Paragraph 58 contains legal conclusions and a request for relief for which an answer is inappropriate and is therefore denied. PSE further denies that the City is entitled to any relief from PSE related to the Tumwater Boulevard Widening Project.

59. Paragraph 59 contains legal conclusions and a request for relief for which an answer is inappropriate and is therefore denied. PSE further denies that the City is entitled to any relief from PSE related to the Tumwater Boulevard Widening Project.

60. Paragraph 60 contains a request for relief for which an answer is inappropriate and is therefore denied. PSE further denies that the City is entitled to any relief from PSE related to the Tumwater Boulevard Widening Project or this action.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

61. Paragraph 61 contains a request for relief for which an answer is inappropriate and is therefore denied. PSE further denies that the City is entitled to any relief from PSE related to the Tumwater Boulevard Widening Project.

PSE'S AFFIRMATIVE DEFENSES

1. The City fails to state a claim on which relief can be granted.

2. The City's claim that the Facility Relocation Agreement dated December 16, 2004 is *ultra vires* is barred by the doctrines of equitable estoppel and/or unclean hands.

3. The City's claims that PSE's Easement was superseded or extinguished by the 1985 Franchise or the 1987 Dedication Deed or any other subsequent agreement are barred by the Statute of Frauds.

4. The City's claims related to Section IX of its Complaint and its interpretation of the Schedule 74 Design Agreement and Schedule 74 of PSE's Electric Tariff G are within the primary jurisdiction of the WUTC.

5. PSE reserves the right to set forth additional defenses to the City's Complaint as may be warranted as discovery in this matter progresses.

PSE'S COUNTERCLAIM FOR DECLARATORY JUDGMENT

By way of counterclaim against the CITY OF TUMWATER, PUGET SOUND ENERGY, INC. alleges as follows:

I. PARTIES

1. Counterclaimant PUGET SOUND ENERGY, INC. ("PSE") is a public service corporation organized and operating under the laws of the State of Washington, with

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

its principal place of business and headquarters in Bellevue, Washington. PSE has paid any and all fees and penalties due the State of Washington.

2. Counterclaim defendant the CITY OF TUMWATER ("the City") is a Washington municipal corporation, formed as a mayor-council plan of government pursuant to Chapter 35A.12, RCW.

II. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over PSE's counterclaims pursuant to RCW 2.08.010 and 7.24.010-020.

4. Venue in Thurston County is proper pursuant to RCW 4.12.010 and 4.12.025.

III. FACTS ENTITLING PSE TO RELIEF

A. PSE's Easement Rights Have Never Been Extinguished

5. On or about November 3, 1981, the Port of Olympia ("Port") granted, conveyed and warranted to Puget Sound Power & Light Company, PSE's predecessor in interest, a perpetual easement for the construction, operation, maintenance, repair, replacement and enlargement of electric facilities ("PSE's Easement"), a copy of which (excluding exhibits) was provided with the City's Complaint as Exhibit E.

6. The property burdened by PSE's Easement included portions of the right of way that was then called Airdustrial Way in Thurston County, Washington, although PSE's Easement extended beyond the street right of way.

7. PSE's Easement does not contain any provision permitting the Port to require the removal or relocation of any electric facilities installed in the easement area.

8. PSE's Easement provides that the rights and obligations of the parties under the PSE's Easement are binding upon their respective successors and assigns.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

9. PSE's Easement was recorded on December 8, 1981, under Thurston County Auditor's file No. 8112080070.

10. As of the time PSE's Easement was granted by the Port and recorded in Thurston County, the property burdened by PSE's Easement was outside the City's boundaries.

11. After the Port granted PSE's Easement and prior to 1985, PSE installed electric distribution facilities within PSE's Easement area, including on Airdustrial Way.

12. On or about June 19, 1985, the City granted to Puget Sound Power & Light Company a franchise to, among other things, construct, operate, repair and maintain electrical facilities within the rights-of-way and other public places of the City as then-existing or subsequently extended ("Franchise"). A copy of the Franchise was provided with the City's Complaint as Exhibit B.

13. PSE accepted the Franchise on or about July 11, 1985. A copy of PSE's acceptance was provided as Exhibit C to the City's Complaint.

14. The Franchise, among other things, grants permission to PSE to construct, operate, repair and maintain electrical facilities within the Franchise Area.

15. The Franchise does not convey any property from the City to PSE or from PSE to the City.

16. On or about January 21, 1987, the Port transferred to the City by dedication deed certain property for public street right-of-way purposes (the "Dedication Deed"), including Airdustrial Way. A copy of the Dedication Deed was provided with the City's Complaint as Exhibit D.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

17. At the time the Port executed the Dedication Deed, the City knew or should have known of the existence of PSE's Easement as an encumbrance on the property conveyed to the City by the Port through the Dedication Deed.

18. The City has never commenced condemnation proceedings against PSE to acquire the property rights granted to PSE through PSE's Easement.

19. The City has never paid compensation to PSE in exchange for acquisition by the City of the property rights granted to PSE through PSE's Easement.

B. PSE Constructed and has Maintained Its Facilities Along Airdustrial Way/Tumwater Boulevard Pursuant to the Rights Granted in PSE's Easement

20. In early 2002, the City began discussing with PSE a potential road improvement project for Airdustrial Way/Tumwater Boulevard (the "Project"). In September 2002, the City notified PSE that it intended to proceed with the Project, that some of PSE's utility facilities would need to be relocated, and that the City desired to convert overhead utility facilities to underground as part of the Project.

21. In March 2003, PSE provided the City with a preliminary cost estimate for converting overhead facilities related to the Project to underground. PSE also informed the City that PSE had not yet completed its rights review for the existing overhead facilities but would provide an updated cost estimate once the rights review was completed.

22. PSE subsequently determined that its electric facilities along Tumwater Boulevard that the City desired to relocate or to convert to underground facilities were located entirely within the area covered by PSE's Easement.

23. PSE installed the electric facilities that the City desires PSE to relocate or to convert to underground as part of the Project pursuant to the rights granted to PSE by the

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

Port in 1981 through PSE's Easement. PSE did not install these electric facilities pursuant to the permissions granted to PSE in its 1985 Franchise with the City.

24. Accordingly, in April 2003, PSE notified the City that the City would be responsible for reimbursing PSE for all of the costs for converting or relocating PSE's facilities for the Project because of the existence of PSE's Easement. Shortly thereafter, PSE provided a copy of PSE's Easement to the City.

25. On February 12, 2004, the City informed PSE that it wished to proceed with the relocation and underground conversion of PSE's facilities and acknowledged that the City would bear the expense for that work.

C. The Schedule 74 Design Agreement Did Not Extinguish or Waive PSE's Easement Rights

26. PSE and the City then executed a Schedule 74 Underground Conversion Project Design Agreement dated May 17, 2004 ("Schedule 74 Design Agreement), a copy of which was provided with the City's Complaint as Exhibit F.

27. The scope of the Schedule 74 Design Agreement was limited to the underground conversion aspect of the work on PSE's facilities related to the Project. The Schedule 74 Design Agreement had no bearing on the terms under which existing PSE facilities would be relocated as part of the Project.

28. Nothing in the Schedule 74 Design Agreement extinguished or waived PSE's property rights as set forth in the PSE Easement. Neither did anything in the Schedule 74 Design Agreement constitute an admission or a waiver by PSE as to the proper application of the cost sharing provisions of Schedule 74 to the potential underground conversion project. Indeed, on July 1, 2004, pursuant to the Schedule 74 Design Agreement, PSE provided to the City a proposed design schedule and cost estimate for the design work for

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

the underground conversion related to the Project. At that time, PSE stated that for most conversion projects, the cost of the design work becomes a shared cost of the conversion if construction proceeds within five years. But for the City's Project, PSE stated, "the facilities to be converted along Tumwater Boulevard are on private easement and in accordance with Schedule 74, the City of Tumwater would be responsible for one hundred percent (100%) of cost of conversion including all design costs."

29. On July 13, 2004, the City sent a notice to PSE to proceed with the design for the Schedule 74 underground conversion work.

30. In March 2005, consistent with PSE's tariff Schedule 74, PSE provided the City with a proposed Schedule 74 Construction Agreement and Project Plan for the underground conversion work for the Project that had been designed pursuant to the Schedule 74 Design Agreement. The Project Plan provided that costs for the work were to be allocated 100% to the City.

31. In June 2005, PSE provided a revised proposed Schedule 74 Construction Agreement and Project Plan to the City that superseded the proposed agreement and plan sent in March 2005 to reflect that the City – rather than PSE – would perform trench installation for the underground conversion work. The Project Plan again provided that costs for the underground conversion work were to be allocated 100% to the City.

32. In or about late November 2005, the City claimed for the first time that it should not be responsible for 100% of the costs of the underground conversion work related to the Project.

33. To the extent the City alleges or claims that the Schedule 74 Design Agreement extinguished or waived PSE's property rights as set forth in the PSE Easement or constituted an admission or a waiver by PSE as to the proper application of the cost sharing

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

provisions of Schedule 74 to the potential underground conversion project, resolution of such allegations or claims would be within the primary jurisdiction of the Washington Utilities and Transportation Commission ("WUTC") and should first be heard and resolved by the WUTC.

D. The Facility Relocation Agreement Confirmed the City's and PSE's Understanding of the Superiority of PSE's Easement Rights

34. PSE and the City also executed a Facility Relocation Agreement dated December 16, 2004 ("Facility Relocation Agreement"), a copy of which was provided as Exhibit G to the City's Complaint. The Facility Relocation Agreement applied to relocation and/or modification work required for PSE's facilities for the Project other than underground conversion work.

35. The Facility Relocation Agreement provided that PSE would provide a design for and relocate certain of its electric facilities in connection with the City's Tumwater Boulevard improvements, and that the City "shall be responsible for, and shall reimburse PSE for, all costs and expenses incurred by PSE in connection with the performance" of the design and relocation work. (Exhibit G, § 7.3)

36. Consistent with the Facility Relocation Agreement, PSE provided a design work plan to the City for the relocation work on January 25, 2005. On January 26, 2005, the City gave PSE a Notice to Proceed with the design work.

37. In June 2005, PSE sent the City a Relocation Plan for the Project pursuant to the Facility Relocation Agreement. Section III of the Relocation Plan provided that the "City is responsible for reimbursing PSE for 100% of the actual costs...to perform the relocation portions of the work."

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

38. In or about late November 2005, the City claimed for the first time that it should not be responsible for 100% of the costs of the relocation work related to the Project.

E. Project Work Proceeds Notwithstanding This Dispute Over Cost Responsibility

39. In order to permit the underground conversion work to proceed without delaying the City's Tumwater Boulevard Widening Project, the City executed a Schedule 74 Construction Agreement dated February 23, 2006, in the form that PSE claimed was appropriate for the underground conversion work ("Construction Agreement"). A copy of the Construction Agreement is provide with PSE's Answer and Counterclaim as Exhibit A At the same time, the City reserved its rights to challenge the Construction Agreement, through the Reservation of Rights Agreement provided as Exhibit I to the City's Complaint.

40. In order to permit the relocation work to proceed without delaying the City's Tumwater Boulevard Widening Project, the City also executed a Facility Relocation Agreement dated February 23, 2006, which was also subject to the parties' Reservation of Rights Agreement. A copy of the Facility Relocation Agreement is provide with PSE's Answer and Counterclaim as Exhibit B.

IV. CAUSE OF ACTION FOR DECLARATORY JUDGMENT

41. PSE incorporates by reference the allegations in paragraphs 1 through 40 of its Counterclaim as if fully set forth herein.

42. PSE is entitled to a judgment declaring that the property rights it acquired through PSE's Easement survived the 1985 Franchise, the 1987 Dedication Deed, and any other agreement, deed or event that the City claims extinguished or superseded such property rights, and declaring that PSE's Easement continues in full force and effect.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

43. PSE is entitled to a judgment declaring that the City is bound by and must comply with the terms of its Construction Agreement (Exhibit A hereto) and its Facility Relocation Agreement (Exhibit B hereto) with PSE.

44. PSE believes that the Court's determination of its property rights pursuant to paragraph 42 of PSE's Counterclaim is dispositive of the question whether the City is bound by the Construction Agreement, as set forth in paragraph 43 of PSE's Counterclaim. To the extent the City contests PSE's claim for declaratory judgment by way of a contrary interpretation or application of Schedule 74 of PSE's Electric Tariff G, the dispute would be within the primary jurisdiction of the WUTC and should first be heard and resolved by the WUTC.

45. PSE is further entitled to a judgment declaring that neither the 1985 Franchise nor any subsequent expansion of the City's boundaries extinguished any other of PSE's property rights within the City's boundaries.

V. PRAYER FOR RELIEF

WHEREFORE, PSE seeks the following relief:

A. An Order dismissing with prejudice any and all claims against PSE by the City.

B. An Order declaring that the property rights PSE acquired through PSE's Easement survived the 1985 Franchise, the 1987 Dedication Deed, and any other agreement or event that the City claims extinguished or superseded such property rights, and declaring that PSE's Easement continues in full force and effect.

C. An Order declaring that the City is bound by and must comply with the terms of its Construction Agreement (Exhibit A hereto) and its Facility Relocation Agreement (Exhibit B hereto) with PSE.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

D. An Order declaring that neither the 1985 Franchise nor any subsequent expansion of the City's boundaries extinguished any other of PSE's property rights within the City's boundaries.

E. An award of costs and fees, including PSE's reasonable attorneys' fees, to the extent allowed by contract and by law.

F. Such other relief as the Court may deem just and proper.

DATED this 7th day of June, 2006.

PERKINS COIE LLP

By _____

Kirstin S. Dodge, WSBA #22039
Donna L. Barnett, WSBA# 36794
Attorneys for Defendant
Puget Sound Energy, Inc.

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1400
Fax: (425) 635-2400

EXHIBIT C

PUGET SOUND ENERGY
Electric Tariff G

(N)

SCHEDULE 73
CONVERSION TO UNDERGROUND SERVICE FOR CUSTOMERS OTHER THAN GOVERNMENT ENTITIES

1. AVAILABILITY

The Company shall, in accordance with the Company's applicable standards and specifications (and subject to the other provisions of this Schedule), design and install an Underground Distribution System in the Conversion Area and remove from the Conversion Area the existing overhead electric distribution system of 15,000 volts or less together with Company-owned poles following removal of all utility wires therefrom under this Schedule when all of the following conditions are met:

a. Sufficient materials and equipment are available.

b. The Customer has requested the Company to install an Underground Distribution System, and the Customer and the Company have entered into a Schedule 73 Underground Conversion Agreement in the form set forth in Attachment A to this Schedule.

c. The Company has the right to install, construct, operate, repair and maintain an electrical distribution system (including an Underground Distribution System) in the Conversion Area (i) regarding the portions of such system to be installed in a Public Thoroughfare, pursuant to a franchise granted by the applicable Government Entity and executed by the Company, or, if there is no such franchise, pursuant to some other grant of rights mutually agreed upon by the Company and such Government Entity, and (ii) regarding any other portion of such system, pursuant to a grant of rights agreed upon by the Company.

d. All customers served by the Company within the Conversion Area will receive electric service through Underground Service Lines from the Underground Distribution System, unless the Company explicitly agrees to other electric service arrangements.

e. The Customer requesting service under this Schedule is not a Government Entity.

Customers that are eligible to receive service under this Schedule are not eligible for service under Schedule 74 of the Company's Electric Tariff G. (N)

Issued: June 26, 2002 **Effective:** July 1, 2002
Advice No.: 2002-12
By Authority of the Washington Utilities and Transportation Commission in Docket Nos. UE-011570 & UG-011571
Issued By Puget Sound Energy

By: George Pohndorf George Pohndorf **Title:** Director, Rates & Regulation

PUGET SOUND ENERGY
Electric Tariff G

(N)

SCHEDULE 73
CONVERSION TO UNDERGROUND SERVICE
FOR CUSTOMERS OTHER THAN GOVERNMENT ENTITIES
(Continued)

2. NON-ELIGIBLE CONVERSIONS IF PERMITTED BY THE COMPANY

Conversions of existing overhead distributions systems or portions thereof that do not meet the availability requirements of Section 1 of this Schedule shall be accomplished at the sole discretion of the Company and after payment by the Customer to the Company of one hundred percent (100%) of the Company's estimated design and construction costs to perform such conversion. Non-eligible conversions, if accomplished by the Company, shall be subject to Sections 3 through 13 of this Schedule.

3. CUSTOMER OBLIGATIONS

a. The Customer shall, at its expense, perform the following within the Conversion Area, all in accordance with the Company's specifications:

(1) Trenching and Restoration, together with all coordination required for the installation of the Underground Distribution System; and
(2) surveying for alignment and grades for vaults and ducts.

b. The Customer shall pay to the Company the entire amount of all of the costs described below in this Section 3.b. The Customer shall pay to the Company, prior to the Company's commencing any work under this Schedule, an amount equal to the Company's estimate of the design and construction costs for the conversion project to be accomplished by the Company pursuant to this Schedule. If the actual costs of any amounts payable by the Customer to the Company pursuant to this Schedule are different from such estimate, the Company shall refund any excess payment to the Customer or bill (and be entitled to collect from) the Customer the appropriate amount in the case of any underpayment of actual costs by the Customer, such bill to be paid by the Customer within thirty (30) days.

(1) the actual costs to the Company for labor, materials and overheads and all other costs for design of the Underground Distribution System;
(2) the actual costs to the Company for labor, materials and overheads and all other costs to construct and install the Underground Distribution System;
(3) the actual design costs to the Company (including costs for labor, materials and overheads and all other costs), and the actual construction and installation costs to the Company (including costs for labor, materials and overheads and all other costs), less the salvage value (if any) to the Company of the facilities removed, for removal of the existing electrical facilities;

(N)

Issued: June 26, 2002 **Effective:** July 1, 2002
Advice No.: 2002-12
By Authority of the Washington Utilities and Transportation Commission in Docket Nos. UE-011570 & UG-011571
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PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 73
CONVERSION TO UNDERGROUND SERVICE
FOR CUSTOMERS OTHER THAN GOVERNMENT ENTITIES
(Continued)

(4) the costs, if any, incurred by the Company to obtain the Operating Rights;
(5) the incremental costs or cost reductions incurred by the Company to implement any Customer Requested Changes (including, without limitation, any overtime labor costs and costs of inspection); (N) | (N)
(6) the costs incurred by the Company due to delays in the Company's installation of the Underground Distribution System attributable to the acts or omissions of the Customer, its contractors or other parties the Customer allows to use the trench for the Underground Distribution System (including, without limitation, any overtime labor costs); and
(7) the costs of (i) cancellation as provided herein; (ii) any facilities installed at the time of the conversion to provide Temporary Service, as provided for herein; and (iii) removal of any facilities installed to provide Temporary Service (less salvage value of removed equipment).

4. GENERAL

a. Ownership of Facilities: Except as otherwise provided in the Company's Electric Tariff G, the Company shall own, operate, and maintain the Underground Distribution System installed or provided pursuant to this Schedule.
b. Prior Contracts: Nothing herein contained shall affect the rights or obligations of the Company under any previous agreements pertaining to existing or future facilities of greater than 15,000 Volts within any Conversion Area.
c. Temporary Service: Temporary Service shall not exceed a term of 18 months from the date of completion of the conversion to an Underground Distribution System, unless the Company agrees to extend such term. If a Temporary Service is not disconnected or removed within such time approved by the Company acting reasonably, the Customer shall pay, without duplication of any amounts previously paid by the Customer pursuant to this Schedule, either (i) 100% of the costs for the entire Underground Distribution System or (ii) 100% of the costs of converting only the Temporary Service to underground, whichever the Customer may elect.

5. USE BY OTHER UTILITIES OF TRENCHES PROVIDED BY THE CUSTOMER

Other utilities may be permitted by the Customer to use trenches provided by the Customer pursuant to this Schedule for the installation of such other utilities' facilities, so long as such facilities, or the installation thereof, do not interfere (as determined pursuant to the Company's electrical standards) with the installation, operation or maintenance of the Company's Facilities located within such trenches. Any change to the Company's design to accommodate such use shall be deemed to be a Customer Requested Change.

PUGET SOUND ENERGY
Electric Tariff G

(N)

SCHEDULE 73
CONVERSION TO UNDERGROUND SERVICE
FOR CUSTOMERS OTHER THAN GOVERNMENT ENTITIES
(Continued)

6. CANCELLATION

If a Customer cancels or takes any other action that has substantially the same effect as cancellation regarding a conversion project undertaken under this Schedule prior to completion of the conversion to an Underground Distribution System, the Customer shall pay the Company all of the costs incurred by the Company to the date of such cancellation or other action, plus any future costs of the Company that may not be reasonably avoided. If on account of any Customer action or failure to act construction of a conversion project has not commenced within one year after the Company has provided an estimate of the costs for such project to the Customer, such conversion project shall be deemed to be cancelled. The Customer shall pay all design and construction costs incurred by the Company on account of cancellation (or any other action that has substantially the same effect as cancellation) within thirty (30) days after receipt of the Company's invoice therefor.

7. INSTALLATION AND OPERATING RIGHTS

a. The Company shall, at the Customer's expense, obtain all rights to space and all legal and other rights necessary, in the Company's sole judgment, for the safe and efficient installation, operation, repair and maintenance of all of the Facilities within the Conversion Area; provided, that with the prior written consent of the Company, the Customer may, at its expense, obtain all or part of such rights. Expenses for which the Customer shall be liable pursuant to this section include, but are not limited to, Company staff costs (including overheads) and the actual costs of any easement, fee, permit, survey and reasonable attorneys' fees.
b. If any Operating Rights are not available to the Company in a timely manner, service under this Schedule may be delayed or canceled at the discretion of the Company.

8. STREET LIGHTING

Removal and replacement of existing street lighting or installation of new street lighting within the Conversion Area suitable for service from the Underground Distribution System installed pursuant to this Schedule shall be arranged separately as provided in the Company's Electric Tariff G.

9. UNDERGROUND SERVICE LINES

Underground Service Lines shall be installed, owned, and maintained as provided in the Company's Electric Tariff G.

(N)

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PUGET SOUND ENERGY
Electric Tariff G

(N)

SCHEDULE 73
CONVERSION TO UNDERGROUND SERVICE
FOR CUSTOMERS OTHER THAN GOVERNMENT ENTITIES
(Continued)

10. DESIGN AND COSTS

The Company exclusively shall determine the appropriate design, phase, voltage and capacity of the Underground Distribution System and appropriate costs using its cost estimating system in conjunction with sound engineering practices. The Company shall provide estimates of its design and construction costs to perform the conversion; provided, that (a) estimates shall be provided for planning purposes only, and may differ from the actual costs of conversion, and (b) the Company may, at its option, require the Customer to pay in advance the Company's cost of providing such estimates. Upon request, the Company shall provide (but not more frequently than once in any calendar month) a report of progress identifying work completed to date, work yet to be completed and an estimate regarding whether the conversion project is on target with respect to estimated budget and schedule.

11. STANDARD PRACTICES

The manner and type of construction of any Underground Distribution System or Underground Service Lines installed under this Schedule shall be determined by the Company in its sole judgment consistent with its standard practices. In the event that the applicable government authority or law requires any type of construction that results in any increase in costs over the costs that would have been incurred for design and construction pursuant to the Company's standard practices, any such increase in costs shall be paid in full by the Customer to the extent that such increased costs are not paid to the Company by the applicable government authority or other person or entity.

12. GENERAL RULES AND PROVISIONS

Service under this Schedule is subject to the General Rules and Provisions contained in Schedule 80 of the Company's Electric Tariff G.

13. DEFINITIONS

The following terms when used in this Schedule shall, solely for purposes of this Schedule, have the meanings given below:

a. Conversion Area: The geographical area in which the Company replaces its overhead electric distribution system with an Underground Distribution System.

(N)

Issued: June 26, 2002 **Effective:** July 1, 2002
Advice No.: 2002-12
By Authority of the Washington Utilities and Transportation Commission in Docket Nos. UE-011570 & UG-011571
Issued By Puget Sound Energy

By: George Pohndorf George Pohndorf **Title:** Director, Rates & Regulation

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 73
CONVERSION TO UNDERGROUND SERVICE
FOR CUSTOMERS OTHER THAN GOVERNMENT ENTITIES
(Continued)

b. Customer Requested Change: Any change requested or caused by the Customer in the engineering, design, construction and installation plan or in the Trenching and Restoration plan of the Underground Distribution System. Customer Requested Changes may include, but are not limited to, re-routing or re-locating the Underground Distribution System, use of different or non-standard equipment, installation of equipment in indoor vault rooms, expedited installation of the Underground Distribution System or use of Customer-provided contractors to perform work that would otherwise be performed by the Company under this Schedule. Customer Requested Changes do not include any change in the size of the Conversion Area.

All Customer Requested Changes are subject to acceptance and approval by the Company. Use of Customer-provided contractors is limited to the installation of duct and vaults where (i) all materials installed by the Customer are provided by the Company, or in the case of service line conduit, provided or approved by the Company, and (ii) there is a one-hundred percent (100%) inspection and over-sight of the installation by the Company. A Customer Requested Change may include installation of service line conduit by the Customer on Customer-owned property. (N)

c. Facilities: All components of the Underground Distribution System, including but not limited to, primary voltage cables, secondary voltage cables, connections, terminations, pad-mounted transformers, pad-mounted switches, ducts, vaults and other associated components.

d. Government Entity: Any municipality, county or other government entity having authority over the Public Thoroughfare in the Conversion Area.

e. Operating Rights: Any of the rights to space or other rights referred to in Section 7.a of this Schedule.

f. Public Thoroughfare: Any municipal, county, state, federal or other public road, highway or throughway, or other public right-of-way or other public real property rights allowing for electric utility use. (K)

Issued: October 24, 2005
Effective: November 24, 2005
Advice No.: 2005-46

Issued By Puget Sound Energy

By: Karl R. Karzmar **Title:** Director, Regulatory Relations

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 73
CONVERSION TO UNDERGROUND SERVICE
FOR CUSTOMERS OTHER THAN GOVERNMENT ENTITIES
(Continued)

g. Temporary Service: Temporary Service shall have the meaning set forth in the General Rules and Provisions of the Company's Electric Tariff G and, in addition, shall mean (i) limited overhead facilities that, at the request of a Customer, the Company may elect in its sole discretion to leave in place within the Conversion Area after installation of the Underground Distribution System and/or (ii) limited overhead or underground facilities that, at the request of a Customer, the Company may elect in its sole discretion to install concurrently with the installation of the Underground Distribution System, and that, in each case, shall be used to provide overhead distribution service within the Conversion Area for such period as may be approved by the Company acting reasonably under the circumstances, (e.g., to accommodate other demolition or construction projects within the Conversion Area). (M)

h. Trenching and Restoration: Includes, but is not limited to, any or all of the following, whether in Public Thoroughfares or on other property: breakup of sidewalks, driveways, street surfaces and pavements; disturbance or removal of landscaping; excavating for vaults; trenching for ducts or cable; shoring, flagging, barricading and backfilling; installation of select backfill or concrete around ducts (if required); compaction; and restoration of Public Thoroughfares and other property.

i. Underground Distribution System: An underground electric distribution system, excluding "Underground Service Lines" as such term is defined herein, that is comparable to the overhead distribution system being replaced. The Underground Distribution System includes the Facilities as defined herein. For purposes of this Schedule, a "comparable" system shall include, unless the Customer and the Company otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced.

j. Underground Service Lines: The underground electric cables and associated components extending from the service connections at the outside of the customers' structures to the designated primary voltage or secondary voltage service connection points of an Underground Distribution System.

(M) Transferred from Sheet No. 73-e

EXHIBIT D

PUGET SOUND ENERGY
Electric Tariff G

(N)

SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE FOR GOVERNMENT ENTITIES

1. AVAILABILITY

The Company shall install an Underground Distribution System and shall remove the existing overhead electric distribution system of 15,000 volts or less together with Company-owned poles following removal of all utility wires therefrom under this Schedule when all of the following conditions are met:

a. The Government Entity has determined that installation of an Underground Distribution System is or will be required and has notified the Company in writing of such determination, and the Company and such Government Entity have agreed upon the provisions of the Design Agreement and the Construction Agreement pursuant to which the Company shall design and install an Underground Distribution System and provide service under this Schedule.

b. The Company has the right to install, construct, operate, repair and maintain an electrical distribution system (including an Underground Distribution System) within the Public Thoroughfare in the Conversion Area pursuant to a franchise previously granted by the Government Entity requesting such installation and executed by the Company, or, if there is no such franchise, or if such franchise does not provide such right, pursuant to some other grant of rights mutually agreed upon by the Company and the Government Entity.

c. All customers served by the Company within the Conversion Area will receive electric service through Underground Service Lines from the Underground Distribution System, unless the Company explicitly agrees to other electric service arrangements.

Government Entities that are eligible to receive service under this Schedule are not eligible for service under Schedule 73 of the Company's Electric Tariff G.

2. AGREEMENT PROVISIONS

The Company shall provide and install an Underground Distribution System within the Conversion Area subject to the terms and conditions of a Schedule 74 Design Agreement (the "Design Agreement") and a Schedule 74 Construction Agreement (the "Construction Agreement"), and the following shall apply:

(N)

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)

(N)

a. The Design Agreement and the Construction Agreement shall (i) be consistent with this Schedule, and (ii) be substantially in the forms of Attachment A and Attachment B hereto, which attachments are by this reference incorporated in this Schedule as if fully set forth herein. Without limiting the possibility that the Company and the Government Entity may (consistent with this Schedule) mutually agree upon terms that are in addition to those contained in the forms set forth in Attachments A and B hereto, neither the Government Entity nor the Company shall be required to agree to additional terms as a condition of service under this Schedule.

b. The Design Agreement and the Construction Agreement shall:
(1) except as otherwise provided in Section 2.b(2), obligate the Government Entity to pay the Company 40% of the total Cost of Conversion and the Company to pay 60% of the total Cost of Conversion;
(2) obligate the Government Entity to pay (i) 100% of the total Cost of Conversion for conversion of that portion, if any, of the existing overhead distribution system located, as of the date on which the Government Entity provides the notice referred to in Section 4.a or the date on which the Government Entity commences acquisition or condemnation of real property to facilitate construction of any public improvements related to the conversion project, whichever occurs first, (A) outside of the Public Thoroughfare or (B) pursuant to rights not derived from a franchise previously granted by the Government Entity or pursuant to rights not otherwise previously granted by the Government Entity, less (ii) the distribution pole replacement costs (if any) that would be avoided by the Company on account of such conversion, as determined consistent with the applicable Company distribution facilities replacement program, plus (iii) just compensation as provided by law for the Company's interests in real property on which such existing overhead distribution system was located prior to conversion;
(3) obligate the Government Entity to pay the Company 100% of the costs of (i) cancellation as provided herein; (ii) any facilities installed at the time of the conversion to provide Temporary Service, as provided for herein; and (iii) removal of any facilities installed to provide Temporary Service (less salvage value of removed equipment);
(4) obligate the Company to pay 100% of the cost of obtaining the rights referred to in Section 3.b; and
(5) obligate the Government Entity to (i) perform or to cause to be performed (A) all Trenching and Restoration and job coordination required for the installation of the Underground Distribution System and (B) all surveying for alignment and grades of vaults and ducts and (ii) to pay 100% of the cost of performance under clause (i) of this Section 2.b(5).

(N)

Issued: June 26, 2002 **Effective:** July 1, 2002
Advice No.: 2002-12
By Authority of the Washington Utilities and Transportation Commission in Docket Nos. UE-011570 & UG-011571
Issued By Puget Sound Energy

By: George Pohndorf George Pohndorf Title: Director, Rates & Regulation

PUGET SOUND ENERGY
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SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)

(N)

c. The Government Entity may, at its option, install ducts and vaults, provided that (i) pursuant to the Design Agreement and the Construction Agreement the Government Entity and the Company have mutually agreed upon (A) the cost of such installation to be included in the Cost of Conversion and (B) the specifications and standards applicable to such installation, and (ii) such installation is accomplished by the Government Entity in accordance with the applicable design and construction specifications provided by the Company for such installation pursuant to the Design Agreement. To the extent the Government Entity installs any of the Facilities pursuant to the Construction Agreement, the Company shall not be required to do so under this Schedule.

d. A Government Entity that is a municipality shall notify all persons and entities within the Conversion Area that electric service to such persons and entities must be converted from overhead to underground (as provided for in the Company's Electric Tariff G) within the applicable statutory period following written notice from the Government Entity that service from underground facilities is available in accordance with RCW 35.96.050. The Government Entity shall exercise its authority to order disconnection and removal of overhead facilities with respect to persons and entities failing to convert service lines from overhead to underground within the timelines provided in RCW 35.96.050.

3. INSTALLATION AND OPERATING RIGHTS:

a. The Company may install all of the Facilities within a Public Thoroughfare in the locations provided for in a franchise previously granted by the Government Entity or otherwise provided for in the grant of rights referred to in Section 1.b. The Government Entity shall act in good faith and shall use its best efforts to provide space sufficient for the safe and efficient installation, operation, repair and maintenance of all of the Facilities ("Sufficient Space") within the Public Thoroughfare in the Conversion Area, and the Company shall act in good faith and shall use its best efforts to install Facilities in such space within the Public Thoroughfare. If the Company and the Government Entity agree that there is not or will not be Sufficient Space within the Public Thoroughfare in the Conversion Area, then the Government Entity shall provide Sufficient Space by obtaining additional Public Thoroughfare or other equivalent rights mutually agreeable to the Government Entity and the Company, title to which shall be in the Government Entity's name.

(N)

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(N)

SCHEDULE 74
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FOR GOVERNMENT ENTITIES
(Continued)

b. If, notwithstanding the use of best efforts by each of the Government Entity and the Company as provided in Section 3.a, the Government Entity and the Company do not agree whether there is or will be Sufficient Space within the Public Thoroughfare in the Conversion Area, the Company shall install those Facilities, for which there is not Sufficient Space within the Public Thoroughfare, on property outside the Public Thoroughfare, the rights for which shall be obtained by the Company at its sole expense. Subject to the other provisions of this Schedule, nothing in this section shall excuse the Company from complying with any work schedule agreed to by the Government Entity and the Company pursuant to the Design Agreement and the Construction Agreement.

c. If the Government Entity requires the relocation of any Facilities installed pursuant to this Schedule in a Public Thoroughfare within five (5) years from the date of the energization for service of such Facilities, the Government Entity shall reimburse the Company for all costs incurred by the Company in connection with the relocation and reinstallation of facilities substantially equivalent to the relocated Facilities.

d. If the Government Entity requires (or takes any action that has the effect of requiring) a third party not acting as an agent or a contractor of Government Entity to relocate any Facilities installed pursuant to this Schedule in a Public Thoroughfare within five (5) years from the date of the energization for service of such Facilities, the Government Entity shall require the third party, as a condition to the Company's performance of any relocation, to pay the Company for all costs incurred by the Company in connection with the relocation and reinstallation of facilities substantially equivalent to the relocated Facilities.

4. GENERAL

a. Timing: The Company shall commence performance (as contemplated in the forms of Design Agreement and Construction Agreement attached hereto as Attachments A and B) within ten (10) business days of written notice from a Government Entity of its determination that it requires installation of an Underground Distribution System under this Schedule.

b. Ownership of Facilities: Except as otherwise provided in the Company's Electric Tariff G, the Company shall own, operate, and maintain the Underground Distribution System installed or provided pursuant to this Schedule.

c. Prior Contracts: Nothing herein contained shall affect the rights or obligations of the Company under any previous agreements pertaining to existing or future facilities of greater than 15,000 Volts within any Conversion Area.

(N)

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By: George Pohndorf George Pohndorf **Title:** Director, Rates & Regulation

PUGET SOUND ENERGY
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(N)

SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)

d. Temporary Service: Temporary Service shall not exceed a term of 18 months from the date on which service from the Underground Distribution System is available, unless the Company acting reasonably agrees to extend such term. Should a Temporary Service not be removed within such 18-month period or such other period of time that has been approved by the Company acting reasonably, a Government Entity that is a municipality shall exercise its authority under RCW 35.96.050 to order such Temporary Service disconnected and removed within the applicable statutory period following the date of mailing of the Government Entity's notice under RCW 35.96.050. Otherwise, if a Temporary Service is not disconnected or removed within such time approved by the Company acting reasonably, the Government Entity shall pay either (i) 100% of the Cost of Conversion for the entire Underground Distribution System or (ii) 100% of the costs of converting only the Temporary Service to underground, whichever the Government Entity may elect.

5. USE BY OTHER UTILITIES OF TRENCHES PROVIDED BY GOVERNMENT ENTITY

Other utilities may be permitted by the Government Entity to use trenches provided by the Government Entity pursuant to this Schedule for the installation of such other utilities' facilities, so long as such facilities, or the installation thereof, do not interfere (as determined pursuant to the Company's electrical standards) with the installation, operation or maintenance of the Company's Facilities located within such trenches.

6. CANCELLATION

If by written notice or other official action a Government Entity cancels or suspends indefinitely or takes similar official action regarding a conversion project undertaken under this Schedule prior to completion of the conversion to an Underground Distribution System, the Government Entity shall pay the Company all of the costs incurred by the Company to the date of such cancellation consistent with the termination provisions of the Design Agreement and Construction Agreement.

7. STREET LIGHTING

Removal and replacement of existing street lighting or installation of new street lighting within the Conversion Area suitable for service from the Underground Distribution System installed pursuant to this Schedule shall be arranged separately as provided in the Company's Electric Tariff G.

(N)

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By: George Pohndorf George Pohndorf **Title:** Director, Rates & Regulation

PUGET SOUND ENERGY
Electric Tariff G

(N)

SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)

8. UNDERGROUND SERVICE LINES

Underground Service Lines shall be installed, owned, and maintained as provided in the Company's Electric Tariff G.

9. GENERAL RULES AND PROVISIONS

Service under this Schedule is subject to the General Rules and Provisions contained in Schedule 80 of the Company's Electric Tariff G.

10. DEFINITIONS

The following terms when used in this Schedule, the Design Agreement or the Construction Agreement shall, solely for purposes of this Schedule and such agreements, have the meanings given below:

a. Conversion Area: The geographical area in which the Company replaces its overhead electric distribution system with an Underground Distribution System.
b. Cost of Conversion: The cost of converting an existing overhead distribution system to an Underground Distribution System shall be the sum of:
   (i) the actual, reasonable costs to the Company for labor, materials and overheads and all other reasonable costs, not including mark-up or profit of the Company, for design of the Underground Distribution System, such costs to be determined in accordance with the Design Agreement; plus
   (ii) the actual costs to the Company for labor, materials and overheads and all other costs, not including mark-up or profit of the Company, to construct and install the Underground Distribution System, up to a maximum amount determined in accordance with the Construction Agreement; plus
   (iii) the actual reasonable design costs to the Company (including costs for labor, materials and overheads and all other reasonable costs), and the actual construction and installation costs to the Company (including costs for labor, materials and overheads and all other costs), less the salvage value to the Company of the facilities removed, up to a maximum amount determined in accordance with the Construction Agreement, in each case not including mark-up or profit of the Company, for removal of the existing electrical facilities; plus

(N)

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FOR GOVERNMENT ENTITIES
(Continued)

(N)

(iv) the actual costs to the Government Entity (if any) of installation of ducts and vaults or other Facilities that the Government Entity has agreed to install for the Underground Distribution System pursuant to the Construction Agreement, up to a maximum amount determined in accordance with the Construction Agreement; plus
(v) the actual, reasonable costs to the Government Entity (if any) of obtaining Public Thoroughfare or other equivalent rights for the Facilities pursuant to Section 3.a.

The Cost of Conversion shall not include any costs of Trenching and Restoration, or of the Company's obtaining rights pursuant to Section 3.b of this Schedule. Company upgrades and expansions, Government Entity requested changes and requested upgrades, the cost of delays and overtime labor costs shall be as provided for in the Design Agreement and the Construction Agreement.

c. Facilities: All components of the Underground Distribution System, including but not limited to, primary voltage cables, secondary voltage cables, connections, terminations, pad-mounted transformers, pad-mounted switches, ducts, vaults and other associated components.

d. Government Entity: The municipality, county or other government entity having authority over the Public Thoroughfare in the Conversion Area.

e. Public Thoroughfare: Any municipal, county, state, federal or other public road, highway or throughway, or other public right-of-way or other public real property rights allowing for electric utility use.

f. Temporary Service: Temporary Service shall have the meaning set forth in the General Rules and Provisions of the Company's Electric Tariff G and, in addition, shall mean (i) limited overhead facilities that, at the request of the Government Entity, the Company may elect in its sole discretion to leave in place within the Conversion Area after installation of the Underground Distribution System and/or (ii) limited overhead or underground facilities that, at the request of the Government Entity, the Company may elect in its sole discretion to install concurrently with the installation of the Underground Distribution System, and that, in each case, shall be used to provide overhead distribution service within the Conversion Area for such period as may be approved by the Company acting reasonably under the circumstances, (e.g., to accommodate other demolition or construction projects within the Conversion Area).

(N)

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By: George Pohndorf George Pohndorf **Title:** Director, Rates & Regulation

PUGET SOUND ENERGY
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SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)

(N)

g. Trenching and Restoration: Includes, but is not limited to, any or all of the following, whether in Public Thoroughfares or on other property: breakup of sidewalks, driveways, street surfaces and pavements; disturbance or removal of landscaping; excavating for vaults; trenching for ducts or cable; shoring, flagging, barricading and backfilling; installation of select backfill or concrete around ducts (if required); compaction; and restoration of Public Thoroughfares and other property; all in accordance with the specifications applicable thereto set forth in the Design Agreement and the Construction Agreement.

h. Underground Distribution System: An underground electric distribution system, excluding "Underground Service Lines" as such term is defined herein, that is comparable to the overhead distribution system being replaced. The Underground Distribution System includes the Facilities as defined herein. For purposes of this Schedule, a "comparable" system shall include, unless the Government Entity and the Company otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the Design Agreement and Construction Agreement necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced.

i. Underground Service Lines: The underground electric cables and associated components extending from the service connections at the outside of the customers' structures to the designated primary voltage or secondary voltage service connection points of an Underground Distribution System.

(N)

Issued: June 26, 2002 **Effective:** July 1, 2002
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By Authority of the Washington Utilities and Transportation Commission in Docket Nos. UE-011570 & UG-011571
Issued By Puget Sound Energy

By: George Pohndorf George Pohndorf **Title:** Director, Rates & Regulation

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UE-011570 and UG-011571 (consolidated)
Complainant,	)	TWELFTH SUPPLEMENTAL ORDER: REJECTING TARIFF FILING; APPROVING AND ADOPTING SETTLEMENT STIPULATION SUBJECT TO MODIFICATIONS, CLARIFICATIONS, AND CONDITIONS; AUTHORIZING AND REQUIRING COMPLIANCE FILING
v.	)	
PUGET SOUND ENERGY, INC.,	)	
Respondent.	)	

SYNOPSIS: The Commission approves and adopts an unopposed Settlement Stipulation as a reasonable resolution of Puget Sound Energy, Inc.'s request for a general increase in electric rates and other relief, and as a partial resolution of the Company's request for a general increase in gas rates. The Commission approves an overall 4.6 percent electric rate increase. The Commission also approves a power cost adjustment mechanism to enhance the Company's financial stability. Other provisions of the approved and adopted Settlement Stipulation include a one-year extension, through September 2003, of PSE's time-of-use (TOU) electricity pricing program, establishment of a new program to assist low-income PSE customers, increased commitment by PSE to electric and natural gas conservation, continuation and expansion of service quality performance standards, revision of PSE's tariff schedules that govern underground conversion of distribution facilities, and revisions to PSE's line extension and backup distribution services tariff schedules.

1 **PROCEEDINGS.** On November 26, 2001, Puget Sound Energy, Inc. ("PSE" or the "Company") filed tariff revisions designed to effectuate a general rate increase for electric and gas services. On December 3, 2001, PSE filed a request for an interim electric rate increase. These proceedings were consolidated under Docket Nos. UE-011570 and UG-011571. The Commission established procedural schedules for an interim phase (electric) hearing and general rate phase (electric and gas) hearing.

2 The Commission approved and adopted an unopposed Settlement Stipulation on March 28, 2002, to resolve the interim phase of these proceedings.[1] The interim settlement agreement included commitments by the parties to conduct further settlement negotiations via a series of collaboratives and stipulations among the parties to certain facts pertinent to the determination of final rates.

3 On April 19, 2002, PSE filed on behalf of itself and one other party, King County, a proposed "Stipulation of Settlement for King County." PSE and King County filed a revised Stipulation later on May 6, 2002, which the Commission approved.[2]

4 On June 6, 2002, PSE filed on behalf of itself and other parties a "Settlement Stipulation for Electric and Common Issues and Application for Commission Approval of Settlement" ("Settlement Stipulation"). The proposed Settlement Stipulation is unopposed by any party.

5 **PARTIES.** Markham Quehrn and Kirstin Dodge, Perkins Coie LLP, Bellevue, Washington, represent Puget Sound Energy, Inc. John A. Cameron and Traci Kirkpatrick, Davis Wright Tremaine, represent AT&T Wireless and the Seattle Times Company. Danielle Dixon, Policy Associate, Northwest Energy Coalition, represents that organization and the Natural Resources Defense Council. Carol S. Arnold, Preston Gates Ellis, Seattle, Washington, represents Cost Management Services, Inc., and the cities of Auburn, Des Moines, Federal Way, Redmond, Renton, SeaTac, Tukwila, Bellevue, Maple Valley, and Burien ("Auburn, *et al.*"). Ron Roseman, attorney at law, Seattle, Washington, represents the Multi-Service Center, the Opportunity Council, and the Energy Project; Charles M. Eberdt, Manager, Energy Project also entered his appearance for the Energy Project; Dini Duclos, CEO, Multi-Service Center, also entered an appearance for that organization. Angela L. Olsen, Assistant City Attorney, McGavick Graves, Tacoma, Washington, represents the City of Bremerton. Donald C. Woodworth, Deputy Prosecuting Attorney, Seattle, Washington, represents King County. Melinda Davison and S. Bradley Van Cleve, Davison Van Cleve, P.C., Portland, Oregon, represent Industrial Customers of

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[1] *WUTC v. PSE. Docket Nos. UE-011570/UG-011571 (consolidated), Ninth Supplemental Order (March 28, 2002).*

[2] *WUTC v. PSE, Docket Nos. UE-011570/UG-011571 (consolidated), Eleventh Supplemental Order (May 6, 2002).*

Northwest Utilities. Elaine L. Spencer and Michael Tobiason, Graham & Dunn, Seattle, Washington, represent Seattle Steam Company. Edward A. Finklea, Energy Advocates, LLP, represents the Northwest Industrial Gas Users. Donald Brookhyser, Alcantar & Kahl, Portland, Oregon, represents the Cogeneration Coalition of Washington. Michael L. Charneski, Attorney at Law, Woodinville, Washington, represents the City of Kent. Norman J. Furuta, Associate Counsel, Department of the Navy, represents the Federal Executive Agencies ("FEA"). Michael L. Kurtz, Boehm, Kurtz & Lowry, Cincinnati, Ohio, represents Kroger Company. Kirk H. Gibson and Lisa F. Rackner, Ater Wynne LLP, Portland, Oregon, represent WorldCom, Inc. Elizabeth Thomas, Preston Gates Ellis LLP, Seattle, Washington, represents Sound Transit. Harvard M. Spigal and Heather L. Grossman, Preston Gates and Ellis LLP, Portland, Oregon, represent Microsoft Corporation. Simon ffitch, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section, Office of Attorney General. Robert D. Cedarbaum, Senior Assistant Attorney General, and Shannon Smith, Assistant Attorney General, Olympia, Washington, represent the Commission's regulatory staff (Staff). [3]

6 **COMMISSION:** The Commission approves and adopts the unopposed Settlement Stipulation, with certain modifications, clarifications, and conditions, as a full and final resolution of the remaining issues in Docket No. UE-011570 and of certain issues in Docket No. UG-011571. The Commission incorporates the Settlement Stipulation by reference and makes it a part of this Order. *Appendix A, infra.* The Commission authorizes and requires PSE to make any compliance filings required to effectuate the terms of the Settlement Stipulation and this Order.

MEMORANDUM

I. Introduction.

7 This Order marks the culmination of significant efforts by the parties, and by the Commission, to help restore the financial integrity of one of Washington State's major electric utilities, and to help ensure that PSE's customers continue to receive

[3] In formal proceedings, such as this case, the Commission's regulatory staff (Staff) functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. *RCW 34.05.455.*

reliable electric service at reasonable rates. Ms. Kimberly Harris, PSE's Vice-President of Regulatory Affairs, testified that:

> The parties' ability to reach agreement is a significant accomplishment that required an extraordinary commitment on behalf of the parties and their representatives, that in many respects required more effort than would be required for resolution of a rate case through litigation. I believe that the process will have lasting benefits to the Company and its customers because of the quality of the settlement achieved, the extensive communication that occurred regarding various interests and concerns, and the working relationships that have developed through this process. The Company looks forward to continuing to work collaboratively with its customers on many more issues into the future.

Exhibit No. 530 at 2.

8 As we stated in our Ninth Supplemental Order in this proceeding, the Commission is encouraged by the approach of the Company's new management in meeting its public service obligation, which includes the obligation to improve PSE's financial condition and restore the Company's financial vitality. Steps taken or to be taken by PSE both as a result of the terms of settlement, and independently, demonstrate the Company's commitment to building and maintaining greater financial strength on a prospective basis. We commend the Company and the parties for their hard work and success in forging an agreement of impressive and unprecedented scope. Both the Company and its customers will benefit from the agreement we approve today and from continuing constructive collaborative efforts.

II. Background and Procedural History.

9 PSE filed a general rate case on November 26, 2002. The Company sought by its filing permanent increases in both electric and gas rates in the amounts of $228.3 million per year and $85.9 million per year, respectively, for an aggregate amount of $314.2 million. On December 3, 2001, PSE filed both a Petition for Interim Rate Relief and an Electric Tariff Filing in Advice No. 2001-51. The Company sought by that filing to implement a temporary rate increase, subject to refund, to obtain immediate rate relief in the amount of $170.7 million. PSE requested the Commission to approve Tariff Schedule 128, which would implement an Electric Energy Cost Surcharge rate of $1.4568¢ per kWh.

10 Both the interim and general rate filings were docketed as Nos. UE-011570 and UG-011571.[4] The Commission convened a prehearing conference in these proceedings on December 20, 2001, in Olympia, Washington, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner Patrick J. Oshie, and Administrative Law Judge Dennis J. Moss. The dockets were consolidated by the Commission's Second Supplemental Order: Prehearing Conference, entered on December 28, 2001. A procedural schedule for both the interim and general phases of these proceedings was set by the Second Supplemental Order, as later amended by the Commission's Fifth and Seventh Supplemental Orders.

11 The Commission conducted evidentiary hearings on the interim rate issues in Olympia from February 18, 2002, through February 22, 2002. The Commission heard public testimony in Olympia on the issues related to interim rate relief on February 21, 2002. The parties requested several continuances of the date established for filing briefs (*i.e.*, March 1, 2002) to permit them an opportunity to conduct settlement negotiations with the assistance of Administrative Law Judge C. Robert Wallis as mediator.

12 On March 20, 2002, Puget Sound Energy, Inc., the Commission's regulatory staff, Public Counsel, Industrial Customers of Northwest Utilities, Northwest Industrial Gas Users, Kroger Co., AT&T Wireless, Northwest Energy Coalition, Natural Resources Defense Council, and Seattle Steam Company filed a partial settlement in Docket Nos. UE-011570/UG-011571. These parties requested that the Commission enter an order by March 29, 2002, approving and adopting the settlement agreement as a full and final resolution of the interim rate issues, as a resolution of certain other issues pending in Docket Nos. UE-011570/UG-011571, and as full and final resolution of all issues pending in Docket No. UE-011411.[5] The Commission conducted an evidentiary hearing on the proposed settlement agreement on March 25, 2002, and entered its Ninth Supplemental Order approving and adopting the settlement agreement on March 28, 2002.

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[4] In a related filing, Docketed as No. UE-011600, PSE petitioned for an order authorizing the deferral of a portion of the Company's electric energy supply costs. The Commission entered its Order Granting Accounting Petition on December 28, 2001.

[5] On October 8, 2001, the Public Counsel Section of the Attorney General's Office filed with the Commission a complaint against PSE in Docket No. UE-011411. The complaint alleges that PSE violated the Commission's Fourteenth Supplemental Order in the Puget/WNG Merger proceeding (Docket No. UE-960195) and the Rate Plan in the underlying merger settlement by failing to transfer the prior Bonneville Power Administration residential exchange credit to general rates on July 1, 2001.

13 On April 19, 2002, PSE filed on behalf of itself and King County a proposed Stipulation of Settlement for King County. On April 26, 2002, Commission staff filed comments to which it appended a document captioned "PSE-Staff Stipulation Regarding PSE's King County Settlement." On May 6, 2002, following hearing proceedings, PSE and King County filed and presented for the Commission's consideration a revised Stipulation of Settlement. On May 6, 2002, the Commission, by its Eleventh Supplemental Order, approved and adopted the settlement between PSE and King County and the related Stipulation between PSE and Staff.

14 Pursuant to the settlement agreement we approved by our Ninth Supplemental Order, the parties conducted a series of collaboratives during April and May, 2002. According to the Settlement Stipulation now before us, this involved "extensive meetings, formal and informal data exchange, and negotiations, in a good faith effort to resolve the remaining issues in dispute in the electric General Rate Case and common issues in dispute in the gas General Rate Case." *Stipulation at 3.*

15 On June 6, 2002, PSE filed a "Settlement Stipulation for Electric and Common Issues and Application for Commission Approval of Settlement." On June 7, 2002, several parties filed testimony in support of the Settlement Stipulation. The Settlement Stipulation is signed by 32 of the 34 parties to this proceeding and is unopposed by any party.[6] The Commission conducted prehearing proceedings on the proposed settlement on June 11, 2002, and evidentiary hearing proceedings on June 13, 14, and 17, 2002. The Commission held a public comment hearing on June 13, 2002.

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[6] The so-called Participating Parties include PSE, the Commission's regulatory staff, the Public Counsel Section of the Attorney General's Office ("Public Counsel"), Industrial Customers of Northwest Utilities ("ICNU"), Kroger Company, Northwest Industrial Gas Users ("NWIGU"), AT&T Wireless Services ("AT&T"), Microsoft Corporation, WorldCom, Inc., Seattle Steam Company, Northwest Energy Coalition ("NWEC") jointly with Natural Resources Defense Council ("NRDC"), Multi-Service Center jointly with Opportunity Council and Energy Project, Cost Management Services, Inc., Federal Executive Agencies, Cogeneration Coalition of Washington, King County, Sound Transit, and the Cities of Auburn, Bremerton, Bellevue, Burien, Des Moines, Federal Way, Kent, Maple Valley, Redmond, Renton, SeaTac, and Tukwila. Although Cogeneration Coalition of Washington is listed as a Participating Party, it is not a signatory to the Settlement Stipulation. Seattle Times Company is neither a Participating Party nor a signatory to the Settlement Stipulation, but does not oppose its approval.

III. Governing Statutes and Rules.

16 The following statutory provisions and rules are most central to our discussion and decision:

RCW 80.01.040 General Powers and Duties of Commission.

The utilities and transportation commission shall:

* * *

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies . . . .

RCW 80.04.130 Suspension of tariff change.

(1) Whenever any public service company shall file with the commission any schedule, classification, rule or regulation, the effect of which is to change any rate, charge, rental or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of such rate, charge, rental or toll for a period not exceeding ten months from the time the same would otherwise go into effect, and after a full hearing the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective. . . .

(2) At any hearing involving any change in any schedule, classification, rule or regulation the effect of which is to increase any rate, charge, rental or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

RCW 80.28.010 Duties as to rates, services, and facilities.

(1) All charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every gas company, electrical company and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any gas company, electrical company or water company, affecting or pertaining to the sale or distribution of its product, shall be just and reasonable. . . .

RCW 80.28.020 Commission to fix just, reasonable, and compensatory rates.

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any gas company, electrical company or water company, for gas, electricity or water, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.

Additional parts of Chapters 80.01, 80.04, and 80.28 RCW and Chapters 480-09, 480-80, and 480-100 WAC apply generally.

IV. Discussion and Decision.

17 The Settlement Stipulation now before us was developed through the collaborative process that the Commission approved in its Ninth Supplemental Order in this proceeding. That process began in late March of 2002. The Settlement Stipulation is proposed to resolve all electric issues and issues that are common to the electric and natural gas aspects of this general rate case. Remaining natural gas issues are to be addressed through further collaboration or litigation, consistent with the process approved by the Commission's Ninth Supplemental Order.

18 We acknowledge that the Settlement Stipulation which resulted from collaboration among the many parties to this proceeding is a significant accomplishment that required an extraordinary effort by the parties, their representatives, and Administrative Law Judge C. Robert Wallis, who served as mediator to facilitate the collaborative process.

19 By their Settlement Stipulation, the Participating Parties request that the Commission approve the following general results:

- An overall 4.6 percent electric rate increase. This represents approximately $59 million in additional annual revenue for PSE, in contrast to the approximately $228,300,000, or 16.5 percent increase PSE sought through its original filing, and the $99,441,756, or 7.31 percent increase PSE sought as of March 2002 when the parties settled PSE's request for interim rate relief.
- A power cost adjustment mechanism designed to enhance the Company's financial stability by addressing concerns associated with potentially volatile wholesale power markets and fluctuations in hydropower availability due to uncertain weather conditions.
- A one-year extension, through September 2003, of PSE's time-of-use (TOU) electricity pricing program, with modifications, and with new collaborative efforts to further investigate the cost effectiveness and environmental impact of the program.
- The establishment of a new program to assist low-income PSE customers to pay their electricity and natural gas bills.

- An increased commitment by PSE to electric and natural gas conservation, including establishment of an Advisory Committee to continue collaborative efforts related to conservation.
- Continuation and expansion of service quality performance standards for electric and natural gas service that PSE has followed for the past five years.
- A thorough revision of PSE's tariff schedules that govern the cost-sharing, terms, and conditions of service when cities or others wish to convert overhead power distribution facilities to underground systems.
- Revisions to PSE's line extension and backup distribution services tariff schedules.

20 The Settlement Stipulation is a complex and comprehensive set of documents. It includes numerous detailed provisions. In addition, there is comprehensive testimony contained in Exhibit Nos. 526 through 577 offered in support of the Settlement Stipulation. Numerous issues were explored at hearing. *Transcript Vols. xiv-xvii.* Collectively, this evidence covers all significant issues contained in the Settlement Stipulation. In particular, we find adequate supporting evidence pertaining to the various parts of the Settlement Stipulation as follows:

- Electric Revenue Requirements, Common Cost Allocation, and Overall Rate of Return (Exhibit B to Settlement Stipulation): *Exhibit No. 533 (Karzmar); Exhibit No. 556 (Dittmer); Exhibit No. 562 at 3-6 (Lott).*
- Electric Rate Spread (Exhibit C to Settlement Stipulation): *Exhibit No. 535 at 1-5 (Pohndorf); Exhibit No. 552 (Lazar); Exhibit No. 562 at 7-9 (Lott).*
- Electric Rate Design (Exhibit D to Settlement Stipulation): *Exhibit No. 535 at 6-11 (Pohndorf); Exhibit No. 553 (Lazar); Exhibit No. 562 (Lott).*
- Time of Use (TOU) (Exhibit E to Settlement Stipulation): *Exhibit No. 536 (Pohndorf); Exhibit No. 554 (Lazar); Exhibit No. 562 at 9-11 (Lott).*
- Conservation (Exhibit F to Settlement Stipulation): *Exhibit No. 537 (Pohndorf); Exhibit No. 557 (Klumpp); Exhibit No.*

564 at 1-4 (Steward); Exhibit No. 571 (Dixon); Exhibit No. 572 (Eberdt).

- Low Income (Exhibit G to Settlement Stipulation): *Exhibit No. 538 Pohndorf); Exhibit No. 564 at 5 (Steward); Exhibit No. 571 (Dixon); Exhibit No. 573 (Brannon).*
- Electric Line Extensions (Exhibit H to Settlement Stipulation): *Exhibit No. 539 (Pohndorf); Exhibit No. 555 (Lazar); Exhibit No. 562 at 15 (Lott); Exhibit No. 571 at 8-9 (Dixon).*
- Relocation and Underground Conversion (Cities) (Exhibit I to Settlement Stipulation): *Exhibit No. 531 (Harris); Exhibit No. 565 (Etchart).*
- Service Quality Index (SQI) (Exhibit J to Settlement Stipulation): *Exhibit No. 541 (Pohndorf); Exhibit No. 558 (Kimball); Exhibit No. 564 at 6-7 (Steward).*
- Backup Distribution Service (Exhibit K to Settlement Stipulation): *Exhibit No. 542 (Pohndorf); Exhibit No. 562 at 11-12 (Lott).*

21 We incorporate the Settlement Stipulation by reference, and include it as an Appendix to this Order. Except to the extent expressly clarified or modified in the body of this Order, we intend that the Settlement Stipulation should speak for itself.

22 **Exhibit A: Power Cost Adjustment Mechanism.** A PCA mechanism should achieve an appropriate balance between risks to customers and risks to utility shareholders. The parties propose a mechanism that would result in a sharing of costs and benefits between PSE and its customers if power costs deviate significantly from those embedded in PSE's rates (*i.e.*, the "power cost baseline" established under the Power Cost Adjustment Issue Agreement).

23 Under the proposed PCA actual allowed power costs over the preceding year are compared with base power costs on an annual basis. If the annual difference exceeds $20 million in either the positive or the negative direction, a posting is made to the deferral account. As Mr. Lazar explains, if power costs are higher than the PCA baseline, PSE must absorb the first $20 million of excess costs,[7] half of the next $20

[7] No costs are deferred for possible future collection through a power cost surcharge until allowable power costs exceed normalized power costs by at least $20 million. *Exhibit No. 551 (Gaines) at 3.*

million, 10 percent of the next $80 million, and 5 percent of any amounts that exceed $120 million. *Id.* In like fashion, if power costs are lower than the PCA baseline, PSE retains the first $20 in savings, half of the next $20 million, 10 percent of the next $80 million, and 5 percent of any amounts that exceed $120 million. *Exhibit No. 331 at 3-4.*

24 In addition to providing PSE incentives to control power costs, the PCA also is designed to promote rate stability even in the face of fluctuating power costs. *See Exhibit No. 551 (Lazar) at 2-3; see also Exhibit No. 562 (Lott) at 14.* Under the proposed mechanism, excess power costs or savings, beyond the $20 million "dead band" noted above, are posted to a power cost deferral account. The deferral balance, however, must reach $30 million, plus or minus, before a surcharge or credit is triggered. Thus, in a given year, "power costs would have to exceed normal levels by a total of about $62 million before a surcharge would be triggered." *Exhibit No. 551 (Lazar) at 3.*

25 Mr. Lott testified concerning the Power Cost Only Rate Review provision, stating that:

> new resources will not be recovered directly through the PCA, but the Company may periodically update its general rates to reflect increased power supply costs associated with new resources or increased costs of existing resources. These Power Cost Only rate proceedings are an exception to the general rule that a company should not be allowed to file single issue rate cases. For that reason, these single issue rate cases are limited and under certain events will trigger a general rate case to true-up all costs. Further, these single issue rate cases will look at all costs included within the PCA mechanism. And, the Company will be required to support these rate proposals in the same detail it must support power supply costs in a general rate proceeding.

Exhibit No. 562 at 14. We expressly clarify that the Power Cost Only Rate Review provisions in the PCA settlement allow for single-issue rate making.

Similarly, no costs are deferred for possible future return to ratepayers through a power cost credit until allowable power costs savings exceed $20 million. This is the so-called "dead band" that is

26 In colloquy with the witnesses and counsel at hearing, we clarified and confirmed additional aspects of the Power Cost Only Rate Review provisions. We expressly clarify the provisions of this Issue Agreement in three respects, in addition to our clarification in the preceding paragraph of our Order. First, paragraph C.8. of the PCA Issue Agreement is modified to read as follows:

> **Power Cost Only Rate Review:** In addition to the yearly adjustment for power cost variances, there ~~would~~ could be a periodic proceeding specific to power costs that would true up the Power Cost Rate to *all power costs* identified in the Power Cost Rate. The Company can also initiate a power cost only proceeding to add new resources to the Power Cost Rate. In either case, the Company would submit a Power Cost Only Rate filing proposing such change. This filing shall include testimony and exhibits that include the following:
>
> - Current or updated least cost plan
> - Description of the need for additional resources (as applicable)
> - Evaluation of alternatives under various scenarios
> - Adjustments to the Fixed Rate Component
> - Adjustments to the Variable Rate Component
> - A calculation of pro forma production cost schedules that are consistent with this docket, including power supply and other adjustments impacting then current production costs.

This change captures the point that filings under this provision are discretionary, not required.

27 Second, with specific reference to paragraph C.9. of the PCA Issue Agreement, we discussed with the witnesses and with counsel whether the parties' intent with respect to the Power Cost Only Rate Review provisions, and the legal effect of this provision in particular, was to bring the Power Cost Only Rate Review process within the exceptions to WAC 480-09-310, which provides in relevant part as follows:

"designed to cover approximately one standard deviation of the cost variability associated with stream

> 1) For the purposes of WAC 480-09-300 through 480-09-335 only, a general rate increase filing is the request by any company regulated by the commission under Title 80 and chapters 81.77 and 81.108 RCW for an increase in rates which meets one or more of the following criteria:
>
> (a) The amount requested would increase gross annual revenue of the company from activities regulated by the commission by three percent or more.
>
> (b) Tariffs are restructured such that the gross revenue provided by any customer class would increase by three percent or more.
>
> (c) The company requests a change in its authorized rate of return on common equity or capital structure.
>
> * * *
>
> (2) The following proceedings shall not be considered general rate increases for companies regulated under Title 80 RCW even though the revenue requested may exceed three percent of the company's gross annual revenue from Washington regulated operations: Periodic rate adjustments for electric utilities as may be authorized by the commission; . . .

We established on the record, and conclude, that the Power Cost Only Rate Review provisions do fall within the exception to this rule governing general rate increase filings, which we highlight by underlining in our partial quote of the rule above.

28 Third, we clarify that to the extent the provisions in paragraph C.11. of the PCA Issue Agreement describe processes before the Commission, they express only the parties' intentions to seek expedited treatment in the fashion described and are not intended to bind the Commission to a particular process or schedule.

29 The parties have requested approval of the PCA mechanics and accounting. The Settlement Terms for Power Cost Adjustment, however, states that the precise costs to be included in the calculation of base power costs have yet to be verified by the

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flow." *Exhibit No. 562 (Lott) at 14.*

parties. *Settlement Stipulation, Exhibit A—PCA Issue Agreement, ¶¶ 12 and 13.* This was confirmed by the parties during our hearing. *TR. 2147-54.* Mr. Lott suggested that verification of the necessary power cost figures could be accomplished through a staff investigation. *TR. 2154-55.* We agree. This is an important and essential step for implementation of the power cost adjustment. Accordingly, we direct the Commission Staff to open an investigation for this purpose and expect that confirmation of the base power cost levels will be resolved quickly, and no later than August 30, 2002.

30 Paragraph 7 of Exhibit B to the Settlement Stipulation refers "to the Company's filed depreciation study incorporated in the adjusted test year." We made the depreciation study referenced in paragraphs 6 and 7 of the Issue Agreement a part of our record as Exhibit No. 527. *TR. 1775-76.* We find the study adequately supports the amortization rates that are not otherwise expressly addressed in paragraph 7 of the Issue Agreement.

31 **Exhibit D: Electric Rate Design.** The Settlement Stipulation provides that the three Internet Service Provider (ISP) customers that have been served under special contracts approved in connection with the termination of Schedule 48 following the *Air Liquide* litigation will be served prospectively under Schedule 31. In one respect, however, Exhibit D is inartfully worded in establishing the settlement terms for electric rate design. *TR. 1885-93 (colloquy with counsel).* Accordingly, we modify the fourth bullet-point under paragraph 7 of the Issue Agreement to read as follows:

> ***Internet Service Providers ("ISP") (Special Contract Customers):*** The three ISP customers currently served under special contract will be served under Schedule 31 Primary Voltage Service. Based upon the line extension policy in effect as of the date below (i.e., June 5, 2002), the customers will receive a ~~full refund of~~ credit under Schedule 85 with respect to payments made to the Company in association with constructing Company-owned facilities to establish service for those customers. The ~~refunds~~ credits will be made with interest ~~at the same rate applied to customer deposits~~ as provided under Schedule 85. Future incremental load and facilities requirements for these customers will be subject to the then effective line extension policies and provisions and /or other tariffs. Any of

these three customers may, at any time, take service under any other PSE tariff for which it qualifies.

32 We confirmed that the revenue credit now described in this section of the Settlement Agreement is available to all Schedule 31 customers in accordance with the terms of Schedule 85. *TR. 1889, 1892-93 (colloquy with counsel).* Given this, we find the proposed revenue credit is not proposed as a preferential treatment for the ISP customers and is not discriminatory.

33 **Exhibit E: Time-of-Use (TOU) Rates.** We expressed at hearing our dismay that despite the Commission's repeated requests for information that would allow us to evaluate the potential benefits asserted in support of our initial approval of TOU rates, and our prior extensions and modifications of the pilot, no such information has been furnished to the Commission.

34 The Settlement Stipulation, at Exhibit E, establishes a collaborative to evaluate the TOU pilot program during calendar year 2003. Because we want to ensure that the collaborative will timely produce the information we need to evaluate the TOU program, we require that the collaborative will, at a minimum, present the Commission with four progress reports as follows:

1. **Study Design by November 1, 2002:** The research design, including a description of the statistical, econometric and other analysis techniques, which will allow a determination of program costs, TOU's effect on peak and overall energy consumption, and the costs and benefits of changes in consumption on PSE and the region; the research design to determine consumer acceptance of the program; the schedule of activities leading to a final report; and data needs and collection methods.

2. **Data Collection by February 3, 2003:** Progress of data collection efforts; an interim assessment of the capability of the method(s) identified in the November 1, 2002 report to achieve the specified objectives; identified adjustments to the research design; and up-to-date observations regarding changes in consumption patterns and

consumer acceptance resulting from the negotiated modifications to the program.

3. **Preliminary Findings by May 1, 2003:** Initial findings regarding the effects of TOU pricing.

4. **Final Report and Recommendations by July 1 2003:** Conclusions regarding the observed effects of TOU pricing; the implications of those conclusions for the expected effects of TOU pricing during periods of wholesale price stability and wholesale price instability; and recommendations regarding whether or not the program should continue in its current form, in an amended form, or be discontinued.[8]

35 Finally, we turn to paragraph 6 of the TOU Issue Agreement. Specifically, the final sentence of this paragraph states:

> Additionally, in any public statements PSE makes regarding its pilot program, PSE will acknowledge that the scope and extent of environmental or conservation benefits (if any) resulting from its pilot program have yet to be determined and are still being evaluated.

The parties did not intend the prohibition on public statements concerning the pilot time-of-use program to be this restrictive, and we find the sentence to be unnecessarily over-reaching. *TR. 2088-96 (colloquy with counsel).* Accordingly, we strike this sentence from the Settlement Stipulation.

36 **Exhibit F: Conservation.** The Settlement Stipulation does not specify what particular conservation programs will be implemented, or the cost of those programs. It does establish a commitment by the parties to establish a formal Advisory Committee and for PSE to develop a conservation plan and file with us the full details of that plan and related budgets by August 1, 2002. The response to Bench Request No. B.7. states:

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[8] Should the collaborative be unable to reach consensus on either the program's effect or recommendations for the program's future, the commission would accept majority/minority reports.

> The August 1, 2002 filing will include program descriptions, projected budgets, estimated savings and revised tariffs. Detailed evaluation plans are not expected to be included in the August 1, 2002 filing. However, such plans will be developed in conjunction with the Conservation Advisory Committee and are expected to be finalized by October 31, 2002. The schedule for filing evaluation results will be included in those evaluation plans.

37 Conservation is an important resource available to the Company for meeting its load-service obligations efficiently and at lowest cost. However, the evaluation of the Company's conservation programs for actual performance (*e.g.*, measured or reasonably estimated savings, the associated costs, and the calculation of cost-effectiveness relative to the agreed-upon avoided costs) is a very important measure of the Company's conservation efforts. We will require that the conservation program evaluation plans be filed for Commission Staff review no later than November 29, 2002. The program evaluation plans should include, at a minimum, the research design for establishing program savings and costs, and the method for calculating cost-effectiveness.

38 **Exhibit I: Relocation and Underground Conversions.** The Settlement Stipulation would completely replace existing Tariff Schedules 70 and 71 with new Tariff Schedules that are fundamentally different both conceptually and substantively. Current Schedule 70 provides terms and conditions for conversion of overhead distribution systems serving residential single phase loads. Current Schedule 71 provides terms and conditions for commercial and three phase loads. *Exhibit No. 530 at 1-2.* While those descriptions are, in part, the subject of ongoing litigation,[9] the important point here is that the new Schedules proposed via the Settlement

[9] In *City of Kent v. WUTC (Thurston County No. 02-2-00774-8)* and *Cities of Auburn, et al. v. WUTC (Thurston County No. 02-2-00341-6)*, the respective cities have appealed the Commissions Third Supplemental Order (January 28, 2002) in the consolidated matters styled *City of Kent v. PSE*, Docket No. UE-010778, and *Cities of Auburn, Bremerton, Des Moines, Federal Way, Lakewood, Renton, SeaTac, and Tukwila v. PSE*, Docket No. UE-010911. These two appeals would be dismissed with prejudice following a Commission order approving the Settlement Stipulation and the expiration of the statutory appeals period applicable to that order. In *City of SeaTac v. WUTC* (King County No. 02-2-03746-1 KNT) and *City of Clyde Hill v. WUTC* (King County No. 02-2-07014-1 SEA), the respective cities have appealed the Commissions Third Supplemental Order (January 28, 2002) in the consolidated matters styled *City of SeaTac v. PSE*, Docket No. UE-010778, and *City of Clyde Hill v. PSE*, Docket No. UE-010911. The Settlement Stipulation makes no provision for the disposition of these appeals.

Stipulation abandon the operative distinctions based on the type of facilities covered in favor of distinctions based on the nature of the entity that requests underground conversion. As Ms. Harris testified:

> The proposed new Schedule 71 will provide terms and conditions for underground conversions *when the conversion customer is a government entity* (i.e., municipalities or counties), whether or not the conversion is commercial, residential, three-phase or single-phase. The proposed new Schedule 70 will provide terms and conditions for all such underground conversions of overhead distribution when the conversion customer is *not* a government entity.

Exhibit No. 531 at 2.

39 In light of the conceptually different bases for the old and new Schedules, we think it advisable, in order to avoid confusion, to provide the new Tariff schedules with new numbers.

40 ***Commission Decision:*** We find that the Settlement Stipulation, taken as a whole, and modified, clarified, and conditioned as we have directed, strikes an appropriate balance among the broad range of interests and issues represented in this proceeding. The parties provided extensive testimony concerning the details of the proposed settlement and expressed their collective view that the proposed resolutions of the issues addressed by the Settlement Stipulation are in the public interest. This testimony provides a solid record on the basis of which we find that the Settlement Stipulation results in rates that are fair, just and reasonable, and is, in all other respects, in the public interest. Accordingly, we approve the Settlement Stipulation and adopt it with the modifications, clarifications, and conditions we have stated, as the full and final resolution of the issues pending in Docket No. UE-011570 and for those issues resolved by the Settlement Stipulation that are pending in Docket No. UG-011571.

FINDINGS OF FACT

41 Having discussed above all matters material to our decision, and having stated general findings, the Commission now makes the following summary findings of fact.

Those portions of the preceding discussion that include findings pertaining to the Commission's ultimate decisions are incorporated by this reference.

42 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies.

43 (2) Puget Sound Energy, Inc., is a "public service company" and an "electrical company" as those terms are defined in RCW 80.04.010, and as those terms otherwise may be used in Title 80 RCW. Puget Sound Energy, Inc., is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.

44 (3) Puget Sound Energy, Inc., filed on November 26, 2001, certain tariff revisions that were suspended by Commission Orders entered in Docket Nos. UE-011570 and UG-011571 on December 12, 2001. The general rates proposed by Puget Sound Energy, Inc.'s, as-filed tariff revisions are the principal subject matter of the Commission's inquiry in these proceedings. We find that the rates proposed by tariff revisions filed by Puget Sound Energy, Inc., on November 26, 2001, and suspended by prior Commission order, are not just, fair, or reasonable

45 (4) Puget Sound Energy, Inc., on behalf of itself and other parties to this proceeding, filed a proposed Settlement Stipulation on June 6, 2002.

46 (5) The existing rates for electric service provided in Washington State by Puget Sound Energy, Inc., are insufficient to yield reasonable compensation for the service rendered. Puget Sound Energy, Inc., requires prospective relief with respect to the rates it charges for electric service provided in Washington State.

47 (6) The rates, terms, and conditions of service that result from adoption of the Settlement Stipulation that is attached to this Order as Appendix A and incorporated into the body of this Order as if set forth in full, subject to the

modifications, clarifications, and conditions stated in the body of this Order, are fair, just, reasonable, and sufficient.

48 (7) The rates, terms, and conditions of service that result from adoption of the Settlement Stipulation, modified, clarified, and conditioned as stated in the body of this Order, are neither unduly preferential nor discriminatory.

49 (8) The Settlement Stipulation, considered as a whole, and as modified, clarified, and conditioned in its individual parts as discussed in the body of this Order, is in the public interest.

CONCLUSIONS OF LAW

50 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the Commission's ultimate decisions are incorporated by this reference.

51 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceedings. *Title 80 RCW.*

52 (2) The rates proposed by tariff revisions filed by Puget Sound Energy, Inc., on November 26, 2001, and suspended by prior Commission order, are not just, fair, or reasonable and should be rejected. *RCW 80.28.010.*

53 (3) The existing rates for electric service provided in Washington State by Puget Sound Energy, Inc., are insufficient to yield reasonable compensation for the service rendered. *RCW 80.28.010; RCW 80.28.020.*

54 (4) Puget Sound Energy, Inc., requires relief with respect to the rates it charges for electric service provided in Washington State. *RCW 80.01.040; RCW 80.28.060.*

55 (5) The Commission must determine the fair, just, reasonable, and sufficient rates to be observed and in force under Puget Sound Energy, Inc.'s, tariffs that

govern its rates, terms, and conditions of service for providing electricity and natural gas to customers in Washington State. *RCW 80.28.020.*

56 (6) The Settlement Stipulation filed by the parties on June 6, 2002, which is attached to this Order as Appendix A and incorporated by reference as if set forth in full in the body of this Order, considered as a whole, and as modified, clarified, and conditioned in the body of this Order, is in the public interest. The Settlement Stipulation should be approved and adopted by the Commission as a reasonable resolution of the issues presented by its terms. *WAC 480-09-465; WAC 480-090-466.*

57 (7) The rates, terms, and conditions of service that result from this Order are fair, just, reasonable, and sufficient. *RCW 80.28.010; RCW 80.28.020.*

58 (8) The rates, terms, and conditions of service that result from this Order are neither unduly preferential nor discriminatory. *RCW 80.28.020.*

59 (9) The Commission's prior orders in this proceeding, and in any related proceedings discussed in the body of this Order, should be amended to the extent necessary, or rescinded to the extent required, to effectuate the provisions of this Order. *RCW 80.04.210; WAC 480-09-815.*

60 (10) The Commission Secretary should be authorized to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this Order. *WAC 480-09-340.*

61 (11) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order. *Title 80 RCW.*

ORDER

62 (1) THE COMMISSION ORDERS That the proposed tariff revisions filed by Puget Sound Energy, Inc., on November 26, 2001, and suspended by prior Commission order, are rejected.

63 (2) THE COMMMISSION ORDERS FURTHER That the Settlement Stipulation filed by the parties on June 6, 2002, which is attached to this Order as Appendix A and incorporated by reference as if set forth in full in the body of this Order, is approved and adopted as a full and final resolution of this general rate proceeding, subject to the clarifications, modifications, and conditions stated in the body of this Order.

64 (3) THE COMMISSION ORDERS FURTHER That Puget Sound Energy, Inc., is authorized and required to file tariff sheets following the effective date of this Order that are necessary and sufficient to effectuate its terms. The required tariff sheets shall bear an effective date of July 1, 2002.

65 (4) THE COMMISSION ORDERS FURTHER That the Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this Order.

66 (5) THE COMMISSION ORDERS FURTHER That it retains jurisdiction over the subject matter and the parties to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this 20th day of June 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission with respect to certain issues resolved. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

APPENDIX A

SETTLEMENT STIPULATION

Exhibit I to
Settlement Stipulation

PSE GENERAL RATE CASE
DOCKET NOS. UE-011570 and UG-011571

SETTLEMENT TERMS FOR
RELOCATION AND UNDERGROUND CONVERSIONS (CITIES)

A. Executing Parties

1. The following parties have participated in the Relocation and Underground Conversion (Cities) collaborative in Docket Nos. UE-011570 and UG-011571, and have reached consensus on the terms of settlement with respect to issues in dispute in this proceeding regarding electric Schedules 70, 71 and 72 and gas Rule 28, as set forth in this Agreement: Puget Sound Energy, Inc. ("PSE" or the "Company"); the Staff of the Washington Utilities and Transportation Commission ("WUTC Staff"); Intervenor King County ("King County"); Intervenor the Central Puget Sound Regional Transit Authority ("Sound Transit"); and Intervenors the Cities of Auburn, Bellevue, Bremerton, Burien, Maple Valley, Kent, Des Moines, Federal Way, Redmond, Renton, SeaTac and Tukwila (the "Cities") (hereinafter referred to collectively as "Executing Parties").

B. Withdrawal of Electric Schedule 72 and Gas Rule 28

2. Electric Schedule 72 and gas Rule 28 shall be withdrawn from PSE's general rate case filing in Docket Nos. UE-011570 and UG-011571, and shall have no force or effect.

3. In addition to complying with applicable statutory and regulatory notice requirements, PSE further agrees to notify the Cities, Sound Transit and King County through their chief executive officers in writing thirty (30) days prior to making any filing at the Commission that would have substantially the same effect as Electric Schedule 72 or gas Rule 28, for a period of five (5) years from the date of execution of this Agreement.

C. Substitution of Agreed Electric Schedules 70 and 71

4. The versions of Electric Schedules 70 and 71 that were filed by PSE in its general rate case filing in Docket Nos. UE-011570 and UG-011571 shall be withdrawn and replaced by the versions of Electric Schedules 70 and 71 that are attached hereto as Appendix 1 and Appendix 2, respectively.

D. Future Changes or Challenges to New Schedule 71

5. PSE agrees that it will not seek to revise, change or amend Sections 1, 2.a. or 3 or the definition of any terms contained therein, of the Schedule 71 that is attached hereto as Appendix 2 by filing any proposed revisions to such schedule or by making any other filing that would have the effect of revising, changing or amending such sections of the schedule, unless PSE has obtained the express, written approval of the Cities for such a filing, for a period of five (5) years from the date of execution of this Agreement.

6. In addition to complying with applicable statutory and regulatory notice requirements, PSE further agrees to notify the Cities, Sound Transit and King County through their chief executive officers in writing thirty (30) days prior to any filing at the Commission that would revise, change or amend the provisions of the Schedule 71 that is attached hereto as Appendix 2 or have the effect of revising, changing or amending such schedule, for a period of five (5) years from the date of execution of this Agreement.

7. The Cities agree that they will not file or join in any complaint claiming that the provisions of the Schedule 71 that is attached hereto as Appendix 2 are not fair, just, or reasonable, or that otherwise challenges or seeks to revise, change or amend the provisions of the Schedule 71 that is attached hereto as Appendix 2 for a period of five (5) years from the date of execution of this Agreement; *provided that* nothing in this Agreement shall preclude the Cities from filing a complaint claiming that any other Executing Party has or is failing to comply with the provisions of the Schedule 71 that is attached hereto as Appendix 2.

E. Resolution of Pending Appeal of Commission's Third Supplemental Order Regarding Schedule 71

8. The Executing Parties agree and stipulate that the Commission's Third Supplemental Order: Declaratory Order on Motions for Summary Determination, *City of Kent v. Puget Sound Energy, Inc.; City of Auburn et al. v. Puget Sound Energy, Inc.*, Dockets Nos. UE-010778 and UE-010911 ("Schedule 71 Third Supplemental Order") was based on stipulated facts and interpreted and applied PSE's tariff Schedule 71 – Conversion to Underground Service in Commercial Areas (Effective Date April 11, 1997).

9. The Cities of Auburn, Bremerton, Des Moines, Federal Way, Kent, Lakewood, Redmond, Renton, SeaTac, and Tukwila ("Appeal Cities") have petitioned for judicial review of the Schedule 71 Third Supplemental Order in *Cities of Auburn et al. v. Washington Utilities and Transportation Commission* (Thurston Co. No. 02-2-00341-6) and *City of Kent v. Washington Utilities and Transportation Commission* (Thurston Co. No. 02-2-00774-8) ("Appeal"). Following Commission approval and acceptance of the Schedule 71 that is attached hereto as Appendix 2 in its entirety, without material alteration, and following expiration of all reconsideration and appeal time periods of the Commission order granting such approval, the Appeal Cities agree to dismiss the Appeal with prejudice. The Appeal Cities shall determine materiality and shall do so in good faith. Such dismissal shall be without waiver of or prejudice to the Appeal Cities' rights with respect to any future proceedings.

F. **Settlement of Disputes Regarding Pending City Of SeaTac ("SeaTac") Conversion and Related Interim Agreement**

10. The Company and SeaTac entered into an Interim Undergrounding Agreement dated February 25, 2002 ("SeaTac Agreement"), for the underground conversion of certain overhead PSE facilities on International Boulevard from South 160th Street to South 170th Street specifically identified on PSE work order No. 101009635 (the "SeaTac Project"). The SeaTac Agreement reserved the parties' rights with respect to numerous issues pending the final outcome of the Appeal, and construction on the SeaTac Project is currently underway. As part of the dismissal of the Appeal described above and settlement of disputes related to application of the former Schedule 71 or the new, agreed Schedule 71 to this pending project, the SeaTac Agreement will be amended to reflect the following:

a. PSE shall pay 60% and SeaTac shall pay 40% of the actual conversion costs.

b. PSE shall notify SeaTac if the actual conversion costs begin to track higher than the $552,678.62 estimate of actual conversion costs that was provided in the SeaTac Agreement.

c. No transfer of operating rights for the SeaTac Project shall occur, so that SeaTac will continue to hold any utility easements that are in SeaTac's name in SeaTac's name, and PSE shall continue to hold any easements that are in PSE's name. No reimbursement for such operating rights shall occur, except that PSE shall pay SeaTac for SeaTac's costs for the agent SeaTac hired to negotiate PSE's easements, up to a maximum payment amount of $15,000.

d. The provisions of Sections 3.c and 3.d of Appendix 2 shall govern the relocation of the Company's facilities installed pursuant to the SeaTac Agreement.

e. The schedule for exchange of itemization of costs and payment deadlines for the SeaTac Project shall be consistent with Section 7 of the Project Construction Agreement attached to Appendix 2. Nothing in this Section 9.e. or application of Section 7 of the Project Construction Agreement attached to Appendix 2 shall modify Sections 10.a – 10.d, above.

G. **Miscellaneous Provisions**

11. **Binding on Parties:** The Executing Parties understand that this Agreement, including Appendix 1 and 2, is subject to Commission approval. The Executing Parties agree to support the terms and conditions of this Agreement, including Appendix 1 and 2, as described above. The Agreement, including Appendix 1 and 2, and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the Executing Parties, including but not limited to, any entity to which the rights or obligations of an Executing Party are assigned, delegated, or

transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

12. **Integrated Terms of Settlement:** The Executing Parties have negotiated this Agreement, including Appendix 1 and 2, as an integrated document. Accordingly, the Executing Parties agree to recommend that the Commission adopt this Agreement, including Appendix 1 and 2, in its entirety.

13. **Negotiated Agreement:** This Agreement, including Appendix 1 and 2, represents a fully negotiated agreement. Each Executing Party has been afforded the opportunity, which it has exercised, to review the terms of the Agreement, including Appendix 1 and 2. Each Party has been afforded the opportunity, which it has exercised, to consult with legal counsel of its choice concerning such terms and their implications. The Agreement, including Appendix 1 and 2, shall not be construed for or against any Executing Party based on the principle that ambiguities are construed against the drafter.

14. **Execution:** This Agreement may be executed by the Executing Parties in several counterparts, through original and/or facsimile signature, and as executed shall constitute one agreement.

DATED this 3rd day of June, 2002.

PUGET SOUND ENERGY, INC.

By _____
Kimberly Harris
Vice President of Regulatory Affairs

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF

By _____
Robert Cedarbaum
Shannon Smith
Assistant Attorneys General

SOUND TRANSIT

By _____
Elizabeth Thomas
Claire Jackson
Preston Gates Ellis LLP
Counsel for Sound Transit

KING COUNTY

By _____
Its _____

provisions hereof shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the Executing Parties, including but not limited to, any entity to which the rights or obligations of an Executing Party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

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DATED this 3rd day of June, 2002.

PUGET SOUND ENERGY, INC.

By _____
Kimberly Harris
Vice President of Regulatory Affairs

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF

By _____
Robert Cedarbaum
Shannon Smith
Assistant Attorneys General

SOUND TRANSIT

By _____
Elizabeth Thomas
Claire Jackson
Preston Gates Ellis LLP

KING COUNTY

By _____
Its _____

EXHIBIT E

C 2004-044

SCHEDULE 74 UNDERGROUND CONVERSION

Project Design Agreement

Project Name: Tumwater – Tumwater Boulevard Widening Project

Project Number: 10475804

THIS Agreement, dated as of this 11th day of May, 2004, is made by and between the City of Tumwater (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy and, pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity is considering conversion of the Company's existing overhead electric distribution system to a comparable underground electric distribution, as more specifically described in the Scope of Work (as defined in paragraph 2, below) furnished to the Company by the Government Entity (the "Conversion Project").

C. The Government Entity has requested that the Company perform certain engineering design services and otherwise work cooperatively with the Government Entity to develop a mutually acceptable Project Plan (as defined in paragraph 6, below) for the Conversion Project, in accordance with and subject to the terms and conditions of this Agreement (the "Design Work").

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the Design Work for the Conversion Project.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement.

2. The Government Entity shall, within ten (10) business days after the date of this Agreement, provide the Company with a written scope of work for the Conversion Project which includes, among other things, (a) a reasonably detailed description of the scope of the work required for the Conversion Project, (b) a list of the key milestone dates for the Conversion Project, (c) reasonably detailed drawings showing any associated planned improvements to the Public Thoroughfare, and (d) a statement as to whether the Government Entity desires to install the ducts and vaults for the Conversion Project (the "Scope of Work"). The Government Entity shall provide the Company two (2) hard copies of the Scope of Work and a copy of the relevant electronic file(s) in a mutually agreed electronic format.

3. Within ten (10) business days of its receipt of the Scope of Work, the Company shall prepare and submit to the Government Entity (a) a reasonably detailed, good faith estimate of the cost to perform the Design Work (the "Design Cost Estimate"), and (b) a proposed schedule for completion of the Design Work which, to the extent reasonably practicable, reflects the applicable key milestone dates

specified in the Scope of Work and provides for completion of the Design Work within ninety (90) business days from the date the Company receives the Government Entity's notice to proceed under paragraph 5, below (the "Design Schedule"). The proposed Design Cost Estimate and the proposed Design Schedule shall be based upon the then-current Scope of Work. Unless otherwise specified in the Scope of Work, the Design Work shall not include negotiation or acquisition of third party property rights but shall include preliminary planning between the Company and the Government Entity regarding their respective obligations for negotiating and acquiring third party property rights.

4. Within ten (10) business days after the Government Entity's receipt of the proposed Design Cost Estimate and the proposed Design Schedule from the Company, the Government Entity and the Company shall meet in order to (a) review the proposed Design Cost Estimate, (b) review the proposed Design Schedule; (c) review the Scope of Work, and (d) make any changes necessary to create a final Scope of Work, final Design Cost Estimate, and final Design Schedule that are reasonably acceptable to both parties. If the parties are unable to agree upon a final version of the Scope of Work, Design Cost Estimate, and/or Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The final Scope of Work, Design Cost Estimate and Design Schedule, once determined in accordance with this paragraph 4, may thereafter be changed or amended only in accordance with the change procedures set forth in paragraph 13, below.

5. The Government Entity shall, within ten (10) business days after determination of the final of the Scope of Work, Design Cost Estimate, and Design Schedule, issue (a) a written notice to proceed which shall delineate the final Scope of Work, Design Cost Estimate, and Design Schedule, or (b) a written notice to terminate this Agreement without cost to the Government Entity. If the Government Entity terminates this Agreement, the costs incurred by the Company in preparing and submitting the Design Cost Estimate and the Design Schedule shall not be reimbursable to the Company, and the rights and obligations of the parties under this Agreement shall be terminated in their entirety and without liability to either party.

6. Following the Company's receipt of the notice to proceed, and within the applicable time period specified in the Design Schedule, the Company shall, with the cooperation and assistance of the Government Entity as outlined in this Agreement, prepare a project plan for the Conversion Project (the "Project Plan") which shall include, among other things, the following: (a) a detailed description of the work that is required to be performed by each party and any third party in connection with the Conversion Project (the "Construction Work"), (b) the applicable requirements, drawings, and specifications for the Construction Work, (c) a description of any operating and other property rights that are required to be obtained by each party for the Conversion Project (and the requirements and specifications with respect thereto), (d) a detailed estimate of the costs to be incurred by each party in its performance of the Construction Work, and (e) a detailed schedule for completing the Construction Work (including, without limitation, the dates for delivery of the ducts and vaults and other materials for use at the site of the Construction Work).

7. The Government Entity shall be responsible for coordinating the Design Work with all other design work to be performed in connection with the Conversion Project and any associated planned improvements to the Public Thoroughfare. The parties shall work together in an effort to mitigate the costs of the Conversion Project to each party, including, without limitation, identifying ways to accommodate the facilities of the Company to be installed as part of the Conversion Project within the Public Thoroughfare.

8. Within the applicable time period specified in the Design Schedule, the Company shall prepare and submit to the Government Entity a proposed initial draft of the Project Plan. The parties understand and acknowledge that the proposed Project Plan submitted by the Company shall be preliminary in nature and shall not include, without limitation, information required to be supplied by the Government Entity (e.g., scope and estimate of the cost of the Construction Work to be performed by the Government Entity).

9. Within the applicable time period specified in the Design Schedule, the Government Entity shall (a) review the proposed Project Plan submitted by the Company, (b) complete any information required to be supplied by the Government Entity, (c) make any changes required to conform the proposed Project Plan to the Scope of Work and this Agreement, and (d) return the amended Project Plan to the Company.

10. Within the applicable time period specified in the Design Schedule, the Company shall review the amended Project Plan submitted by the Government Entity and notify the Government Entity in writing of either the Company's acceptance of, or the Company's specific objections to, the amended Project Plan. If the Company makes any objection to the amended Project Plan, and the parties are unable to resolve the objections and mutually agree upon the Project Plan prior to the final design date specified in the Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The Project Plan, as mutually agreed upon by the parties or established through the dispute resolution process, shall be attached to and incorporated in a Project Construction Agreement substantially in the form attached hereto as Exhibit A (the "Construction Agreement") which is to be signed by the parties prior to commencement of the Construction Work.

11. The parties intend and agree that the Design Work and the Project Plan in its final form shall conform to the following requirements:

    (a) The Project Plan shall, if requested by the Government Entity in its initial Scope of Work, specify that the Government Entity shall install the ducts and vaults for the Conversion Project; provided that (i) the parties mutually agree upon and set forth in the Project Plan (A) the costs of such installation work to be included in the Cost of Conversion, and (B) the specifications and standards applicable to such installation work, and (ii) such installation work is accomplished by the Government Entity in accordance with the applicable design and construction specifications provided by the Company and set forth in the Project Plan.

    (b) Each estimate of the costs to be incurred by a party shall, at a minimum, be broken down by (i) the design and engineering costs, (ii) property and related costs, including any costs of obtaining operating rights, and (iii) construction costs, including and listing separately inspection, labor, materials, and equipment.

    (c) All facilities of the Company installed as part of the Conversion Project shall be located, and all related property and operating rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74. The Project Plan shall describe in detail the location of such facilities, any related property and operating rights required to be obtained, and the relative responsibilities of the parties with respect thereto.

    (d) The schedule set forth in the Project Plan for completing the Construction Work shall include, at a minimum, milestone time periods for completion of the Trenching, installation of ducts and vaults, the construction and removal of any Temporary Service, and the removal of overhead facilities.

    (e) The Project Plan may include the specification of work and requirements for Government-Requested Upgrades and Company-Initiated Upgrades; provided, however, that the costs incurred by the Company with respect to the design and engineering of Company-Initiated Upgrades shall not be included in the costs reimbursable to the Company under this Agreement or the Construction Agreement. For purposes of the foregoing, (i) the term "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced, and (ii) the term "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For

purposes of subparagraph (ii), above, a "comparable" system shall include, unless the parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the final Scope of Work necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced. For purposes of subparagraph (i), above, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.

(f) The Project Plan shall set forth all specifications, design standards and other requirements for the Construction Work and the Conversion Project, including, but not limited to, the following: (i) applicable federal and state safety and electric codes and standards, (ii) applicable construction and other standards of the Company, and (iii) applicable street design and other standards of the Government Entity which are in effect as of the commencement of the Conversion Project.

12. Upon request of the Government Entity, and in any event at the times specified in the Design Schedule, the Company shall provide periodic reports which compare the actual costs of the Design Work incurred to that point in time to the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below. Further, if at any time the Company reasonably expects that the actual cost of the Design Work will exceed the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below, the Company shall notify the Government Entity immediately. Upon receipt of the Company's notice, the Government Entity may, at its option,

(a) notify the Company in writing that this Agreement is terminated; or

(b) request a reasonably detailed explanation supported by documentation (reasonably satisfactory to the Government Entity) to establish that the actual costs in excess of the Design Cost Estimate are:
   (i) reasonable,
   (ii) consistent with the Scope of Work, and
   (iii) consistent with sound engineering practices.

If the Government Entity requests an explanation, the Government Entity shall, within ten (10) business days after receipt of the explanation,

(a) change the Scope of Work in accordance with paragraph 13, below, or

(b) direct the Company to continue with the Design Work without a change in the Scope of Work, but reserving to the Government Entity the right to dispute the reasonableness of the costs to be paid the Company under paragraph 14, below, in accordance with the dispute resolution procedures in paragraph 16, below, or

(c) direct the Company to discontinue performing the Design Work pending resolution, pursuant to paragraph 16, below, of any dispute regarding the reasonableness of the costs, in which event the Design Schedule will be adjusted to reflect the delay, or

(d) notify the Company in writing that this Agreement is terminated.

In the event the Government Entity terminates this Agreement or discontinues the performance of the Design Work under subparagraph (c), above, for more than ninety (90) days, the Government Entity shall pay the Company for all costs incurred by the Company in its performance of the Design Work prior to the date the Company receives the Government Entity's notice of termination, plus any costs incurred by the Company for materials and other items ordered or procured by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. The foregoing payment obligation shall survive any termination of this Agreement.

13. (a) Either party may, at any time, by written notice thereof to the other party, request changes to the Scope of Work (a "Request for Change"). No Request for Change shall be effective and binding upon the parties unless signed by an authorized representative of each party. If any approved Request for Change would cause an increase in the cost of, or the time required for, the performance of any part of the Design Work, an equitable adjustment in the Design Cost Estimate and the Design Schedule shall be made to reflect such increase. The parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each party shall, if requested by the other party, proceed with the Design Work in accordance with the Request for Change. Any such request to proceed must be accompanied by a written statement setting forth the requesting party's reasons for rejecting the proposed equitable adjustment of the other party.

(b) The Design Cost Estimate and/or the Design Schedule shall be equitably adjusted from time to time to reflect any change in the costs or time required to perform the Design Work to the extent such change is caused by: (i) any Force Majeure Event under paragraph 17, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost, schedule or other aspect of the Design Work and was not known by or disclosed to the affected party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Design Work which are expressly identified by the parties in the final Scope of Work. Upon the request of either party, the parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution provisions in paragraph 16, below.

14. Upon completion of the Design Work (i.e., the date on which the Project Plan is final under paragraph 10, above, either by mutual agreement of the parties or as established through the dispute resolution procedures), the Government Entity shall pay the Company all actual, reasonable costs to the Company for the Design Work (which, if disputed in good faith by the Government Entity, may be submitted by either party for resolution pursuant to the dispute resolution provisions in paragraph 16, below), plus any costs incurred by the Company for materials and other items ordered by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. If, thereafter, the Construction Agreement is executed by the parties and the Conversion Project is completed within five (5) years from the date of this Agreement, the full amount of the costs incurred by the Company in its performance of the Design Work shall be included in the "Shared Company Costs" under the Construction Agreement and any payment of such amounts under this Agreement shall be credited to the Government Entity in calculating the "Net Amount" payable under the Construction Agreement.

15. Within sixty (60) business days after completion of the Design Work, the Company shall issue to the Government Entity an itemized invoice for the amounts payable under this Agreement. Such invoice shall be in a form mutually agreed upon by the Company and the Government Entity and shall, at a minimum, itemize the design and engineering costs, including and listing separately inspection, labor, materials and equipment. In the event the Government Entity does not verify such invoice within ten (10) business days of receipt, the Government Entity shall provide a written request to the Company specifying the additional information needed to verify the invoice. The Company will provide, within a reasonable period after receipt of any request, such documentation and information as the Government Entity may reasonably request to verify such invoice. The Government Entity shall pay the Company all amounts payable under this Agreement within thirty (30) days after receipt of the Company's invoice. Payment as provided in this Agreement shall be full compensation for the Company's performance of the Design Work, including without limitation all services rendered and all materials, supplies, equipment, and incidentals necessary to complete the Design Work.

16. Dispute Resolution Procedures:

(a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the parties. A party who wishes dispute resolution shall notify the other party in writing as to the nature of the dispute. Each party shall appoint a representative who shall be responsible for representing the party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the parties' representatives in writing to the senior management of the parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the parties may agree upon), each party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

(b) Any claim or dispute arising hereunder which relates to the Scope of Work, Design Cost Estimate, and Design Schedule under paragraph 4, above; the Project Plan under paragraph 10, above; or any Request for Change (including, without limitation, any associated equitable adjustment) under paragraph 13, above; and is not resolved by senior management within the time permitted under paragraph 16(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.

(c) In connection with any arbitration under this paragraph 16, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the parties. Each party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing party's costs and expenses by the other party.

(d) Unless otherwise agreed by the parties in writing, the parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.

17. In the event that either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party; or any failure or delay in the performance by the other party, or a third party who is not an employee, agent or contractor of the party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

18. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electric Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.

19. Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity:

City of Tumwater
555 Israel Road S.W.
Tumwater, WA
Attn: Mr. Jay Eaton, PE
Fax: 360/754-4142

If to the Company:

Puget Sound Energy, Inc.
3130 South 38th Street TAC-LL
Tacoma, WA 98409
Attn: Barry Lombard
Fax: 253/476-6037

Either party may change its address specified in this paragraph by giving the other party notice of such change in accordance with this paragraph.

20. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.

21. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entireties.

22. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the parties, including but not limited to, any entity to which the rights or obligations of a party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:

CITY OF TUMWATER

BY Ralph C. Osgood

ITS Mayor

Date Signed April 27, 2004

Company:

PUGET SOUND ENERGY, INC.

BY Barry Lombard

ITS Municipal Liaison Manager

Date Signed 5/17/04

Approved as to form:

Christy A. Todd

ATTEST:

Gayla L. Gjertsen, Clerk/Treasurer

EXHIBIT F

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENT, Petitioner, v. PUGET SOUND ENERGY, INC. Respondent.	)	DOCKET NO. UE-010778 (Consolidated)
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, v. PUGET SOUND ENERGY, INC. Respondent.	)	DOCKET NO. UE-010911 (Consolidated) THIRD SUPPLEMENTAL ORDER: DECLARATORY ORDER ON MOTIONS FOR SUMMARY DETERMINATION

SYNOPSIS: *The Commission interprets Puget Sound Energy, Inc.'s tariff Schedule 71, and determines the applicability of the schedule to portions of various underground relocation projects in PSE's service territory.*

1 **PROCEEDINGS:** Docket No. UE-010778 concerns a Petition for Declaratory Relief filed by the City of Kent on May 29, 2001. Docket No. UE-010911 concerns a Complaint and Petition for Declaratory Relief filed by the cities of Auburn, Bremerton, Des Moines, Federal Way, Lakewood, Redmond, Renton, SeaTac, and Tukwila on June 21, 2001. The pleadings request that the Commission enter a declaratory order, or orders, establishing the respective rights and obligations of the cities and PSE in connection with PSE's administration of its Electric Tariff G,

Schedule 71, and that the Commission order other and further relief alleged to be appropriate under the facts and law asserted.

2 The Commission convened a joint prehearing conference in these dockets and in a related proceeding in Docket No. UE-010891 on April 23, 2001, in Olympia, Washington, before Administrative Law Judge Dennis J. Moss. Among other things, the Commission determined that Docket Nos. UE-010778 and UE-010911 should be consolidated, and established a procedural schedule. The Parties filed motions and cross-motions for summary determination, responses, and replies.

3 **PARTIES:** Michael L. Charneski, Attorney at Law, Woodinville, Washington, represents the City of Kent (Kent). Carol S. Arnold and Laura K. Clinton, Preston Gates Ellis LLP, Seattle, Washington, represent the Cities of Auburn, Bremerton, Des Moines, Federal Way, Lakewood, Renton, SeaTac, and Tukwila (Auburn, *et al.*). Kirsten Dodge and Bill Bue, Perkins Coie LLP, Bellevue, Washington, represent Puget Sound Energy (PSE or the Company). Mary Tennyson, Senior Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Staff).

4 **COMMISSION:** The Commission grants PSE's Cross-Motion for Summary Determination. The Commission denies the City of Kent's Motion for Summary Determination and denies Auburn, *et al.'s* Motion for Summary Determination.

MEMORANDUM

I. Background and Procedural History

5 The City of Kent filed a Petition for Declaratory Relief on May 29, 2001, in Docket No. UE-010778. The cities of Auburn, Bremerton, Des Moines, Federal Way, Lakewood, Redmond, Renton, SeaTac, and Tukwila filed a Complaint and Petition for Declaratory Relief in Docket No. UE-010911 on June 21, 2001. These pleadings raise issues concerning the interpretation and application of PSE's tariff Schedule 71—Conversion to Underground Service in Commercial Areas. Generally, the Parties dispute the scope of PSE's and the Cities' respective rights and obligations in connection with the relocation of certain overhead electric distribution facilities to underground locations, as the Cities undertake to widen and improve approximately

ten miles of Pacific Highway, also known as State Highway No. 99. Projects on other roadways also are involved.

6 The Commission convened a joint prehearing conference in these dockets and in a somewhat related proceeding in Docket No. UE-010891 on April 23, 2001, in Olympia, Washington, before Administrative Law Judge Dennis J. Moss. Based on discussions at the prehearing conference, the Commission found the pleadings present such common issues of fact and law that the consolidation of Docket Nos. UE-010778 and UE-010911 would provide significant efficiencies for the Commission and would promote the ends of justice.

7 Discussion at the prehearing conference also suggested that these proceedings might be amenable to resolution on motions for summary determination pursuant to WAC 480-09-426. Accordingly, a schedule was set for such process. On or before August 15, 2001, the Commission accepted for filing Petitioner City of Kent's Amended Motion for Summary Determination and the Cities' Motion for Summary Determination and Memorandum in Support. On September 5, 2001, PSE filed its Response and Cross-Motion for Summary Determination. Kent and the Cities filed Replies on September 18, 2001. The Parties presented oral argument before the Commission on October 11, 2001.

II. Discussion and Decision

A. Governing Statutes, Rules, and Tariffs

8 Schedule 71 of PSE's Electric Tariff G is attached as Appendix A to this Order.

9 The following statutory provisions and rules are most central to our discussion and decision:

> **RCW 80.01.040 General Powers and Duties of Commission.**
>
> The utilities and transportation commission shall:
>
> * * *
>
> (3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility

service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies . . . .

80.28.010 Duties as to rates, services, and facilities . . . .

(1) All charges made, demanded or received by any . . . electrical company . . . for . . . electricity . . . , or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every . . . electrical company . . . shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any . . . electrical company . . . affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

80.28.020 Commission to fix just, reasonable, and compensatory rates.

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any . . . electrical company . . . for . . . electricity . . ., or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.

10 RCW 34.05.413 establishes our authority to conduct adjudicatory proceedings. RCW 34.05.240 and WAC 480-09-230 establish our authority to enter declaratory orders and establish certain process related to our consideration of petitions for such relief.

11 WAC 480-09-426 provides that parties to an adjudication may file motions for summary determination. Pursuant to WAC 480-09-426(2), a party requesting summary determination must show that "the pleadings filed in the proceeding, together with any properly admissible evidentiary support, show that there is no genuine issue as to any material fact and the moving party is entitled to summary determination in its favor." The Commission considers motions for summary determination under "the standards applicable to a motion made under CR 56 of the civil rules for superior court." *Id.* The civil rules provide:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

CR 56(c). A material fact is one of such nature that it affects the outcome of the litigation. *Greater Harbor 2000 v. Seattle*, 132 Wn.2d 267, 279, 937 P.2d 1082 (1997).

B. Substantive Issues

1. Introduction.

12 The municipal parties and PSE dispute their respective rights and obligations when a city requests PSE to relocate its existing overhead facilities to underground facilities in connection with certain street improvement projects. The City of Kent has requested PSE to underground its facilities along the portion of Pacific Highway South that is within the City's Pacific Highway Improvement Project. Auburn, *et al.*, also have requested undergrounding of PSE's facilities along the portions of Pacific Highway South that are within their jurisdictions. PSE's tariff Schedule 71 governs because these projects involve underground placement of facilities in "commercial areas."

13 We begin with the observation that the pleadings and motions in this case are voluminous. The breadth of the issues argued is far wider than what is necessary to our resolution of the essential disputes. Much of the argument is devoted to discussion of what the parties contend *should* be explicit in PSE's tariff Schedule 71,

rather than to the more pertinent question of what Schedule 71 *does* explicitly provide. We focus our Order on the second question rather than the first. Argument concerning what *should* be in tariff Schedule 71 is a subject more properly considered in the context of a tariff proceeding, not in the context of this declaratory order proceeding.[1]

2. What Schedule 71 Permits and Requires Under the Facts at Hand.

14 It is important at the outset to distinguish PSE's obligation *to relocate* facilities, when a city's street improvement or other public works projects require existing facilities to be moved, from PSE's obligation *to convert* overhead facilities to underground.[2] PSE does not dispute the cities' contention that PSE is obligated as a matter of common law and contract *(i.e.*, PSE's franchise agreements with the cities) "to relocate existing facilities that are located in public rights-of-way to new locations for municipal purposes at PSE's expense." *PSE Answer/Motion at 9.* PSE argues, however, that when the question is not simply relocation, but relocation to underground, the parties' respective rights and obligations are determined not by common law or PSE's franchise agreements, but by Commission regulation.

15 With respect to relocation, *per se*, PSE states in its Answer/Motion that:

> this proceeding is not about whether PSE will relocate its existing overhead facilities that are currently located on city rights of way. PSE has offered to relocate its overhead facilities to new overhead locations to accommodate the Cities' road improvements along Pacific Highway South.

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[1] During the pendency of this case, PSE has made a general rate filing in Docket Nos. UE-011570/UG-011571 (consolidated). Among the issues that filing raises are the form and substance of Schedules 70 and 71, both of which concern the undergrounding of facilities. The Petitioners in Docket Nos. UE-010778 and UE-010911, and in related Docket Nos. UE-010891 and UE-011027, will have the opportunity to seek intervention and participation in the general rate case. Several of the municipal parties before us here have, in fact, already intervened in PSE's general rate proceeding. Nothing in this Order should be considered as indicative of what determinations we may make on matters of law and policy properly presented for our consideration in the context of Docket Nos. UE-011570/UG-011571 (consolidated).

[2] Albeit in the context of telecommunications facilities rather than electric distribution facilities, there is a useful discussion of this fundamental point in *City of Auburn, et al. v. Qwest Corp., 260 F.3d 1160, 2001 U.S. App. LEXIS 15518 (9th Cir. 2001).*

PSE Answer/Motion at 10. PSE does not dispute that it would bear 100 percent of the expense of relocating overhead facilities to other overhead facilities. The cities, however, do not want PSE to relocate its existing overheard facilities to new overhead locations. The cities want PSE to relocate its existing overhead facilities to underground locations, a far more involved and costly undertaking. There does not appear to be any actual dispute among the parties that PSE's obligation to relocate facilities to underground locations, and the allocation of costs and responsibilities associated with undergrounding, are matters governed by PSE's tariff Schedules 70 and 71. Schedule 71 is directly at issue in these dockets, there being no dispute that the facilities in question are in commercial areas.[3]

16 The cities contend that PSE is obligated to underground the facilities at issue if the requirements of Section 2 of Schedule 71, which establishes "Availability" criteria under the schedule, are met.[4] *Kent Motion at 6-7; Cities' Motion at 7-10.* Significantly, there is no dispute that the Availability requirements stated in Section 2 of Schedule 71 are satisfied with respect to the Pacific Highway projects. Thus, if the dispute here turned on the application of this single section of the tariff schedule, as the cities' arguments suggest, there would be little, if anything, for us to decide.

17 We are required, however, to consider not just Section 2 of Schedule 71, but the entire rate schedule. Filed and approved tariffs have the force and effect of state law and are analyzed in the same manner and following the same principles as govern the courts' consideration of statutes. *General Tel. Co. v. City of Bothell,* 105 Wn.2d 579, 585 (1986) In accordance with those principles, when confronted with disputes such as those present here, we must harmonize and give effect to all of the tariff's provisions. *King County v. Central Puget Sound Growth Management Hearings Board,* 91 Wn.App. 1 (Div. 1 March 2, 1998); *State ex rel. Royal v. Board of Yakima County Comm'rs,* 123 Wn.2d 451, 459, 869 P.2d 56 (1994) (quoting *Service Employees Int'l Union, Local 6 v. Superintendent of Pub. Instruction,* 104 Wn.2d 344, 348-49, 705 P.2d 776 (1985) (quoting *Washington State Human Rights Comm'n v. Cheney Sch. Dist. No. 30,* 97 Wn.2d 118, 121, 641 P.2d 163 (1982)). The cities' arguments concerning Section 2 of Schedule 71 thus beg the question of the parties' respective rights and obligations vis-à-vis Schedule 71 considered as a whole.

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[3] Schedule 70 applies in areas that are "used exclusively for residential purposes."

[4] *See* Appendix A for the language of Section 2.

18 Schedule 71 does not require PSE to convert overhead facilities to underground facilities under any and all circumstances, whenever PSE is requested to do so by a city. Schedule 71 imposes a number of requirements both on PSE and on a city that seeks to have PSE's existing overhead facilities placed underground. Again, there is no dispute that the availability requirements of Section 2 of Schedule 71 are met. The question before us is whether other requirements under Schedule 71 also are met. The key substantive provisions of Schedule 71 that we must consider include Section 3, which concerns contracting and financial arrangements, and Section 4, which concerns "Operating Rights."

19 We focus initially on that portion of Section 3 of Schedule 71 that provides (emphasis supplied):

> [t]he Company will provide and install within the Conversion Area a Main Distribution System upon the following terms:
>
> a. The Company and the municipality having jurisdiction of the Conversion Area or the owners of all real property to be served from the Main Distribution System [or their agent] shall enter into a written contract . . . for the installation of such systems, which Contract shall be consistent with this schedule and shall be in a form satisfactory to the Company.

20 The contracts that PSE has tendered to the various cities include provisions that the cities contend are not consistent with Schedule 71. If we were to agree with the cities, then PSE could not insist on such terms as a condition of undergrounding pursuant to Section 3 of Schedule 71. On the other hand, if we find the disputed contract provisions to be consistent with Schedule 71, PSE can insist on such terms and, absent agreement by the cities, PSE can refuse to go forward with the proposed undergrounding of its facilities. The heart of the dispute, then, can be stated in fairly simple terms: are the contract provisions proposed by PSE consistent with Schedule 71? We find that they are, as discussed more fully below.

21 One requirement PSE would impose as a condition of its agreement to relocate the facilities to underground locations is that the cities obtain easements (or, alternatively, reimburse PSE for the cost of obtaining easements) whenever PSE exercises its

asserted discretion under Section 4 of Schedule 71 to insist that certain underground facilities be located outside the public rights-of-way on private property. Section 4 of Schedule 71 provides that:

> [t]he owners of real property within the Conversion Area shall, at their expense, provide space for all underground electrical facilities which in the Company's judgment shall be installed on the property of said owners. In addition, said owners shall provide to the Company adequate legal rights for the construction, operation, repair, and maintenance of all electrical facilities installed by the Company pursuant to this schedule, all in a form or forms satisfactory to the Company.

(emphasis supplied).

22 PSE's Statement of Fact and Law, filed in response to the City of Kent's Petition, states that:

> Pursuant to Section 4 of Schedule 71, PSE requires that underground facilities (other than cable and conduit) and pad-mounted facilities, such as vaults for junctions, vaults for pulling cable, transformers and associated vaults, and switches and associated vaults, be placed on private property within easements that are in the Company's standard form. The question whether such facilities should be placed on private property is a matter that the Tariff leaves to the sole discretion of the Company. In any case, PSE's judgment with respect to this question is sound because undergrounding facilities raises safety, operational and cost issues that are different than those associated with overhead facilities.

23 Auburn, *et al.* complain that PSE refuses to place its facilities in city rights-of-way, even where adequate space exists or can be made available through the purchase of additional rights-of-way. Auburn, *et al.* contend PSE's principal rationale for this refusal is an effort by the Company to avoid its common law and contractual obligations in the future, if the cities require PSE to relocate the newly undergrounded facilities a second time. Auburn, *et al.* argue that PSE's "insistence on locating all of its underground facilities on private easements is an attempt to avoid its

responsibilities for relocation costs." *Id. at 20.* Auburn, *et al.* characterize equipment relocation as "a necessary cost of doing business for a utility." *Id. at 21.*

24 PSE, in fact, does take the view that Schedule 71 does not apply to its facilities that are located on private easements. PSE acknowledges that part of its exercise of judgment and discretion under Section 4, to insist that certain facilities to be located on private easements, is based on its desire to avoid the risk of having to bear the costs of relocating these facilities, once undergrounded, a second time. *See, e.g., PSE Statement of Facts and Law at ¶17; PSE Response and Cross-Motion at 30.* Again, PSE does not dispute its obligation to relocate facilities that are in the public rights-of-way. Rather, PSE wishes to avoid bearing the significant costs associated with undergrounding more than once. PSE says that while it will agree to place at least some facilities on public rights-of-way, even though it would prefer to place them on private easements, it will do so only if the Company is indemnified against having to bear the expense of any future relocation of the underground facilities. Thus, the contracts PSE has tendered also include terms that would require the cities to pay any future relocation costs for facilities placed underground in public rights-of-way.

25 Auburn, *et al.* argue that Section 4 of Schedule 71 does not apply to cities, because cities are not "owners of real property." The cities argue that the only "operating rights" they are obligated to provide are those they have committed to provide via their franchise agreements with PSE. That is, the cities contend that PSE's only alternatives are to place all of its underground facilities in public rights-of-way or, if PSE decides that some facilities should be on private property, to obtain the necessary rights to such locations at its own expense. The cities also contend 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. They argue such a contract term is not consistent with Schedule 71.

26 Kent contends that Section 4 of Schedule 71 contemplates that property owners will grant easements to PSE without compensation in consideration of the benefits of undergrounding. *Id. at 8, 11.* Absent that, Kent argues that since Schedule 71 does not expressly require the City to pay for easement rights over private property, it must follow that PSE is obligated to pay such "just compensation" as the private property owner may demand and be entitled to for the easement rights. *Id. at 11.*

27 Citing Article 8, Section 7 of the Washington Constitution, Kent also argues that it does not have the legal authority to buy private property interests for PSE. *Id. at 12.* Kent argues that it follows from this that "the only party that can, and quite reasonably should, pay for PSE's private easements is PSE." *Id.* Like Kent, Auburn, *et al.* argue that to interpret Schedule 71 to require the cities to purchase private easements for PSE's use would violate the state Constitution's prohibition against gifts of public funds.

28 PSE concedes that nothing in Schedule 71 expressly requires the cities to bear any costs associated with easements PSE may require in the exercise of its judgment that certain facilities should be located on private property. It is equally true, however, that nothing in Schedule 71 requires PSE to bear such costs. Indeed, Section 4 states that it is the "owners of real property within the Conversion Area" that must bear such costs.[5] These property owners are not parties to this dispute. The tariff, then, simply does not squarely answer the question presented to us of who bears the responsibility for obtaining and, if necessary, paying for, private easements that PSE may require in its discretion under Section 4 of Schedule 71.

29 Kent argues that in the final analysis there are but two possible outcomes. Either PSE must pay for all costs associated with any private easements PSE requires in its judgment in connection with the undergrounding of facilities; or "there will be no undergrounding of electric facilities if a property owner from whom PSE has requested an easement asks for compensation." Kent's reasoning here, as in its earlier arguments, suffers from incompleteness.

30 In fact, there are several other possible outcomes. One possibility is that the cities can make arrangements with the property owners to secure their cooperation. PSE points out historical examples when cities have made various arrangements with private property owners, such as extending services to their property, in exchange for the owners' agreements to give PSE adequate operating rights to build, operate, and

[5] Kent also argues that not only is PSE obligated to obtain its own easements on private property that are necessary in PSE's judgment to complete an undergrounding project, but also that PSE is obligated to bear all costs associated with such easements, including direct costs attributable to the value of the easement (*i.e.*, any payment to the owner for the property right itself). That is, Kent contends that PSE must pay 100 percent of any PSE staff costs, engineering, survey, legal, or other costs incurred in connection with the identification and memorialization of easement rights, whether or not the property owner demands compensation. PSE acknowledges Kent's point in its Answer and argues that these incidental costs should be shared according to the applicable percentages under Schedule 71.

maintain underground facilities on the owners' properties. *PSE Answer/Motion at 47, 49.* Another possibility is for the cities to work with PSE and private property owners to identify alternative sites, where facilities can be located on easements without the necessity for compensation to be paid. That, too, has occurred in the past. And, despite the cities' arguments now that there is no legal way for them to do so, cities have found ways in the past to purchase easements for PSE. *PSE Response/Motion at 46-49; Kent Reply at 7-8; Auburn, et al. Reply at 22-23.*

31 The parties' submissions also relate that in some instances, PSE has located its facilities in the public rights-of-way, and has required indemnification against the costs of any subsequent relocation of those facilities. In other instances, PSE apparently has voluntarily purchased easement or other property rights in connection with undergrounding projects. All of this illustrates that PSE and various cities have exercised considerable latitude within the scope of Schedule 71 to structure arrangements for undergrounding projects. In the past, they always have found solutions to the problem that here is presented as being intractable without our intervention.

32 In our view, Section 4 of Schedule 71 gives PSE the discretion to determine that some, or all, of the facilities to be located underground as part of the Pacific Highway South projects will be placed on private property. While that is not unfettered discretion—it must be exercised reasonably—PSE's cost-based rationale cannot be said to be unreasonable.[6] By contrast, it is unreasonable for the cities to expect PSE to bear a significant share of undergrounding costs under Schedule 71 (*i.e.*, up to 70 percent of the total costs excluding trenching and restoration per Section 3.b.1 of Schedule 71), to accommodate the cities' requests for undergrounding on this occasion, and to agree to terms that would potentially leave the Company liable for the costs of future relocation of the same facilities.[7]

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[6] The parties argue at length not only about the cost rationale, but also about the engineering, operational, and safety rationales PSE uses to justify its exercise of judgment to require facilities to be located on private easements. We see no need to discuss the full range of these arguments, as it clearly is the dispute over costs that most concerns the parties in these proceedings, and because we find that PSE's cost-based concerns reasonably support its exercise of judgment. These other rationales argued by PSE, however, might also provide bases justifying the Company's position.

[7] Although in the context of telecommunications facilities rather than electric facilities, we note that the Legislature recently addressed these issues. The resulting law, Chapter 35.99 RCW, shifts to cities even *overhead relocation* costs when a city requests a second relocation within five years after a prior relocation. The statute also recognizes the distinction between relocation and undergrounding and places responsibility for *all* incremental costs of undergrounding on cities, absent a tariff that governs

33 Section 4 of Schedule 71 provides that PSE is not responsible for the costs of any easements it requires in the reasonable exercise of its discretion. It is also true that Section 4 does not by its terms place the responsibility for acquiring easements on the cities. PSE, however, does not lose its discretionary rights under Section 4 simply because Schedule 71 does not impose on the cities an obligation to pay for operating rights PSE requires in its judgment on private property. PSE is not required under Schedule 71 to locate all underground facilities on public rights-of-way, even if those rights-of-way are adequate from an engineering perspective to accommodate PSE's facilities. When, as here, PSE exercises its discretion to require facilities to be located on private easements, there must be contract provisions that reflect the practical consequences of that exercise of discretion. The contracts tendered by PSE include terms which require that the Company be provided easements at no cost to PSE as a condition of the conversion. Such terms are neither inconsistent with Schedule 71, nor unreasonable. As discussed above, the cities have various means to secure, or assist PSE to secure, adequate operating rights when PSE exercises its discretion under Section 4. If these operating rights cannot be secured, the alternative is overhead relocation.

34 If the cities wish to negotiate with PSE to secure the Company's agreement to not exercise its discretion to require facilities to be located on private easements, and to locate those facilities in the public rights-of-way, they may do so. It is neither inconsistent with Schedule 71, nor unreasonable in that circumstance for PSE to insist on a *quid pro quo* that provides the same financial protection against incurring future relocation costs that would follow if PSE did exercise its discretion to require that the facilities be located on private easements.[8]

35 PSE has the right under Section 3 of Schedule 71 to insist on contract terms that are consistent with the rate schedule and not unreasonable. The terms PSE has tendered in connection with the Pacific Highway South projects meet those criteria. If the

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the allocation of such costs. RCW 35.99.060 also allows for the utility to be reimbursed for relocation costs when the relocation is solely for aesthetic purposes, or is "primarily for private benefit." The statute does not control here, but we are struck by the consistency of its requirements with our independent analysis, findings, and conclusions in this proceeding. For PSE to insist on contract terms that are consistent with what the Legislature has required in the analogous realm of telecommunications facilities cannot be said to be unreasonable.

cities refuse to execute contracts that include such terms, then PSE is not required to "provide and install within the Conversion Area a Main Distribution System."

3. Special Issue re Federal Way's 23rd Avenue South/South 320th Street Project.

36 In addition to the Pacific Highway South Project, the City of Federal Way is undertaking a street improvement project at the intersection of 23rd Avenue South and South 320th Street. The improvements extend along 23rd Avenue South, from South 316th to South 324th Street, and along South 320th Street on either side of 23rd Avenue South from 20th Avenue South to 25th Avenue South. As part of this project, Federal Way has requested that PSE convert its overhead facilities to underground facilities. *Stipulated Fact 12.* Most of PSE's existing facilities along the 320th Street portion of the street improvements are located on PSE easements outside of Federal Way's right-of-way. Federal Way's street improvements will not encroach into PSE's easement areas. *Stipulated Fact 13.*

37 PSE argues that it "historically has interpreted Schedule 71 (as well as Schedule 70) to apply only to conversions of PSE's overhead facilities that are located in public rights-of-way, and not to facilities that are located on private property and/or PSE easements." *PSE Response/Motion at 74.* PSE states that it is generally willing to convert overhead facilities that are located on private easements to underground facilities, but only if the requesting party pays 100 percent of the cost. *Id. (citing Logen Declaration at ¶45).*

38 PSE argues that the reference in Section 2 of Schedule 71 to "public street," like the reference to "public thoroughfare" in Section 2 of Schedule 70, reflects the intention that the rate schedules should apply only to facilities located on public streets (or in public rights-of-way) and not on private property. PSE argues further that as the owner of easement rights on private property, it has complete control over its facilities within the scope of its easement rights. PSE contends that neither the fee owner of property over which PSE has an easement or prescriptive rights, nor a municipality has the authority to require PSE to convert its overhead facilities to underground facilities without just compensation. PSE argues that the Company has

[8] Whether some term limit should be imposed on the cities' obligation to pay PSE for any subsequent relocation of the facilities once undergrounded is a matter that should be considered in the context of PSE's pending general tariff proceeding, Docket Nos. UE-011570/UG-011571 (consolidated).

the sole discretion to decide to convert facilities that are on private property to underground facilities and to establish contract terms for any such conversion without the necessity for a tariff schedule. In summary, PSE argues that

> [t]o interpret Schedule 71 to apply to PSE's facilities located on private property in Federal Way would be contrary to the Tariff language, which speaks in terms of "public streets," would violate PSE's property rights, and would ignore the historical and legal context in which the schedules were filed by PSE and approved by the Commission.

PSE Response/Motion at 77.

39 Filed and approved tariffs such as Schedules 70 and 71 have the force and effect of state law. *General Tel. Co. v. City of Bothell,* 105 Wn.2d 579, 585 (1986). When, as here, parties dispute what particular provisions require, we must look first to the plain meaning of the tariff. *Nat'l Union Ins. Co. v. Puget Power,* 94 Wn. App. 163, 171, 972 P.2d 481 (1999). If the tariff language is plain and unambiguous, there is no need to resort to rules of construction. *Whatcom County v. Bellingham,* 128 Wn.2d 537, 546, 909 P.2d 1303 (1996); *Food Servs. Of Am. v. Royal Heights, Inc.,* 123 Wn.2d 779, 784-85, 871 P.2d 590 (1994); *Waste Management of Seattle v. Utilities & Transp. Comm'n,* 123 Wn. 2d 621, 629, 869 P.2d 1034 (1994); *Vita Food Prods., Inc. v. State,* 91 Wn.2d 132, 134, 587 P.2d 535 (1978). If the tariff language is not plain, or is ambiguous, the Commission may examine the legislative history and other evidence to determine the meaning of the tariff and how it should be applied to the facts at hand. In interpreting an ambiguous tariff the Commission is like a court interpreting an ambiguous statute. As the Court says in *Whatcom County*:

> If the statute is ambiguous, the courts must construe the statute so as to effectuate the legislative intent. In so doing, we avoid a literal reading if it would result in unlikely, absurd or strained consequences. The purpose of an enactment should prevail over express but inept wording. The court must give effect to legislative intent determined 'within the context of the entire statute.' Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. The meaning of a particular word in a statute 'is not gleaned from that word alone,

> because our purpose is to ascertain legislative intent of the statute as a whole.'

128 Wn.2d at 546 (citations omitted); *see City of Seattle v. Dept of L&I*, 136 Wn.2d 693, 701, 965 P.2d 619 (1998).

40 We concur with PSE, that the scope of Schedule 71 is limited to projects on public streets at least two blocks in length. PSE's is the most logical and reasonable interpretation of the last sentence of Section 2. First, the length of the project must be at least two "contiguous city blocks." The term "city blocks" implies the presence of public streets that define the blocks. Second, all real property on both sides of "each public street" must receive electric service. That there is no mention here of property on private easements suggests it was not contemplated for coverage under Schedule 71. It is not reasonable to think that the tariff would carefully provide requirements applicable to both sides of each public street, provide no similar requirements for private easements, but nevertheless apply to private easements. We find, therefore, that Schedule 71 does not apply to private easements.

41 Put another way, and limiting ourselves strictly to the stipulated facts of this case, we observe that Federal Way's street improvements will not encroach into PSE's easement areas along 320th Street. We infer from this fact that Federal Way is not in a position to require any change—relocation or undergrounding—to PSE's existing facilities. That is, the change Federal Way has requested is entirely discretionary with the city, and with PSE. Since PSE could not be required to relocate the subject facilities, and bear the costs associated with relocation to new overhead facilities, it would not be reasonable to conclude that Schedule 71 requires PSE to bear the costs of relocation to underground facilities. We find that Schedule 71 does not apply to this project, under the facts presented.

42 With respect to the facilities located along 23rd Avenue South, PSE argues that this segment of the Federal Way project must be viewed and evaluated separately from the 320th Street portion of the same project because the 320th Street facilities are, as just discussed, on private easements not subject to Schedule 71. There does not appear to be any dispute that the 23rd Avenue South facilities, considered in isolation, are not at least "two contiguous city blocks in length," as required for eligibility under Section 2 of Schedule 71. PSE acknowledges that if the 320th Street portion of the project was within Schedule 71, the rate schedule also would apply to the 23rd

Avenue South facilities "because the facilities essentially 'turn the corner' and are part of the same physical stretch of facilities." *Id. at 78.*

43 We stated our finding, two paragraphs above, that Schedule 71 does not apply to the proposed conversion of PSE's facilities along 320th Street. This means the project is not part of a "Conversion Area" under Schedule 71. The 23rd Avenue street improvement thus stands on its own for purposes of determining whether Schedule 71 applies. There is no dispute that the 23rd Avenue segment is too short to satisfy the requirements of Section 2 of Schedule 71. Accordingly, we find that Schedule 71 does not apply to Federal Way's 23rd Avenue/South 320th Street project. We also find that PSE is entitled to reimbursement for the costs of undergrounding its facilities in connection with this project.

4. Special Issue re SeaTac's South 170th Street Project.

44 We determine by separate order entered today in Docket Nos. UE-010891 and UE-011027 (consolidated) that Schedule 71 applies to a certain street improvement project on South 170th Street in SeaTac, rather than Schedule 70 as argued by SeaTac. In light of that determination, we are required to resolve another issue in this proceeding concerning the application of Schedule 71's cost-sharing provision (*i.e.*, Section 3.b.1).

45 The parties stipulate that the SeaTac South 170th Street project will widen the existing two-lane street from approximately 24 feet to 36 feet; replace gravel shoulder and drainage ditches with bicycle lanes on both sides of the street that are contiguous to the driving lanes; and add new curbs and gutters behind the bicycle lanes, new sidewalks behind the curbs, and new planter strips behind the sidewalks. *Stipulated Fact No. 18.* The parties also agree that SeaTac is adding "one full lane" to an arterial street or road. *Stipulated Fact No. 20.*

46 There are eight poles involved in the 170th Street underground conversion. If they were not converted to underground facilities, or moved, two of PSE's poles would be located in the new roadway and six would be located in the sidewalk more than six inches from the street side of the curb. *Stipulated Fact No. 19.* Clearly, the two poles that would be in the new roadway are required to be relocated. PSE contends that the remaining six poles are not required to be relocated. PSE relies on WAC 296-45-045, which provides that electric utilities operating in Washington "must design, construct,

operate and maintain their lines and equipment according to the requirements of the 1997 National Electric Safety Code (NESC)." The NESC provides for the following "Clearances of Supporting Structures From Other Objects":

> B. From Streets, Roads, and Highways
>
> 1. Where there are curbs: supporting structures, support arms, or equipment attached thereto, up to 4.6m (15 ft) above the road surface shall be located a sufficient distance from the street side of the curbs to avoid contact by ordinary vehicles using and located on the traveled way. In no case shall such distance be less than 150mm (6 in.).

NESC 231.B (1997), per Stipulated Exhibit No. 22; See also Logen Affidavit at ¶ 51.

47 Considering the facts and the NESC criteria, PSE contends that SeaTac should pay 30 percent of one-quarter of the total cost of the conversion because one-quarter of the existing overhead poles are required to be relocated, and 70 percent of the remaining three-quarters of the total cost because six of the eight poles are not, PSE argues, required to be relocated to accommodate the road widening.

48 SeaTac contends that it is responsible for only 30 percent of the undergrounding costs for the entire project because, SeaTac argues, "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." *Schedule 71, Section 3.b.1.* SeaTac argues that it is the city, not PSE, that is empowered to decide when the public interest requires the relocation of overhead facilities that would end up in the streets or sidewalks following road-widening projects. SeaTac has made that determination in connection with the South 170th Street project because leaving the existing poles in place "would obstruct safe pedestrian traffic." *Auburn, et al. Motion at 38.* SeaTac says that it is the judgment of the city's engineers that the "poles would need to be relocated even if the system were not converted to underground." *Gut Declaration, ¶8.*

49 SeaTac's determination was based in part on the King County Road Standards (1993), which SeaTac has adopted. According to Mr. Gut, Chapter 8, "Utilities" states that on vertical curb type roads in residential areas with speed limits less than 40 mph, such as the subject segment of South 170th Street, utility poles should be placed five and one-half feet from the curb face.

50 SeaTac argues that it is charged by statute to establish and maintain the public streets and roads, and required by law to maintain the public streets and sidewalks in a safe condition. *Auburn, et al. Motion at 39 (citing Chapter 35.77 RCW; RCW 35.22.280; RCW 35.23.440(33); and Kennedy v. City of Everett, 2 Wn.2d 650, 653-54, 99 P.2d 614, amended by 4 Wn.21d 729, 103 P.2d 371 (1940).* SeaTac also argues that the Legislature has delegated authority to cities, not to utilities, to regulate placement of utility poles and structures. *Auburn et al. Motion at 39 (citing, and quoting, RCW 35A.47.040).* Citing additional case authority for propositions related to the primacy of the transportation function and the cities' paramount responsibilities with respect to "the public ways," SeaTac concludes that the city's standards, not PSE's, determine the need to relocate utility facilities. PSE, SeaTac argues, "has no right to refuse to relocate its poles on the City rights-of-way." *Id. at 40.*

51 While we do not dispute the City's contentions regarding its primary responsibility for managing its public rights-of-way, we are concerned here with the administration of PSE's electric tariff and, in particular, who pays for what. Among other things, we must not interpret that tariff in a way that would leave its application subject to varying requirements that might be adopted by the many municipalities in which PSE's facilities are located. Such an interpretation would open the door to claims of undue preference or discrimination as PSE was required to bear more or less costs for otherwise similar or identical projects depending only on which city's standards are deemed to apply. Thus, it is important that we interpret Schedule 71 so that a single standard applies to determinations of whether "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," which triggers the 30 percent reimbursement obligation under Section 3 of Schedule 71, and relieves the city from the 70 percent reimbursement to which it otherwise would be subject under Section 3.

52 We find that the NESC standard PSE applies, which is grounded in the *electricity-related* requirements of WAC 296-45-045, provides a reasonable, consistent basis upon which to determine the allocation of cost responsibility under Schedule 71. Under the facts presented, we determine that SeaTac should pay 30 percent of one-quarter of the total cost of the conversion because one-quarter of the existing overhead poles are required to be relocated, and 70 percent of the remaining three-quarters of the total cost because six of the eight poles are not required to be relocated to accommodate the road widening.

FINDINGS OF FACT

53 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

54 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies

55 (2) The pleadings filed in this proceeding, together with the evidentiary support provided by the parties' fact stipulations, affidavits, and other documents, show that there is no genuine issue as to any material fact.

CONCLUSIONS OF LAW

56 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

57 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and all parties to, these proceedings. *Title 80 RCW.*

58 (2) PSE is a "public service company" and an "electrical company" as those terms are defined in RCW 80.04.010, and as those terms otherwise may be used in Title 80 RCW. PSE is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.

59 (3) PSE is entitled to judgment in its favor, as a matter of law, that it has discretion under Section 4 of Schedule 71 reasonably to require the location of

underground facilities on private easements rather than in public rights-of-way.

60 (4) PSE is entitled to judgment in its favor, as a matter of law, that the disputed requirements PSE proposes to memorialize in contracts that are "in a form satisfactory to the Company," as provided under Section 3 of Schedule 71, are neither inconsistent with the requirements of Schedule 71, nor unreasonable.

61 (5) PSE is entitled to recover fully the costs it incurs in connection with the underground relocation of existing overhead electric distribution facilities that are located on private easements along South 320th Street in Federal Way.

62 (6) Schedule 71 does not apply to the underground relocation of existing overhead electric distribution facilities on 23rd Avenue at the intersection of that roadway with South 320th Street in Federal Way.

63 (7) Section 3.b.1 of Schedule 71 requires, with respect to the 170th Street project in SeaTac, that the City should pay 30 percent of one-quarter of the total cost of the conversion and 70 percent of the remaining three-quarters of the total cost, excluding trenching and restoration.

ORDER

64 THE COMMISSION ORDERS That PSE has the discretion under Section 4 of Schedule 71 to require that portions of the existing overhead facilities it agrees to convert to underground facilities along Pacific Highway South shall be located on private easements that are acquired at no cost to PSE. PSE may require contract provisions under Section 3 of Schedule 71 that memorialize the parties' respective obligations that arise from PSE's exercise of discretion.

65 THE COMMISSION ORDERS FURTHER That PSE is entitled to recover fully the costs it incurs in connection with the underground relocation of existing overhead electric distribution facilities that are located on private easements along South 320th Street in Federal Way.

66 THE COMMISSION ORDERS FURTHER That Schedule 71 does not apply to the underground relocation of existing overhead electric distribution facilities on 23rd Avenue at the intersection of that roadway with South 320th Street in Federal Way.

67 THE COMMISSION ORDERS FURTHER That Section 3.b.1 of Schedule 71 requires, with respect to the 170th Street project in SeaTac, that the City should pay 30 percent of one-quarter of the total cost of the conversion and 70 percent of the remaining three-quarters of the total cost, excluding trenching and restoration.

DATED at Olympia, Washington, and effective this _____ day of January, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

EXHIBIT G

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF SEATAC, Petitioner, v. PUGET SOUND ENERGY, INC. Respondent.	)	DOCKET NO. UE-010891
CITY OF CLYDE HILL, Petitioner, v. PUGET SOUND ENERGY, INC. Respondent.	)	DOCKET NO. UE-011027 THIRD SUPPLEMENTAL ORDER: DECLARATORY ORDER ON MOTIONS FOR SUMMARY DETERMINATION

SYNOPSIS: *The Commission interprets Puget Sound Energy, Inc.'s tariff Schedules 70 and 71, and determines the applicability of the two schedules to portions of underground relocation projects in the cities of SeaTac and Clyde Hill.*

1 **PROCEEDINGS:** Docket No. UE-010891 concerns a Complaint and Petition for Declaratory Relief filed by the City of SeaTac on June 19, 2001. Docket No. UE-011027 concerns a Complaint and Petition for Declaratory Relief filed by the City of Clyde Hill on July 18, 2001. The complaints request that the Commission enter a declaratory order, or orders, establishing the respective rights and obligations of the cities and Puget Sound Energy, Inc. (PSE) in connection with PSE's administration of its tariffs that provide for the conversion of overhead electric distribution systems to underground systems under Electric Tariff G, Schedules 70 and 71. The Commission consolidated Docket Nos. UE-010891 and UE-011027 by order entered on July 30, 2001.

2 The Parties requested that the Commission resolve these matters on a paper record including certain stipulated facts. SeaTac and Clyde Hill filed their respective Motions for Summary Determination by August 13, 2001, as required under the procedural schedule. PSE filed its Response and Cross-Motion for Summary Determination on August 24, 2001. SeaTac and Clyde Hill filed their respective Replies on August 31, 2001.

3 **PARTIES:** Carol S. Arnold and Laura K. Clinton, Preston Gates Ellis, LLP, Seattle, Washington, represent the City of SeaTac. John D. Wallace, City Attorney, Clyde Hill, Washington, and Greg A. Rubstello, Ogden Murphy Wallace, P.L.L.C. represent the City of Clyde Hill. Kirsten Dodge and Bill Bue, Perkins Coie, LLP, Bellevue, Washington, represent Puget Sound Energy. Mary Tennyson, Senior Assistant Attorney General, Olympia, Washington, represents Commission Staff.

4 **COMMISSION:** The Commission denies the City of SeaTac's Motion for Summary Determination on its Complaint and Petition for Declaratory Judgment. The Commission denies Clyde Hill's Motion for Summary Determination on its Complaint and Petition for Declaratory Judgment. The Commission grants PSE's Cross-Motion for Summary Determination.

MEMORANDUM

I. Background and Procedural History

5 The City of SeaTac filed a Complaint and Petition for Declaratory Relief on June 19, 2001, initiating Docket No. UE-010891. SeaTac's pleading raised issues concerning the interpretation and application of PSE's tariff Schedules 70 and 71, which concern the conversion of overhead distribution facilities to underground facilities in residential and commercial areas in municipalities. PSE filed its Answer to SeaTac's Complaint and Petition on June 29, 2001. Later, on July 18, 2001, following certain process described below, the City of Clyde Hill filed a Complaint and Petition for Declaratory relief that raised issues factually and legally similar to those raised by SeaTac. The Clyde Hill matter was docketed under No. UE-011027. Generally, the Parties dispute the scope of PSE's and the cities' respective rights and obligations in connection with the conversion of certain overhead electric distribution facilities to underground facilities.

6 The Commission convened a joint prehearing conference in the SeaTac docket (*i.e.*, No. UE-010891), and in somewhat related proceedings in Docket Nos. UE-010778 and UE-010911, on April 23, 2001, in Olympia, Washington, before Administrative Law Judge Dennis J. Moss. Based on discussions at the prehearing conference, the Commission found that the pleadings in Docket Nos. UE-010778 and UE-010911 presented common issues of fact and law, and consolidated the two dockets. The Commission's resolution of the issues in Docket Nos. UE-010778 and UE-010911 (consolidated) is the subject of a separate order entered today.

7 The City of Clyde Hill initially sought to press its case via intervention in Docket No. UE-010891. It became apparent at the prehearing conference, however, that Clyde Hill should file its own pleading for separate docketing, even though it was also apparent that any such docket likely would be consolidated with Docket No. UE-010891. As noted above, Clyde Hill did file its own Complaint and Petition for Declaratory Relief in Docket No. UE-011027, and the matter was consolidated with Docket No. UE-010891.

8 Discussion at the prehearing conference also suggested that Docket Nos. UE-010891 and UE-011027 (consolidated) might be amenable to resolution on stipulated facts and cross-motions for summary determination pursuant to WAC 480-09-426. Accordingly, a schedule was set for such process. On August 2, 2001, the Parties filed their Joint Statement of Issues, Stipulations of Fact, and Stipulated Exhibit List. On August 13, 2001, SeaTac and Clyde Hill filed their respective Motions for Summary Determination. PSE filed its Response to Motions for Summary Determination and Cross Motion for Summary Determination on August 24, 2001. SeaTac filed its Reply on August 31, 2002, and Clyde Hill filed its Reply on September 4, 2001. The Commission heard oral argument on October 11, 2001.

II. Discussion and Decision

A. Governing Statutes, Rules, and Tariffs

9 Schedules 70 and 71 of PSE's Electric Tariff G are attached as Appendices A and B to this Order.

10 The following statutes and rules are most central to our consideration of the matters raised by the Parties' pleadings and motions:

RCW 80.01.040 General Powers and Duties of Commission.

The utilities and transportation commission shall:

* * *

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies . . . .

80.28.010 Duties as to rates, services, and facilities . . . .

(1) All charges made, demanded or received by any . . . electrical company . . . for . . . electricity . . . , or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every . . . electrical company . . . shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any . . . electrical company . . . affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

80.28.020 Commission to fix just, reasonable, and compensatory rates.

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any . . . electrical company . . . for . . . electricity . . ., or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall

determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.

80. 28.080 Published rates to be charged—Exceptions.

No . . . electrical company . . ., shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time . . .

No . . . electrical company . . . shall extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

80.28.90 Unreasonable preference prohibited.

No . . . electrical company . . . shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

80.28.100 Rate discrimination prohibited—Exception.

No . . . electrical company . . . shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for . . . any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

11 RCW 34.05.413 establishes our authority to conduct adjudicatory proceedings. RCW 34.05.240 and WAC 480-09-230 establish our authority to enter declaratory orders and establish certain process related to our consideration of petitions for such relief.

12 WAC 480-09-426 provides that parties to an adjudication may file motions for summary determination. Pursuant to WAC 480-09-426(2), a party requesting summary determination must show that "the pleadings filed in the proceeding, together with any properly admissible evidentiary support, show that there is no genuine issue as to any material fact and the moving party is entitled to summary determination in its favor." The Commission considers motions for summary determination under "the standards applicable to a motion made under CR 56 of the civil rules for superior court." *Id.* The civil rules provide:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

CR 56(c). A material fact is one of such nature that it affects the outcome of the litigation. *Greater Harbor 2000 v. Seattle*, 132 Wn.2d 267, 279, 937 P.2d 1082 (1997).

B. Legal Standards and Analytical Framework.

13 Filed and approved tariffs such as Schedules 70 and 71 have the force and effect of state law. *General Tel. Co. v. City of Bothell*, 105 Wn.2d 579, 585 (1986). When, as here, parties dispute what particular provisions require, we must look first to the plain meaning of the tariff. *Nat'l Union Ins. Co. v. Puget Power*, 94 Wn. App. 163, 171, 972 P.2d 481 (1999). If the tariff language is plain and unambiguous, there is no need to resort to rules of construction. *Whatcom County v. Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996); *Food Servs. Of Am. v. Royal Heights, Inc.*, 123 Wn.2d 779, 784-85, 871 P.2d 590 (1994); *Waste Management of Seattle v. Utilities & Transp. Comm'n*, 123 Wn. 2d 621, 629, 869 P.2d 1034 (1994); *Vita Food Prods., Inc. v. State*, 91 Wn.2d 132, 134, 587 P.2d 535 (1978). If the tariff language is not plain, or is ambiguous, the Commission may examine the legislative history and other evidence to determine the meaning

of the tariff and how it should be applied to the facts at hand. In interpreting an ambiguous tariff the Commission is like a court interpreting an ambiguous statute. As the Court says in *Whatcom County*:

> If the statute is ambiguous, the courts must construe the statute so as to effectuate the legislative intent. In so doing, we avoid a literal reading if it would result in unlikely, absurd or strained consequences. The purpose of an enactment should prevail over express but inept wording. The court must give effect to legislative intent determined 'within the context of the entire statute.' Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. The meaning of a particular word in a statute 'is not gleaned from that word alone, because our purpose is to ascertain legislative intent of the statute as a whole.'

128 Wn.2d at 546 (citations omitted); *see City of Seattle v. Dept of L&I*, 136 Wn.2d 693, 701, 965 P.2d 619 (1998).

C. Substantive Issues

14 The central issue in this consolidated proceeding is whether PSE's schedule 70 (governing the conversion of overhead facilities to underground facilities in residential areas) or Schedule 71 (governing conversion of overhead facilities to underground facilities in commercial and certain other areas) applies to all or portions of certain projects planned or underway in the respective cities. The material facts are undisputed.

1. Stipulated Facts Related to SeaTac.

15 SeaTac and PSE stipulated to the following facts in their Joint Statement of Issues, Stipulations of Fact, and Stipulated Exhibit List filed on August 2, 2001:

a. The City of SeaTac ("SeaTac") has requested and PSE has agreed to convert its overhead facilities along South 170th Street between 37th Avenue South and Military Road South (the "SeaTac Conversion Area") to underground.

b. SeaTac claims that PSE should undertake the conversion under the terms of Schedule 70, while PSE claims that Schedule 71 applies to the conversion.

c. South 170th Street is a collector arterial that provides access between Military Road South and International Boulevard (Highway 99), as well as SeaTac Airport. International Boulevard and SeaTac Airport are commercial areas. The buildings currently located within the SeaTac Conversion Area are residential dwellings.

d. Stipulated Exhibit A is a true and correct copy of the aerial photograph identified as "South 170th Street Phase 2 Improvements Project Area."

e. Stipulated Exhibit B is a true and correct copy of the map identified as "City of SeaTac Zoning."

f. Stipulated Exhibit C is a true and correct copy of the map identified as "City of SeaTac Comprehensive Plan."

g. PSE's existing overhead distribution system in the SeaTac Conversion Area is a three-phase feeder system, not a single-phase system. The service lines from the distribution system are single-phase.

2. Stipulated Facts Relating to Clyde Hill:

16 Clyde Hill and PSE stipulated to the following facts in their Joint Statement of Issues, Stipulations of Fact, and Stipulated Exhibit List filed on August 2, 2001:

a. The City of Clyde Hill ("Clyde Hill") has requested that PSE convert its overhead facilities to underground along 92nd Avenue N.E. between approximately N.E. 13th Street and N.E. 20th Street, along N.E. 13th Street from 92nd Avenue N.E. eastward to the end of N.E. 13th Street, along N.E. 19th Street from 92nd Avenue N.E. to 94th Avenue N.E., along N.E. 20th Street from just west of 92nd Avenue N.E. to 96th Avenue N.E., along 94th Avenue N.E. from N.E. 19th Street to approximately N.E. 21st Street, and along private drives and through private property running east of and perpendicular to 92nd Avenue N.E. and west of and perpendicular to 94th Avenue N.E. ("Clyde Hill Project"). Stipulated Exhibit D shows the details of the locations of facilities that Clyde Hill wishes to convert to underground.

b. PSE has agreed that facilities in the following conversion areas within the Clyde Hill Project should be performed under Schedule 70: N.E. 13th Street from 92nd Avenue N.E. eastward to the end of N.E. 13th Street, N.E. 20th Street from just west of 92nd Avenue N.E. to 96th Avenue N.E., and along 94th Avenue N.E. from N.E. 19th Street to approximately N.E. 21st Street. See Exhibit D, pink highlighting. PSE's existing overhead facilities in these areas are a single-phase system.

c. PSE claims that facilities in the following conversion area should be performed under Schedule 71: along 92nd Avenue N.E. between approximately N.E. 13th Street and N.E. 20th Street. See Exhibit D, yellow highlighting. PSE's existing overhead facilities along 92nd Avenue N.E. are a three-phase feeder system, not a single-phase system.

d. PSE claims that facilities in the following conversion areas are not subject to either Schedule 70 or Schedule 71, and should be converted only if Clyde Hill pays 100% of the actual costs of the conversion: along private drives and through private property running east of and perpendicular to 92nd Avenue N.E. and west of and perpendicular to 94th Avenue N.E. See Exhibit D, green highlighting. PSE's existing overhead facilities in these areas are located on PSE easements, or by invitation of the property owner, and there is no public thoroughfare in these areas. Clyde Hill claims that Schedule 70 is applicable to these facilities.

e. Clyde Hill consists of approximately 2,900 residents and 1,100 households. There are two commercially developed lots within the corporate limits of the City and certain public and private schools and churches and city buildings, all of which are located outside the conversion area and LID boundary and receive electrical service from service lines outside of the conversion area and LID boundary. The commercially developed lots contain a gas station/convenience store and a Tully's Coffee shop.

f. The Clyde Hill Project arose after a neighborhood of about 100 homes in a contiguous location petitioned the City Council to form a local improvement district (LID) for the purpose of burying the utility lines and installing street lighting in the neighborhood.

g. The City paid PSE $4,000.00 for developing a set of preliminary design plans.

h. On June 22, 2000, PSE provided to Clyde Hill PSE's estimate of the costs of the conversion for the Clyde Hill Project based on PSE's assertion of the application of Schedules 70 and 71, as described above. Stipulated Exhibit E is a true and correct copy of PSE's Project Estimate for Clyde Hill dated June 22, 2000. Clyde Hill advised PSE that it disagreed with PSE's position, and that it felt that Schedule 70 applied to the entire Project.

i. Approximately one year later, on June 12, 2001, after a public hearing, the City Council passed Ordinance No. 836 (Stipulated Exhibit F) creating the Local Improvement District No. 2001-01 for the conversion of overhead to underground facilities and ordering "the making of certain improvements consisting of the undergrounding of overhead lines as described in the property owners' petition therefore, to include such proper appurtenances, if any, as may be determined by the Council."

j. The total area within the boundary of the LID is zoned R1 Residential and is developed with single family residential structures. Stipulated Exhibit G is a true and correct copy of the City map depicting the zoning of the LID and boundary.

k. The buildings currently located within the Clyde Hill Project are all residential dwellings.

l. The electrical distribution lines proposed to be converted to underground in the LID are 15,000 volts or less.

3. Commission Analysis and Decision.

a. Which rate schedule applies to three-phase lines running through residential areas?

17 The cities argue that Schedule 70 is unambiguous and applies to the facts by its plain terms. They focus on the residential character of the land-use on property adjacent to the roadways as the sole criterion by which the Commission should define the clause "in areas which are zoned and used exclusively for residential purposes." Since there is no dispute that the land-use within the area where undergrounding is to occur is residential, the cities argue it follows that Schedule 70 applies.

18 In a similar vein, the cities argue that Schedule 71 does not apply because the residential character of the land-use adjacent to the undergrounding project means the project does not meet the Schedule 71 criterion: "areas of such municipalities which have electrical load requirements which are comparable with developed commercial areas."

19 PSE argues that the tariff contemplates looking beyond the land-use in the Conversion Area to determine whether there is "exclusive" residential use. PSE argues that the character of the infrastructure (both the roadway and the electric system) also is a key criterion. Thus, PSE argues that because the roads are arterial collectors, which connect commercial areas that require three-phase power, and because the facilities are a three-phase distribution backbone system that runs along those roadways, the areas in question are not "used exclusively for residential purposes."

20 PSE also argues that the tariff language is ambiguous, and that it is appropriate to look beyond the words to the legislative history. The "legislative history" PSE focuses on is the evidence and analysis that were used to determine the current rates and charges, which were based on the cost of undergrounding single-phase facilities, and which expressly excluded the significantly higher cost of undergrounding three-phase facilities. PSE urges us to infer from this history that Schedule 70 does not and was never meant to apply to the undergrounding of three-phase distribution systems.

21 PSE argues that Schedule 71 applies because the engineering characteristics of the distribution system along these roadways are dictated by the existence of

commercial electric load requirements (*i.e.*, three-phase power) at one or both ends of the arterial collector roadways. Thus, PSE argues, the project falls within the scope of Schedule 71's "areas of such municipalities which have electrical load requirements which are comparable with developed commercial areas." PSE contends that it does not matter whether the commercial areas served by the three-phase system are adjacent to the project area, as in the SeaTac case, or in some other part of the community, as in the Clyde Hill case.

22 We find that PSE's tariff Schedule 70 suffers from ambiguity. Viewed from different perspectives, as the parties have here, the schedule-applicability language at issue could reasonably be interpreted to mean quite different things, leading to entirely different results when applied to the facts at hand. The language in Section 2 of Schedule 70 that defines the availability of the rate schedule in terms of "areas which are zoned and used exclusively for residential purposes," if viewed strictly from a land-use perspective in the context of the stipulated facts, supports the interpretation argued by the cities. When we consider, however, that the rate schedule does not concern the governance of land-use, but rather the governance of services provided by an electric utility, the interpretation argued by PSE is at least equally plausible.

23 Guided by the principles stated in *Whatcom County, supra,* and reiterated in numerous Washington Supreme Court cases, we conclude that PSE's interpretation is the more reasonable of the two. Specifically, we find that the criterion "used exclusively for residential purposes" in Section 2 of Schedule 70 refers to electrical characteristics as well as land-use characteristics. In this case, the three-phase feeder lines that run along 170th Street in SeaTac, and along 92nd Avenue in Clyde Hill, are stipulated to be present in those locations to support PSE's distribution of electricity necessary to meet commercial load requirements. The areas in question, thus, are not used exclusively by PSE for residential purposes but, rather, are used by PSE for commercial purposes. It follows that Schedule 70 does not apply to the undergrounding projects along 170th Street in SeaTac, and along 92nd Avenue in Clyde Hill.

24 Alternatively, the undergrounding projects along 170th Street in SeaTac, and along 92nd Avenue in Clyde Hill are in areas of the respective municipalities that have electrical load requirements that are "comparable with developed commercial areas." Our focus, again, is on PSE's use of the right-of-way, or area along the right-of-way, for purposes of electric power distribution. The presence

of commercial load requirements in various geographic locations in and around the specific project locations requires that PSE install three-phase feeders along specific routes. The routes at issue were selected as suitable for that purpose and PSE uses those routes to provide power to meet commercial load requirements. Thus, Schedule 71 applies by its terms to undergrounding projects in the locations at issue whether one interprets the route as "commercial" or as an area that has "electrical load requirements which are comparable with developed commercial areas."

25 Compelling support for our interpretation is found in the legislative history provided by Mr. Lynn Logen in his affidavit and in Addendum 9 to his affidavit. In support of the tariff when its rate was last revised in 1984, PSE submitted a cost study. PSE initially compiled the costs of undergrounding projects in six geographical areas. Two of these areas, however, were excluded from the cost-study because they contained three-phase facilities. The costs to underground the remaining four areas, which contained only single-phase facilities, formed the basis for the rates in Schedule 70 of $20.33 per centerline foot. The clear (and only) inference to be drawn is that Schedule 70 was not intended to cover three-phase facilities regardless of their location. Indeed, if Schedule 70 were read to include three-phase facilities, it could not be said to reflect fair, just, reasonable, and compensatory rates, because the cost-study does not support application of the $20.33 rate to three-phase facilities.

26 In light of the relative costs associated with the two types of conversion work (*i.e.*, single-phase and three-phase), it is logical and reasonable to apply Schedule 70 to single-phase conversion work and Schedule 71 to three-phase conversion work. Mr. Logen testified that:

> PSE has estimated that the total cost for the SeaTac Conversion will be $454,870.00. If the existing overhead system were a single-phase rather than a three-phase system, PSE estimates that the cost of the conversion would be $222,632.39. Similarly, PSE has estimated that the total cost for converting the existing overhead facilities along 92nd Ave. N.E. in Clyde Hill will be $382,521. If the existing overhead system along 92nd Avenue N.E. were a single phase system, PSE estimates that the cost of that conversion would be $194,107.37.

Id. at ¶ 11. Thus, in the case of the SeaTac project, the cost for converting the three-phase system to underground is more than twice the cost that would be incurred were this a single-phase system. The difference for the Clyde Hill project is slightly less, but of a similar magnitude.

27 Our interpretation is rooted in the subject matter of the tariff (*i.e.*, the appropriate rate for an electric company's service) and its legislative history. This interpretation is also consistent with the way the tariff has been administered since its inception. Mr. Logen testified that, as the person responsible for the administration of Schedules 70 and 71 for the past eleven years, he has consistently interpreted Schedule 70 to apply only to conversions of single-phase distribution systems to underground, and he has consistently interpreted Schedule 71 to apply to conversions of three-phase systems to underground, regardless of whether the three-phase system has been located in an area that is residential in terms of its zoning and land-use. *Logen Affidavit at ¶13.* Mr. Logen testified that he is "not aware of any cases in which three-phase systems have been converted to underground under Schedule 70." *Id.* Thus, our interpretation of the tariff language in a way that is consistent with the history concerning the administration of these rate schedules, which has been continuously subject to our oversight, incidentally precludes assertions of discrimination and undue preference.

b. Does Schedule 70 apply by its terms or by inference to the private drives in Clyde Hill?

28 Turning to the additional dispute that is limited to the Clyde Hill matter, the City contends that PSE is required to treat the entire "conversion area," including public roads and private drives, under a single rate schedule, Schedule 70. Clyde Hill's initial argument is sufficiently brief to quote in full (underlining in original):

> Schedule 70 applies to the work to be performed in private easements and along 92nd Avenue NE that is part of the conversion area because it is part of the "conversion area." The "conversion area" meets all of the criteria of Section 2. Even that portion of the conversion area described in Stipulated Fact No. 12, where the existing overhead lines are within easements along private drives, are within the clear language and criteria of Section 2 of Schedule 70. The conversion area is clearly greater than one city block in

length. There is no language in Section 2 that provides for segmenting, or breaking down, a contiguous conversion area into smaller segments for purposes of applications of the tariff. Therefore, there is no basis in Section 2 to reasonably argue that the private drives are to be evaluated separately from other segments of the conversion area.

In sum, all of the conversion area comes within the clear scope of coverage of Schedule 70. There is no ambiguity in the language of Schedule 70. There is no legal basis for the Commission to go beyond the clear language of Schedule 70 to ascertain the WUTC's intent when it approved the tariff.

29 PSE responds that it is entirely appropriate to treat different portions of the project under different schedules, depending on the character of the roadway and the electric system. PSE argues that it historically has interpreted Schedule 70 to not apply to private drives because neither a private landowner nor a municipality can require PSE to underground facilities where PSE has an easement or prescriptive right. PSE argues that Schedule 70 sets the terms and conditions only for undergrounding of facilities that could potentially be subject to mandatory undergrounding; that is, facilities located in public rights-of-way. PSE argues that it has the sole discretion when its facilities are on private property to decide whether, and on what terms, to underground, if requested. PSE argues that no tariff is required to permit it to charge private property owners, or municipalities requesting undergrounding on private property, 100 percent of the costs.

30 PSE also argues that to interpret Schedule 70 to apply to PSE's facilities located on private property would be contrary to the tariff language in Section 2 that refers to "public thoroughfares." PSE argues that if Schedule 70 is deemed to apply to private drives, it will not be able to charge any rate because the rate language in Section 3.b. of the tariff refers to "$20.33 per centerline foot of all public thoroughfares."

31 Clyde Hill's logic suffers from a bootstrapping circularity (private drives must be converted at the Schedule 70 rate if the private drives are in a conversion area subject to Schedule 70) and does not reach the question at issue: whether private drives fall within the scope of Schedule 70. Clyde Hill's argument can only hold if we find that a "conversion area" comprises all work within a given geographic

area over a given period of time, and that once a "conversion area" is defined, all work within it must be charged at the same (presumably lowest) rate, regardless of whether the nature of the land and electrical use is commercial or residential, or on public thoroughfares or on private drives.

32 As our discussion in the previous section makes clear, it is not only rational but necessary that undergrounding work be segmented into different functional and rate categories—necessary in order to accord both Schedule 70 and 71 their full and complementary scopes, and necessary in order to align the rates with the underlying cost-studies that were used to support the schedules when they were first established. Whether one calls this segmentation separate conversion areas with separate rates, or one conversion area with separate rates, is a difference in semantics only. It is the character of the land and electrical function that determines whether the rate charged is covered by Schedule 70, Schedule 71—or, as Puget argues, no schedule at all.

33 The clear language of Schedule 70 limits its scope to areas that are a) at least one city block in length, or b) absent city blocks, at least six building lots abutting either side of a "public thoroughfare." The parties have stipulated that "there is no public thoroughfare in these areas," so they have stipulated to facts that by their explicit terms cannot qualify under (b). These same stipulated facts, we find, preclude application of (a), because city blocks are along public streets and rights-of-way, which must also be "public thoroughfares." We do not believe "city block" can be read to mean an abstract length along something other than a public street or right-of-way, because the language in (a) directs that in the "absence of city blocks" (which to us implies the physical presence, in general, of city streets or rights-of-way that form "blocks," not an abstract length), the language in (b) controls. That is, there are not three alternatives: a real city block, a private drive at least the length of a city block, and a public thoroughfare with at least six building lots on either side. There are only two alternatives, and private drives must fit within the definition of "public thoroughfare" to qualify. Also, only by reading the language as we have, does the rate--$20.33 per centerline foot *along the public thoroughfare*—make sense, and cover all situations under Schedule 70.

34 There is no definition in Schedule 70 of "public thoroughfare." In other contexts, (*e.g.*, Schedule 85, which governs line extensions), the term encompasses private land that has certain aspects functionally similar to public roads. In a future case, or in a new tariff filing, we may have the opportunity to review the appropriate

definition of "public thoroughfare," for purposes of Schedule 70. In either event, we could contemplate one or more factual situations, which might inform such a review. Here, the stipulated facts preclude any discussion of what constitutes a "public thoroughfare" because the parties stipulate that there *is* no public thoroughfare.

35 Not being a "city block" or a "public thoroughfare," the private drives in question do not fall under Schedule 70, so we deny Clyde Hill's petition for declaratory judgment that Schedule 70 applies, and we grant Puget's motion for a determination that Schedule 70 does not apply.

36 The remaining question is whether, since Schedule 70 does not apply, we must grant Puget's cross-motion asking us for a summary determination that the customers on the private drives in Clyde Hill (or the City, on their behalf) must pay 100% of the costs. There was very little briefing on this question (none by Clyde Hill), as the parties were more focused on whether Schedule 70 applies. We find that Puget should be able to recover its costs under the facts of this case for discretionary undergrounding activities that fall outside the scope and prescriptions of any existing tariff. We caution, however, that our ruling is limited to the bare-bones facts of this case. The great variety of easements and other arrangements respecting private lands may admit of other treatment, in other situations, depending on the facts and applicable tariffs.

FINDINGS OF FACT

37 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include stipulated facts and other findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

38 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies.

39 (2) The pleadings filed in this proceeding, together with the evidentiary support provided by the parties' fact stipulations, affidavits, and other documents, show that there is no genuine issue as to any material fact.

CONCLUSIONS OF LAW

40 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

41 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and all parties to, these proceedings. *Title 80 RCW.*

42 (2) PSE is a "public service company" and an "electrical company" as those terms are defined in RCW 80.04.010, and as those terms otherwise may be used in Title 80 RCW. PSE is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.

43 (3) PSE is entitled to judgment in its favor, as a matter of law, that Schedule 71 applies to the underground relocation of existing overhead electric distribution facilities that are located in the SeaTac and Clyde Hill Conversion Areas and are part of PSE's three-phase power distribution system.

44 (4) PSE is entitled to judgment in its favor, as a matter of law, that Schedule 70 does not apply to the underground relocation of existing overhead electric distribution facilities that are part of PSE's single-phase power distribution system located in the Clyde Hill Conversion Area on private property alongside private roadways.

45 (5) PSE is entitled to recover fully the costs it incurs in connection with the underground relocation of existing overhead electric distribution facilities that are part of PSE's single-phase power distribution system located in

the Clyde Hill Conversion Area on private property alongside private roadways.

ORDER

46 THE COMMISSION ORDERS That PSE's tariff Schedule 71 applies to the conversion of PSE's overhead facilities along South 170th Street between 37th Avenue South and Military Road South in SeaTac (the "SeaTac Conversion Area") to underground.

47 THE COMMISSION ORDERS FURTHER That PSE's tariff Schedule 71 applies to the conversion of PSE's overhead facilities along 92nd Avenue NE between NE 13th Street and NE 20th Street in Clyde Hill to underground.

48 THE COMMISSION ORDERS FURTHER That PSE's tariff Schedule 70 does not apply to the conversion of PSE's overhead facilities on private property along private drives that are within the Clyde Hill Conversion Area, and PSE is entitled to recover fully the costs it incurs in completing such conversion.

DATED at Olympia, Washington, and effective this ____day of January 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).