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APR 13 2006

SUPERIOR COURT  
BETTY J. GOULD  
THURSTON COUNTY CLERK

PERKINS COIE LLP

**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.

COMPLAINT FOR DECLARATORY JUDGMENT  
AND RETURN OF PAYMENTS - 1

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SEATTLE, WASHINGTON 98101-3299  
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1 **II. Parties**

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

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

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

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

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

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

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

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

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

24 9. The only exception to PSE's requirement to relocate its facilities at no charge to  
25 the City to accommodate a City (rather than private) development is when the City requires a  
26

1 subsequent relocation of the same facilities within 5 years of the first relocation. (Exhibit A, §  
2 4.2.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24           24.     PSE entered into a Schedule 74 Underground Conversion Project Design  
25 Agreement covering the Tumwater Boulevard Widening Project in May 2004. (Exhibit F.)  
26

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

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

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

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

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

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

14          30.     Subsequent to the Underground Conversion agreement signed by PSE in May  
15 2004, PSE purported to enter into a different cost agreement with the City regarding both  
16 underground conversion and relocation on Tumwater Boulevard, titled "Facility Relocation  
17 Agreement – Tumwater Boulevard Improvements," dated December 16, 2004. (Exhibit G.)

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

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

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

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

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

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

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

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

11 38. Chapter 2.14 of the Tumwater Municipal Code requires that all contracts over  
12 \$10,000 be authorized by motion of the City Council and approved by the Mayor or Mayor pro-  
13 tem. (TMC Chapter 2.14 is attached as Exhibit H.)

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

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

18 41. The Public Works Director therefore was without authority to override PSE's  
19 1985 franchise agreement (Exhibit A) and the May 2004 Schedule 74 Underground Conversion  
20 Project Design Agreement (Exhibit F).

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

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

2 **XII. Dispute resolution procedures have been followed.**

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

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

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

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

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

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

22 **XIII. Reservation of Rights**

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

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

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

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

13 **IX. Request for relief**

14 54. The City requests that the Court declare that the 1985 franchise agreement with  
15 PSE (Exhibit A) is in full force and effect, and that the franchise agreement requires PSE to pay  
16 100% of all relocation costs for the Tumwater Boulevard Widening Project.

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

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





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TUMWATER CITY ATTORNEY

Christy A. Todd

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**EXHIBIT A**

AN ORDINANCE granting Puget Sound Power & Light Company, a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of transmission, distribution and sale of energy for power, heat, light and any other purposes for which energy can be used; and to charge and collect tolls, rates and compensation for such energy and such uses.

THE CITY COUNCIL OF THE CITY OF TUMWATER, WASHINGTON, DO  
ORDAIN AS FOLLOWS:

Section 1. Definitions.

1.1 Where used in this franchise (the "Franchise"), the following terms shall mean:

1.1.1 "Puget" means Puget Sound Power & Light Company, a Washington corporation, and its respective successors and assigns.

1.1.2 "City" means the City of Tumwater, a municipal corporation of the State of Washington, and its respective successors and assigns.

1.1.3 "Franchise Area" means: 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 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.

1.1.4 "Facilities" means poles (with or without crossarms), wires, lines, conduits, cables, communication and signal lines, braces, guys, anchors, vaults and all necessary or convenient facilities and appurtenances thereto, whether the same be located over or under ground.

1.1.5 "Ordinance" means Ordinance No. 1034, which sets forth the terms and conditions of this Franchise.

Section 2. Facilities within Franchise Area.

2.1 The City does hereby grant to Puget the right, privilege, authority and franchise to:

2.1.1 Set, erect, construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of transmission, distribution and sale of energy for power, heat, light and any other purpose for which energy can be used; and

2.1.2 To charge and collect tolls, rates and compensation for such energy and such uses.

### Section 3. Noninterference of Facilities.

3.1 Puget's Facilities shall be maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with the laws of the State of Washington. Whenever it shall be necessary for Puget, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, Puget shall, upon completion of such excavation, restore the surface of the Franchise Area, as nearly as practicable, to a condition better or equal than prior to such excavation.

3.2 In the event Puget desires to construct new Facilities in, upon, over, under, along and through any grounds and public places (other than roads, streets, avenues, alleys and highways) in the Franchise Area, Puget shall, prior to such construction, present plans and specifications for such construction to the City for approval and such approval shall not be unreasonably withheld.

### Section 4. Relocation of Facilities.

4.1 Whenever any person or entity, other than the City, requires the relocation of Puget's Facilities to accommodate the work of such person or entity within the Franchise Area; or, whenever the City requires the relocation of Puget's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then the City shall require such person or entity to:

4.1.1 make payment to Puget, at a time and upon terms acceptable to Puget, for any and all costs and expenses incurred by Puget in the relocation of Puget's Facilities; and

4.1.2 indemnify and save Puget harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of Puget's Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of Puget's Facilities or the negligence of the agents, servants or employees of the person or entity requesting the relocation of Puget's Facilities.

4.2 Whenever the City causes the grading or widening of the Franchise Area (for purposes other than those described in Section 4.1) and such grading or widening requires the relocation of Puget's Facilities, the City shall:

4.2.1 provide Puget, within a reasonable time prior to the commencement of such grading or widening, written notice requesting such relocation; and

4.2.2 provide Puget with reasonable plans and specifications for such relocations.

After receipt of such notice and such plans and specifications, Puget shall relocate its Facilities at no charge to the City in a timely manner. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 4.2, the City shall bear the entire cost of subsequent relocation.

4.3 Any condition or requirement imposed by the City upon any person or entity, other than Puget (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which requires the relocation of Puget's Facilities shall be a required relocation for purposes of Section 4.1.

### Section 5. Indemnification.

5.1 Puget shall indemnify and save the City harmless from any and all claims and demands made against it on account of injury or damage to the person

or property of another, to the extent such injury or damage is caused by the negligence of Puget or its agents, servants or employees in exercising the rights granted Puget in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the City, the City shall promptly notify Puget thereof, and Puget shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action be begun against the City based upon any such claim or demand, the City shall likewise promptly notify Puget thereof, and Puget shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

#### Section 6. Moving Buildings within the Franchise Area.

6.1 If any person or entity obtains permission from the City to use the Franchise Area for the moving or removal of any building or object, Puget shall, upon receipt of fourteen (14) days' prior written notice from the City, raise, at the expense of the person or entity desiring to move or remove such building or object, any of its wires which may obstruct the moving or removal of such building or object, provided that:

6.1.1 the moving or removal of such building or object which necessitates the raising of wires shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with Puget's business;

6.1.2 where more than one route is available for the moving or removal of such building or object, such building or object shall be moved or removed along the route which causes the least interference with Puget's business; and

6.1.3 the City shall require the person or entity obtaining permission to move or remove such building or object to indemnify and save Puget harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or object, to the extent such injury or damage is caused by the negligence of the person or entity moving or removing such building or object or the negligence of the agents, servants or employees of the person or entity moving or removing such building or object.

#### Section 7. Default.

7.1 If Puget shall fail to comply with the provisions of this Franchise, the City may serve upon Puget a written order to so comply within sixty (60) days from the date such order is received by Puget. If Puget is not in compliance with this Franchise after expiration of said sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise, provided, however, if any failure to comply with this Franchise by Puget cannot be corrected with due diligence within said sixty (60) day period (Puget's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Puget may so comply shall be extended for such time as may be reasonably necessary and so long as Puget commences promptly and diligently to effect such compliance.

#### Section 8. Nonexclusive Franchise.

8.1 This Franchise is not and shall not be deemed to be an exclusive franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area which do not interfere with Puget's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 9. Franchise Term.

9.1 This Franchise is and shall remain in full force and effect for a period of thirty (30) years from and after the effective date of the Ordinance, provided, however, Puget shall have no rights under this Franchise nor shall Puget be bound by the terms and conditions of this Franchise unless Puget shall, within sixty (60) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance.

Section 10. Assignment.

10.1 Puget shall have the right to assign its rights, benefits and privileges in and under this Franchise. Any assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise. Notwithstanding the foregoing, Puget shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits and privileges in and under this Franchise to the Trustee for its bondholders.

Section 11. Miscellaneous.

11.1 If any term, provisions, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

11.2 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 5.1 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by Puget of any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permits, approval, license, agreement or other document specifically:

- 11.2.1 references this Franchise; and
- 11.2.2 states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

Section 12. Effective Date.

12.1 This Ordinance shall take affect on June 19, 1985, having first been submitted to the City's attorney, having been published posted as required by law, having been passed at a regular meeting of the legislative body of the City by a majority of the whole of such legislative body, and having been approved by the Mayor of the City.


Introduced the 2nd day of April, 1985.

Passed by the majority of the whole membership of the legislative body of the City of Tumwater, the 7th day of May, 1985.

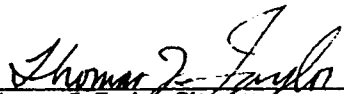
Signed and approved by the Mayor the 7th day of May, 1985.

  
Philip H. Schmidt, Mayor

ATTEST:

  
Mary J. Benson, City Clerk

APPROVED AS TO FORM:

  
Thomas J. Taylor, City Attorney

DATE: May 8, 1985

DATE PUBLISHED: June 14, 1985

DATE POSTED: June 14, 1985



STATE OF WASHINGTON )  
                          ) ss.  
COUNTY OF THURSTON )

I, Mary J. Benson, the duly appointed, qualified City Clerk of the City of Tumwater, a Third Class City, situate in the County of Thurston, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 1034 of the ordinances of the City of Tumwater, entitled.

ORDINANCE NO. 1034

AN ORDINANCE granting Puget Sound Power & Light Company, a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of transmission, distribution and sale of energy for power, heat, light and any other purposes for which energy can be used; and to charge and collect tolls, rates and compensation for such energy and such uses.

I further certify that said Ordinance No. 1034 was introduced on the 2nd day of April, 1985, was submitted to the City Attorney on the 2nd day of April, 1985, was published as provided by law at least once in a newspaper of general circulation in the City of Tumwater, was approved by a majority of the entire legislative body of the City of Tumwater at a regular meeting on the 7th day of May, 1985, and was approved by the Mayor of the City of Tumwater on the 7th day of May, 1985.

WITNESS my hand and official seal of the City of Tumwater this 17th day of June, 1985.

*Mary J. Benson*  
\_\_\_\_\_  
Mary J. Benson, City Clerk  
City of Tumwater, State of  
Washington

**EXHIBIT B**

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF TUMWATER, WASHINGTON

In the matter of the application:  
of Puget Sound Power & Light :  
Company, a Washington : Franchise Ordinance No. 1034  
corporation, for a franchise to :  
construct, operate and maintain :  
facilities in, upon, over, :  
under, along, across and :  
through the franchise area of :  
the City of Tumwater, Washington: ACCEPTANCE  
:

WHEREAS, the City Council of the City of Tumwater,  
Washington, has granted a franchise to Puget Sound Power & Light  
Company, a Washington corporation, its successors and assigns, by  
enacting Ordinance No. 1034, bearing the date of May 7, 1985;  
and

WHEREAS, a copy of said Ordinance granting said franchise  
was received by the Puget Sound Power & Light Company on  
June 17th, 1985, from said City of Tumwater, Thurston County,  
Washington.

NOW, THEREFORE, Puget Sound Power & Light Company, a  
Washington corporation, for itself, its successors and assigns,  
hereby accepts said Ordinance and all the terms and conditions  
thereof, and files this, its written acceptance, with the City of  
Tumwater, Thurston County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Power & Light Company  
has caused this written Acceptance to be executed in its name by  
its proper officer thereunto duly authorized on this 11<sup>th</sup> day  
of JULY, 1985.

ATTEST:

PUGET SOUND POWER & LIGHT COMPANY

William P. Cluckey

By R. V. Pollard  
R. V. Pollard, Director  
Transmission & Distribution  
Operations

Copy received for City of

Tumwater on JULY 25, 1985

By Mary J. Benson  
City Clerk

**EXHIBIT C**

**PUGET SOUND ENERGY**  
**Electric Tariff G**

**SCHEDULE 74**  
**CONVERSION TO UNDERGROUND SERVICE**  
**FOR GOVERNMENT ENTITIES**

(N)

**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)

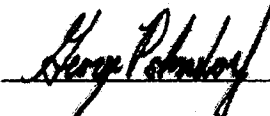
Issued: June 26, 2002

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

Title: Director, Rates & Regulation

**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

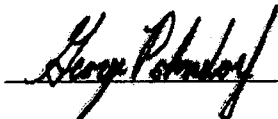
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**PUGET SOUND ENERGY  
Electric Tariff G**

**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)

**Issued:** June 26, 2002

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George Pohndorf

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**PUGET SOUND ENERGY  
Electric Tariff G**

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

(N)

- 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)

Issued: June 26, 2002

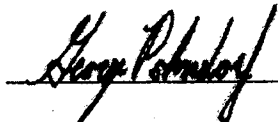
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**PUGET SOUND ENERGY  
Electric Tariff G**

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

(N)

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)

**Issued:** June 26, 2002

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By:



George Pohndorf

Title: Director, Rates & Regulation

**PUGET SOUND ENERGY**  
**Electric Tariff G**

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

(N)

**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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**PUGET SOUND ENERGY**  
**Electric Tariff G**

**SCHEDULE 74**  
**CONVERSION TO UNDERGROUND SERVICE**  
**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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**PUGET SOUND ENERGY**  
**Electric Tariff G**

**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)

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Issued By Puget Sound Energy

By:



George Pohndorf

Title: Director, Rates &amp; Regulation

**EXHIBIT D**

8701280120

6

THURSTON COUNTY  
OLYMPIA, WASH.

CITY OF TUMWATER  
SECOND & BATES STREETS  
TUMWATER WASHINGTON 98502

JAN 28 4 02 PM '87

REQUESTOR  
SAMS, REC. CLERK  
*[Signature]*  
DEPUTY

DEDICATION DEED

THE GRANTOR, PORT OF OLYMPIA for and in consideration of mutual benefit and in further consideration of the general public welfare and of the peculiar and special benefits to accrue to us therefrom, do by these presents grant, convey and dedicate to the CITY OF TUMWATER, a municipal corporation, for public street right-of-way purposes, the following lots, pieces or parcels of land, situate, lying and being in said City of Tumwater, County of Thurston, and State of Washington, and particularly bounded and described as:

Those portions of Sections 2, 3, 10 and 11 Township 17 North, Range 2 West, W.M., commonly known as Center Street, Airdustrial Way and Armstrong Lane, and described as follows:

Center Street:

A strip of land lying 50 feet each side of the following described line:

Beginning at the north quarter corner of said section 10; thence South  $1^{\circ} 56' 58''$  West along the centerline of said Section and Center Street 744.94 feet to an intersection with the centerline of Airdustrial Way; thence continuing along the centerline of Section 10 South  $1^{\circ} 56' 58''$  West 4527.09 feet to the north line of 83rd Avenue and the end of this strip description.

Airdustrial Way:

A strip of land lying 50 feet each side of the following described line:

Beginning at the centerline intersection of Center Street and Airdustrial Way; thence along the centerline of Airdustrial Way South  $88^{\circ} 03' 02''$  East 1290.45 feet to the centerline intersection of Airdustrial Way and Armstrong Lane; thence continuing South  $88^{\circ} 03' 02''$  East 135.46 feet; thence along a curve to the left having a radius of 818.51 feet, a distance of 562.77 feet; thence North  $52^{\circ} 33' 22''$  East 896.21 feet to the northeast corner of Section 10; thence continuing North  $52^{\circ} 33' 22''$  East 784.03 feet to the right-of-way of Capitol Boulevard as conveyed to the City of Tumwater by deed dated April 16, 1986 and the end of this strip description.

Together with a right-of-way fillet (return) formed by a curve of 50-foot radius at the southeast right-of-way intersection of Center Street and Airdustrial Way.

AND together with the construction right-of-way of Airdustrial lying between the west line of Center Street and Highway Engineers' Station AW 40 + 00, as shown on the right-of-way and limited access plan of the Airdustrial Interchange revised July 19, 1985 on file with the Washington State Department of Transportation.

Together with right-of-way fillets (returns) formed by curves of 50-foot radius at the northwest and southwest right-of-way intersections of Center Street and Airdustrial Way, in place of the right-of-way tapers shown on said Airdustrial Interchange Right-of-Way Plan.

Armstrong Lane:

A strip of land lying 40 feet each side of a line beginning at the centerline intersection of Airdustrial Way and Armstrong Lane; thence North  $1^{\circ} 56' 58''$  East 430.00 feet at which point this strip becomes 20 feet on the east side and 40 feet on the west side; thence continuing North  $1^{\circ} 56' 58''$  East 320.05 feet to the north line of Section 10 and the end of this strip description.

Together with right-of-way fillets (returns) formed by curves of 50' radius at the northeast and northwest right-of-way intersections of Airdustrial Way and Armstrong Lane.

8701280120

MICROFILMED

Real Estate Excise Tax Exempt  
Thurston County Treasurer

*[Signature]*

TOGETHER WITH the right to make and maintain all necessary slopes for cuts or fills upon the property adjacent to that specifically described, in order that the streets may be graded to future grade level in a reasonable and proper manner.

DATED this 21<sup>st</sup> day of January, 19 87.

O. Ray Dinsmore  
O. Ray Dinsmore, President

James D. Wright  
~~Notary Public~~, Secretary  
James D. Wright,

STATE OF WASHINGTON )  
County of Thurston ) ss.

On this 21<sup>st</sup> day of January, 19 87, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared O. Ray Dinsmore and ~~James D. Wright~~ to me known to be the President and Secretary, respectively, of Port of Olympia, the corporation that executed the within and foregoing instrument, and acknowledged that the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal here to affixed the day and year first above written.

Celia B. Roberts

Notary Public in and for the State of Washington,  
residing at Olympia

I hereby certify that the City of Tumwater accepted and acknowledged this dedication of right-of-way for public streets. This street dedication has been initiated by the City Council and declared essential for the purpose of general traffic circulation, and the partitioning of land is an incidental effect of this action.

CITY OF TUMWATER .

P.H. Schmidt  
P.H. Schmidt, Mayor

STATE OF WASHINGTON )  
County of Thurston ) ss.

On this day personally appeared before me P.H. Schmidt, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 21<sup>st</sup> day of

January, 19 87.

Maureen M. W. Thiff  
NOTARY PUBLIC in and for the State of Washington,  
residing at Olympia

MICROFILMED

**EXHIBIT E**



For and in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged.

PORT OF OLYMPIA

("Grantor" herein), hereby grants, conveys and warrants to PUGET SOUND POWER & LIGHT COMPANY, a Washington corporation ("Grantee" herein), for the purposes hereinafter set forth, a perpetual easement over, across and under the following described real property (the "Property" herein) in THURSTON County, Washington:

All of Section 10, Township 17 North, Range 2 West, W.M.  
 That portion of Section 11, Township 17 North, Range 2 West, W.M., lying west of Old Highway 99. That portion of Section 14, Township 17 North, Range 2 West, W.M., lying north of Case Road (88th Avenue) EXCEPT the south 2070 feet of the east 1320 feet thereof.  
 That portion of Section 15, Township 17 North, Range 2 West, W.M., lying north of Case Road (38th Avenue) and east of Armstrong Road.  
 That portion of Section 2, Township 17 North, Range 2 West, W.M., lying west of Old Highway 99 and south of Israel Road.  
 That portion of Section 3, Township 17 North, Range 2 West, W.M., lying south of Israel Road and east of the east line of Blocks 2 and 15 of the Plat of West Brighton Park.

Except as may be otherwise set forth herein Grantee's rights shall be exercised upon that portion of the Property (the "Right-of-Way" herein) described as follows:

A Right-of-Way 10 feet in width having 5 feet of such width on each side of a centerline described as follows:

The centerline of Grantee's facilities as now constructed within the above described property as indicated by Exhibits A, B, C, D, E and F attached hereto and with this reference made a part hereof; and as hereafter may be constructed, revised and/or extended within the above described property in accordance with Grantor and Grantee agreement.

MICROFILMED

DEC 10 1981

CENTRAL SERVICES

1. Purpose. Grantee shall have the right to construct, operate, maintain, repair, replace and enlarge one or more electric transmission and/or distribution lines over and/or under the Right-of-Way together with all necessary or convenient appurtenances thereto, which may include but are not limited to the following:

- a. Overhead facilities. Poles and/or towers with crossarms, braces, guys and anchors; electric transmission and distribution lines; communication and signal lines; transformers.
- b. Underground facilities. Underground conduits, cables, vaults, manholes, switches and transformers; semi-buried or ground mounted facilities such as pads, transformers and switches.

Following the initial construction of its facilities, Grantee may from time to time construct such additional lines and other facilities as it may require.

2. Access. Grantee shall have the right of access to the Right-of-Way over and across the Property to enable Grantee to exercise its rights hereunder, provided, that Grantee shall compensate Grantor for any damage to the Property caused by the exercise of said right of access.

3. Cutting of Trees. Grantee shall have the right to cut or trim any and all brush or trees standing or growing upon the Right-of-Way, and also the right to cut or trim any trees upon the Property which, in falling, could, in Grantee's reasonable judgment, be a hazard to Grantee's facilities.

4. Grantor's Use of Right-of-Way. Grantor reserves the right to use the Right-of-Way for any purpose not inconsistent with the rights herein granted, provided, that Grantor shall not construct or maintain any building or other structure on the Right-of-Way and Grantor shall do no blasting within 300 feet of Grantee's facilities without Grantee's prior written consent.

5. Indemnity. By accepting and recording this easement, Grantee agrees to indemnify and hold harmless Grantor from any and all claims for injuries and/or damages suffered by any person which may be caused by the Grantee's exercise of the rights herein granted; provided, that Grantee shall not be responsible to Grantor for any injuries and/or damages to any person caused by acts or omissions of Grantor.

6. Abandonment. The rights herein granted shall continue until such time as Grantee ceases to use the Right-of-Way for a period of five successive years, in which event this easement shall terminate and all rights hereunder shall revert to Grantor, provided, that no abandonment shall be deemed to have occurred by reason of Grantee's failure to initially install its facilities on the Right-of-Way within any period of time from the date hereof.

8112080070

7. Successor and Assigns. The rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors and assigns.

DATED this 3rd day of November, 19 81

GRANTOR

PORT OF OLYMPIA

*H. V. Brewington*  
*James D. Wright*

8112080070

STATE OF WASHINGTON )  
SS  
COUNTY OF )

On this day personally appeared before me \_\_\_\_\_  
to me known to be the individual \_\_\_\_\_ described in and who executed the within and foregoing instrument, and  
acknowledged that \_\_\_\_\_ signed the same as \_\_\_\_\_ free and voluntary act and deed for the uses and purposes therein  
mentioned.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_

STATE OF WASHINGTON )  
SS  
COUNTY OF )

On this day personally appeared before me \_\_\_\_\_  
to me known to be the individual \_\_\_\_\_ described in and who executed the within and foregoing instrument, and  
acknowledged that \_\_\_\_\_ signed the same as \_\_\_\_\_ free and voluntary act and deed for the uses and purposes therein  
mentioned.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_

STATE OF WASHINGTON )  
SS  
COUNTY OF THURSTON )

CORPORATE ACKNOWLEDGMENT

On this 3rd day of November, 19 81, before me, the undersigned, personally appeared  
H. V. Brewington and James D. Wright  
to me known to be the President and Secretary, respectively, of  
PORT OF OLYMPIA COMMISSION the corporation that executed the foregoing instrument,  
and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and  
purposes therein mentioned, and on oath stated that they authorized to execute the said  
instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

*Kate K. Fredericks*  
Notary Public in and for the State of Washington,  
residing at Olympia

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OLYMPIA COMM. REC. FILED

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MAIL TO  
PSP, Co  
P.O. Box 107  
OLYMPIA WA 98501

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Vol 1099 Page 478

**EXHIBIT F**

C 2004. 044

## SCHEDULE 74 UNDERGROUND CONVERSION

### Project Design Agreement

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Project Name: Tumwater – Tumwater Boulevard Widening Project

Project Number: 10475804

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THIS Agreement, dated as of this 17th 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 Isreal Road S.W.  
Tumwater, WA  
Attn: Mr. Jay Eaton, PE  
Fax: 360/754-4142

If to the Company:

Puget Sound Energy, Inc.  
3130 South 38<sup>th</sup> 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.

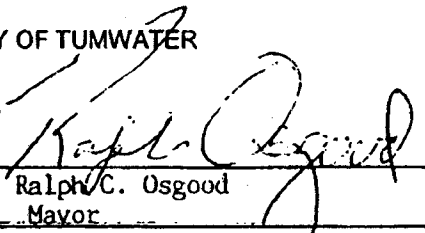
- 20. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.
- 21. This Agreement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

Company:

CITY OF TUMWATER

PUGET SOUND ENERGY, INC.

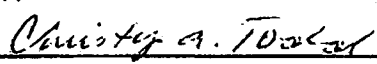
BY   
Ralph C. Osgood  
ITS Mayor

BY   
ITS Municipal Liaison Manager

Date Signed April 27, 2004

Date Signed 5/17/04

Approved as to form:



ATTEST:



Gayla E. Gjertsen, Clerk/Treasurer  
Design Agreement, Attachment A to Schedule 74, Page 7  
Tumwater Boulevard Widening Project

**EXHIBIT G**

**FACILITY RELOCATION AGREEMENT  
Tumwater Boulevard Improvements**

This Agreement, dated as of Dec 16, 2004, is made and entered into by and between Puget Sound Energy, Inc., a Washington corporation ("PSE"), and City of Tumwater, ("Government Entity"). PSE and the Government Entity are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

A. PSE owns and operates certain utility systems and facilities necessary and convenient to the transmission and distribution of electricity ("Facilities") that are located on or in relation to certain operating rights ("Existing Operating Rights"). The Facilities and Existing Operating Rights are more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

B. The Government Entity plans to construct improvements to Tumwater Boulevard east from Capitol Boulevard to the Interstate 5 on-ramps from ("Improvements").

C. In connection with the Improvements Project, the Government Entity has requested that PSE perform certain engineering design work relating to modification or relocation of its Facilities ("Design Work"), and certain construction work relating to modification or relocation of its Facilities ("Relocation Work"), all in accordance with and subject to the terms and conditions of this Agreement, and any applicable tariff on file with the Washington Utilities and Transportation Commission ("WUTC").

**AGREEMENT**

The Parties, therefore, agree as follows:

**Section 1. Design Work**

**1.1 Improvements Plan.** Upon execution of this Agreement by the Parties, the Government Entity shall provide to PSE a written plan for the Improvements ("Improvements Plan"), which shall include, among other things, (a) plans and specifications sufficient in detail, as reasonably determined by PSE, for use by PSE in preparation of the Design Work, including reasonably detailed drawings showing the planned Improvements, (b) a list of the key milestone dates for the Improvements, and (c) information concerning possible conflicts between PSE's Facilities and other utilities or facilities.

**1.2 Design Work Plan.** Within 10 days of PSE's receipt of the Improvements Plan and final execution of this agreement, PSE shall prepare and submit to the Government Entity a proposed work plan for performance of the Design Work requested by the Government Entity ("Design Work Plan"), which shall include, among other things, (a) a description of the scope of the Design Work to be performed by PSE; (b) a good faith

estimate of the cost to perform the Design Work ("Design Cost Estimate"); (c) a schedule for completion of the Design Work that, to the extent reasonably practicable, reflects the applicable key milestone dates provided by the Government Entity; and (d) a description of any additional information needed from the Government Entity to support performance of the Design Work.

**1.3 Notice to Proceed.** Within 5 days after the Parties mutually agree on the final Design Work Plan, the Government Entity shall either (a) provide to PSE a written notice to proceed with the Design Work or (b) terminate this Agreement by written notice to PSE. In the event of such termination, the Government Entity shall promptly pay PSE the amounts payable to PSE in connection with such termination under Section 7.5.

**1.4 Performance of Design Work.** Subject to the terms and conditions of this Agreement and any applicable tariffs on file with the WUTC, PSE shall use reasonable efforts to perform the Design Work as described in the Design Work Plan. As part of the Design Work, PSE shall prepare and submit to the Government Entity a proposed work plan for the Relocation Work to be performed by PSE ("Relocation Plan"), which shall include, among other things, (a) a reasonably detailed description of the Relocation Work to be performed by PSE, (b) a good faith estimate of the costs to perform the Relocation Work ("Relocation Cost Estimate"), and (c) a proposed schedule for performance of the Relocation Work that, to the extent reasonably practicable, reflects the applicable key milestone dates provided by the Government Entity in the Improvements Plan ("Relocation Schedule"). The Design Work Plan shall be based upon the Improvements Plan provided by the Government Entity.

**1.5 Relocation Plan.** Within 5 days after the Government Entity's receipt of the proposed Relocation Plan, the Government Entity and PSE shall discuss the Relocation Plan and make any changes necessary to create a final Relocation Plan that is mutually acceptable to both Parties. The final Relocation Plan mutually agreed upon by the Parties thereafter will be attached as Exhibit B to this Agreement.

## **Section 2. Relocation Work**

**2.1 Notice to Proceed.** At least 10 days prior to the Relocation Work commencement date specified in the Relocation Schedule, the Government Entity shall either (a) provide to PSE a written notice to proceed with the Relocation Work or (b) terminate this Agreement by written notice to PSE. In the event of such termination, the Government Entity shall promptly pay PSE the amounts payable to PSE in connection with such termination under Section 7.5.

**2.2 Performance of Relocation Work.** Subject to the terms and conditions of this Agreement and any applicable tariffs on file with the WUTC, PSE shall use reasonable efforts to perform the Relocation Work as described in the Relocation Plan. Unless

otherwise specified in the Relocation Plan, PSE shall provide all necessary materials, equipment and labor for the Relocation Work.

**2.3 Adjustments to Relocation Plan.** The Government Entity and PSE acknowledge that additional requirements not contemplated by the Relocation Plan may arise during the course of performing the Relocation Work. In the event such additional requirements arise, the Parties shall use good faith reasonable efforts to appropriately respond to such requirements in a prompt and efficient manner, including appropriate adjustment(s) to the applicable cost estimate(s) and work schedule(s). All notices of such requirements shall be in writing.

**2.4 Relocation Schedule.** PSE shall perform the Relocation Work in accordance with the Relocation Schedule with reasonable diligence in the ordinary course of its business and in light of any operational issues as to the remainder of its utility systems that may be influenced by the Relocation Work. PSE shall have no liability to the Government Entity or any third party, nor shall the Government Entity be relieved or released from its obligations hereunder, in the event of any delay in the performance of the Relocation Work due to any (a) repair, maintenance, improvement, renewal or replacement work on PSE's utility systems, which work is necessary or prudent as determined by PSE in its sole discretion; or (b) actions taken by PSE which are necessary or consistent with prudent utility practices to protect the performance, integrity, reliability or stability of PSE's utility systems or any systems to which such systems are connected.

### **Section 3. Operating rights**

The Government Entity shall be solely responsible for the acquisition of, and any and all costs related thereto, any and all operating rights for the Facilities that are necessary or appropriate, in addition to or as replacement for the Existing Operating Rights, for completion of the Relocation Work ("New Operating Rights"). Such New Operating Rights shall be in PSE's name, shall be of equivalent quality and kind as the Existing Operating Rights and shall be provided in a form acceptable to PSE, all as determined by PSE in its sole discretion. The New Operating Rights shall be provided with sufficient title information demonstrating to PSE's satisfaction that PSE shall obtain clear, good and sufficient title to such rights, if applicable. PSE shall not be obligated to commence the Relocation Work, or otherwise in any way change, limit, curtail, impair or otherwise affect the normal and reliable operation of the Facilities as located upon or relative to the Existing Operating Rights, unless and until PSE is in possession of the New Operating Rights.

The Parties agree that PSE will act in good faith as the Government Entity's agent solely for the purpose of acquiring the New Operating Rights. The Government Entity shall reimburse PSE for any and all costs reasonably incurred by PSE to acquire the New Operating Rights. PSE will make reasonable effort to acquire the New Operating Rights in a timely manner and at reasonable costs; however, in no event will PSE be responsible for any delay of the Relocation Work or the Improvements which may result, directly or otherwise, from PSE's

performance of the Operating Rights Work. In the event PSE is unable to acquire any of the New Operating Rights through good faith negotiation at reasonable costs, PSE will promptly inform the Government Entity of same in writing, and thereafter the responsibility for acquisition of such New Operating Rights shall revert to the Government Entity.

#### **Section 4. Permits**

The Government Entity shall be solely responsible for the acquisition, and any costs related to acquisition of any and all permits, licenses, certificates, inspections, reviews, impact statements, determinations, authorizations, exemptions or any other form of review or approval given, made, done, issued or provided by any one or more governmental authorities with jurisdiction necessary or convenient for the Relocation Work (collectively, "Permits"). The Permits shall be on such terms and conditions as PSE shall, in its sole discretion, determine to be appropriate to its needs. PSE shall not be obligated to commence the Relocation Work, or otherwise in any way change, limit, curtail, impair or otherwise affect the normal and reliable operation of the Facilities, unless and until PSE is in possession of all Permits necessary for the Relocation Work and all rights of appeal with respect to the Permits shall have been exhausted. The Government Entity shall be responsible for the performance of and all costs associated with any mitigation required by the Permits.

#### **Section 5. Revisions to Relocation Plan**

**5.1 Performance by Government Entity.** In the event the Government Entity does not perform its obligations under Sections 3 and/or 4 above to PSE's reasonable satisfaction in accordance with the Relocation Plan (as evidenced by PSE's written notice to the Government Entity regarding such satisfaction), absent written waiver by PSE of such obligation, PSE and the Government Entity shall use reasonable efforts to adjust the Relocation Schedule to allow time for the Government Entity to perform such obligations; provided, that if the Parties cannot reasonably agree upon such schedule adjustment, PSE may, at its option, thereafter terminate this Agreement by giving written notice to the Government Entity, and the Government Entity shall promptly pay PSE the amounts payable to PSE in connection with such termination under Section 7.5. PSE's determination as to the satisfaction or waiver of any such obligation under this Agreement shall not be deemed to be a determination of satisfaction or waiver of any other condition arising under this Agreement.

**5.2 Revisions to Improvements Plan or Delays.** PSE shall notify the Government Entity in writing of any reasonably anticipated changes to the Relocation Plan (including the Relocation Schedule and/or Relocation Cost Estimate) that result from (a) the revision or modification of any Improvements in a manner that requires PSE to revise its plans and specifications for the Relocation Work; (b) delay in PSE's performance of the Relocation Work caused by the Government Entity (or its agents, servants, employees, contractors, subcontractors, or representatives); or (c) conditions or circumstances otherwise beyond the control of PSE.

## **Section 6. Ownership**

All materials, information, property and other items provided for, used or incorporated into the Relocation Work (including but not limited to the Facilities) shall be and remain the property of PSE.

## **Section 7. Cost Reimbursement**

**7.1 Estimates.** The Parties agree that the Design Cost Estimate and Relocation Cost Estimate set forth in the Design Work Plan and the Relocation Plan are estimates only and PSE shall be entitled to reimbursement of all actual costs incurred in or allocable to the performance of the Design Work and the Relocation Work.

**7.2 Costs in Excess of Estimates.** PSE shall use reasonable efforts to monitor its actual costs incurred during the performance of the Design Work and the Relocation Work, and in the event PSE determines that such costs are likely to exceed the then-current Design Cost Estimate or Relocation Cost Estimate by more than twenty percent (20%), PSE shall so notify the Government Entity in writing. In such event PSE may, at its discretion, suspend performance of the Design Work or the Relocation Work until such time that PSE receives from the Government Entity its written acceptance of PSE's revised cost estimate(s). PSE shall not be obligated to take any further action with respect to performance of any work unless and until PSE receives the Government Entity's written acceptance of PSE's revised cost estimate(s) and authorization to proceed with the Design Work or the Relocation Work based on the revised cost estimate(s). In the event PSE does not receive written authorization from the Government Entity to proceed with the performance of the Design Work or the Relocation Work within ten (10) working days from the date of PSE's written notice, PSE may, at its discretion, terminate this Agreement. In the event of such termination, the Government Entity shall promptly pay PSE the amounts payable to PSE in connection with such termination under Section 7.5.

**7.3 Design Work Costs & Relocation Costs.** The Government Entity shall be responsible for, and shall reimburse PSE for, all costs and expenses incurred by PSE in connection with the performance of the Design Work ("Design Costs") and the Relocation Work ("Relocation Costs"). For purposes of this Agreement, the Design Costs and Relocation Costs shall include, without limitation, any and all direct or indirect costs incurred by PSE in connection with the performance of the Design Work (including preparation of the Design Work Plan) and the Relocation Work, including, but not limited to, labor, personnel, supplies, materials, overheads, contractors, consultants, attorneys and other professionals, administration and general expenses and taxes.

**7.4 Statement of Costs - Invoice.** Within thirty (30) days of the completion of the Design Work and sixty (60) days of the completion of the Relocation Work, PSE shall provide the Government Entity with a statement and invoice of the actual Design Costs or Relocation Costs incurred by PSE; provided, however, that the statement and invoice of Design Costs may, at the PSE's option, be deferred to and provided concurrent with the



statement and invoice of Relocation Costs. PSE shall provide, within a reasonable period after receipt of any written request from the Government Entity, such documentation and information as the Government Entity may reasonably request to verify any such invoice.

**7.5 Costs Upon Termination of Agreement.** In the event either Party terminates this Agreement, the Government Entity shall promptly pay PSE the following:

(a) all costs and expenses incurred by PSE in connection with the Design Work and the Relocation Work prior to termination of this Agreement (including, without limitation, all Design Costs and Relocation Costs incurred through the date of termination and such additional costs PSE may incur in connection with its suspension or curtailment of the Design Work and the Relocation Work and the orderly termination of the Design Work and the Relocation Work); and

(b) all costs and expenses incurred by PSE in returning and restoring the Facilities to normal and reliable commercial operations.

**7.6 Payment.** The Government Entity shall, within thirty (30) days after the receipt of an invoice for costs payable under this Agreement, remit to PSE a payment for the full amount of the invoice.

## **Section 8. Indemnification**

**8.1 Indemnification.** The Government Entity releases and shall defend, indemnify and hold harmless PSE from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Government Entity in its performance under this Agreement. PSE releases and shall defend, indemnify and hold harmless the Government Entity from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of PSE in its performance under this Agreement. During the performance of such activities employees or contractors of each Party shall at all times remain employees or contractors, respectively, that Party and shall not be, or be construed to be, employees or contractors, respectively, of the other Party.

**8.2 Title 51 Waiver.** Solely for purposes of enforcing the indemnification obligations of a Party under this Section 8, each Party expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, and agrees that the obligation to indemnify, defend and hold harmless provided for in this Section 8 extends to any such claim brought against the indemnified Party by or on behalf of any employee of the indemnifying Party. The foregoing waiver shall not in any way preclude the indemnifying Party from raising such immunity as a defense against any claim brought against the indemnifying Party by any of its employees.

**Section 9. Disclaimers and Limitation of Liability**

**9.1 Disclaimer.** PSE makes no representations or warranties of any kind, express or implied, with respect to the Design Work, Relocation Work or other items or services provided under this Agreement including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose or implied warranty arising out of course of performance, course of dealing or usage of trade.

**9.2 Limitation of Liability.** In no event shall PSE be liable, whether in contract, warranty, tort or otherwise, to any other party or to any other person for any indirect, incidental, special or consequential damages arising out of the performance or nonperformance of the Design Work, Relocation Work or this Agreement.

**Section 10. Miscellaneous**

**10.1 Tariffs Control.** This Agreement is in all respects subject to all applicable tariffs of PSE now or hereafter in effect and on file with the WUTC. In the event of any conflict or inconsistency between any provision of this Agreement and any such tariff, the terms of the tariff shall govern and control.

**10.2 Survival.** Sections 3, and 6 through 10 shall survive any termination of this Agreement. Subject to the foregoing, and except as otherwise provided herein, upon and following termination of this Agreement neither Party shall have any further obligations arising under this Agreement and this Agreement shall be of no further force or effect.

**10.3 Waiver.** The failure of any Party to enforce or insist upon strict performance of any provision of this Agreement shall not be construed to be a waiver or relinquishment of any such provision or any other provision in that or any other instance; rather, the same shall be and remain in full force and effect.

**10.4 Entire Agreement.** This Agreement, including any exhibits hereto, sets forth the complete and integrated agreement of the Parties. This Agreement cannot be amended or changed except by written instrument signed by the Party to be bound thereby.

**10.5 Force Majeure.** 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; storm, 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 Design Work, the Relocation 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 obligation 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 cause by a Force Majeure Event.

**10.6 Enforceability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

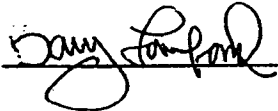
**10.7 Notice.** Any notice, request, approval, consent, order, instruction, direction or other communication under this Agreement given by either Party to the other Party shall be in writing and shall be delivered in person to an authorized representative or mailed, properly addressed and stamped with the required postage, to the intended recipient at the address and to the attention of the person specified below the Parties' respective signatures on this Agreement. Either Party may from time to time change such address by giving the other Party notice of such change in accordance with this section.

**10.8 Governing Law.** This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington. This Agreement shall be fully binding upon the Parties and their respective successors, assigns and legal representatives.

In witness whereof, the Parties have executed this Agreement as of the date set forth above.

PSE:

Puget Sound Energy, Inc.

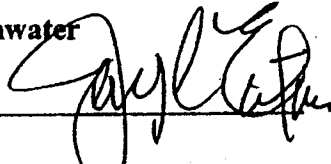
By 

Its Municipal Liason Manager  
Address: 3130 S. 38<sup>th</sup> Street, TAC-LL  
Tacoma, WA 98409

Attn: \_\_\_\_\_

Government Entity:

City of Tumwater

By 

Its Public Works Director  
Address: 555 ISRAEL RD SW  
TUMWATER WA 98501

Attn: \_\_\_\_\_

## EXHIBIT A

### FACILITIES AND EXISTING OPERATING RIGHTS

#### FACILITIES:

##### STA "A"49+20:

- Adjust lids on vaults 560974-139658 and 560974-139657 to final grade.
- Relocate J-box vault 560962-139661 and MP 560962-139660 to behind sidewalk.
- Adjust elevation of crossing to eliminate conflict with storm sewer pipe between catch basins CB#14 and CB#15.
- Reroute and repull primary cables as required.

##### STA "A"57+50 RT:

- Lower crossing to eliminate conflict with storm drain pipe between CB#31 and CB#32.

##### STA "A"59+68 RT:

- Extend conduit on crossing to behind back of new sidewalk.

##### STA "A"62+15:

- Relocate vaults 560976-139794 and 560974-139793 to outside curb line.
- Reroute and repull feeder and primary cables as required.

##### STA "A"75+20:

- Lower crossing to eliminate conflict with storm drain pipe between CB#51 and CB#54.
- Extend conduit on crossing to behind back of new sidewalk.

##### STA "A"79+40I:

- Relocate TUT adjacent to switch 0-5021 (no grid number on map).

##### STA 86+65 LT:

- Relocate switch cabinet 561091-139989 and J-box 561092-139989 to behind back of sidewalk.
- Reroute and repull feeder and primary cables as required.
- Ensure cable/conduit runs do not conflict with storm drain pipe between CB#73 and CB#76.

##### STA "C"206+50 RT:

- Relocate J-box 561071-140004 and MP 561070-140004 to behind new sidewalk.

**EXISTING OPERATING RIGHTS:** 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 B**

**RELOCATION PLAN**

**(TO BE ATTACHED FOLLOWING ACCEPTANCE BY THE PARTIES)**

**EXHIBIT H**

**Chapter 2.14**  
**EXECUTION OF CONTRACTS AND OTHER LEGAL DOCUMENTS**

**Sections:**

- 2.14.010 Purpose.**  
**2.14.020 Contract administration.**  
**2.14.030 Documents conveying real property interests.**  
**2.14.040 Execution of documents.**  
**2.14.050 Responsibility of Finance Department.**  
**2.14.060 Minor Contracts - Execution.**  
**2.14.070 Execution of contracts over \$10,000.**

**2.14.010 Purpose.**

The following provisions and procedures shall be followed in conjunction with the approval and execution of contracts and other legal documents to which the City is a party.

(O96-043, Added, 12/03/1996)

**2.14.020 Contract administration.**

All contracts to which the City is a party shall be in writing, and executed in the name of the City by the Mayor or the City Administrator under the direction of the City Council. In the absence of the City Administrator or Mayor, as the case may be, the Acting City Administrator or Mayor Pro Tem may execute contracts. Such documents shall be attested by the Finance Director and approved as to form by the City Attorney.

No contracts to which the City is obligated shall be executed in the name of a department of the City.

(O96-043, Added, 12/03/1996)

**2.14.030 Documents conveying real property interests.**

All documents by which the City conveys or receives an interest in real property shall be executed in behalf of the City by the Mayor. However, if the document provides for the grant of real property or an interest in real property to the City and the document by its terms is not required to be executed by the Grantee (the City), no such execution shall be required.

(O96-043, Added, 12/03/1996)

**2.14.040 Execution of documents.**

All contracts and real property conveyances which, as provided herein, require execution by the Mayor or Mayor Pro Tem, shall only be so executed following authorization by the City Council. Such authorization shall be in the form of a motion approved by a majority of the City Council. Provided, however, when the City Council by motion or otherwise awards a contract by acceptance of a bid or acceptance of a proposal, such award shall be deemed an authorization for the Mayor or City Administrator to execute the contract.

(O96-043, Added, 12/03/1996)

**2.14.050 Responsibility of Finance Department.**

It shall be the responsibility of the Finance Department to retain signed originals of all contracts and real property conveyances to which the City is a party.

(O96-043, Added, 12/03/1996)

**2.14.060 Minor Contracts - Execution.**

The City Council hereby directs and authorizes the City Administrator to execute minor service provider and other routine contracts without individual approval of each contract by the City Council. For the purpose of this Section, a minor contract is defined to mean a contract having a dollar amount of Ten Thousand Dollars (\$10,000.00) or less. The Mayor or City Administrator may, upon their own volition, place any specific contract on the Council agenda for Council authorization as they see fit. Provided, however, the Mayor or City Administrator shall execute no contract for which funds have not been appropriated by the City Council.

(O96-043, Added, 12/03/1996)

**2.14.070 Execution of contracts over \$10,000.**

All contracts not defined as minor contracts shall be executed by the Mayor or Mayor Pro Tem pursuant to the process set forth in Section 2.14.040 above.

**EXHIBIT I**



## RESERVATION OF RIGHTS AGREEMENT

This Agreement, dated as of February 23, 2006, is made and entered into by and between Puget Sound Energy, Inc. ("PSE"), and the City of Tumwater (the "City").

### RECITALS

A. The City desires to construct certain improvements to Tumwater Boulevard east from Capitol Boulevard to the Interstate 5 on-ramps (the "City Project"). In connection with the City Project, the City has requested that PSE undertake certain design and construction work with respect to the relocation and underground conversion of certain electrical distribution facilities owned by PSE within the area of the City Project (the "Work") and PSE has agreed to continue the Work in accordance with and subject to the terms of the Project Agreements (as defined below) and the reservation of rights set forth in this Agreement.

B. The parties have entered into a Project Design Agreement dated May 17, 2004, pursuant to PSE Tariff G, Schedule 74 ("Schedule 74"), relating to the design work for the underground conversion portion of the Work (the "Design Agreement"). In order to complete the Work, the parties agree to enter into a Project Construction Agreement pursuant to Schedule 74 relating to the construction work for the underground conversion portion of the Work (the "Construction Agreement"), and a new Facility Relocation Agreement relating to the design and construction work for the relocation portion of the Work (the "Facility Relocation Agreement"), each of which will be based on PSE's corresponding standard form agreement and will be signed contemporaneously with the execution of this Agreement. The Design Agreement, Construction Agreement and Facility Relocation Agreement are referred to herein as the "Project Agreements."

C. A dispute has arisen between the parties with respect to the proper allocation between them of the costs incurred by PSE in connection with the Work (the "Dispute"). The parties desire to move forward with the Work pending resolution of the Dispute. Therefore, the parties have entered into this Agreement to confirm their mutual understanding and agreement that notwithstanding the parties' execution of and performance under the Project Agreements, each party reserves all available rights, claims, remedies and defenses relating to the Dispute and each reserves all available rights, claims, remedies and defenses relating to issues of contract construction and interpretation regarding the Project Agreements.

## **AGREEMENT**

Therefore, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

### **1. Reservation of Rights**

**1.1** Notwithstanding its execution of and performance under the Project Agreements, including PSE's assertion of prior operating rights, the City hereby reserves all rights, claims, remedies and defenses of any kind that are available to the City in connection with the Dispute, including, without limitation, any right of the City to seek a judicial determination that the City is not responsible for all or any portion of the costs incurred by PSE in completing the Work. Prior to final resolution of the dispute, the City will be bound by and comply with the terms of the Project Agreements. Upon final resolution of the Dispute, whether such resolution be by judicial determination or by settlement between the parties, (a) any payment made by the City to PSE under the Project Agreements will be subject to refund with interest at the applicable Interest Rate (as defined below) from the date of payment by the City, to the extent such payment is required to be refunded to the City pursuant to judicial order or written settlement of the parties; and (b) the parties will continue to be bound by and comply with the terms of the Project Agreements except to the extent required otherwise by judicial order or written settlement of the parties.

**1.2** Notwithstanding its execution of and performance under the Project Agreements, PSE hereby reserves all rights, claims, remedies and defenses of any kind that are available to PSE in connection with the Dispute, including, without limitation, any right of PSE to seek a judicial determination that the City is responsible for all or any portion of the costs incurred by PSE in completing the Work. Prior to final resolution of the Dispute, PSE will be bound by and comply with the terms of the Project Agreements. Upon final resolution of the Dispute, whether such resolution be by judicial determination or by settlement between the parties, (a) any payment made by the City to PSE under the Project Agreements will be subject to refund with interest at the applicable Interest Rate from the date of payment by the City, to the extent such payment is required to be refunded to the City pursuant to judicial order or written settlement of the parties; and (b) the parties will continue to be bound by and comply with the terms of the Project Agreements except to the extent required otherwise by judicial order or written settlement of the parties.

**1.3** For purposes of this Section 1, the term "Interest Rate" shall mean an interest rate of four and sixty-six one hundredths percent (4.66%) per annum (the "Non-Default Rate"); provided, however, if PSE does not pay any required refund amounts on or before the due date specified in a court order or written settlement of the parties, the term "Interest Rate" shall thereafter mean an interest rate of twelve percent (12%) per annum (the "Default Rate") for all periods after the date of default. For the avoidance of doubt, if PSE fails to pay any refund when due, interest will accrue on the refund amount at the Non-Default Rate up to the date of default and will thereafter accrue on any unpaid portion of the refund amount at the Default Rate from the date of default until paid in full.

2. **Miscellaneous**

2.1 The failure of either party to insist upon or enforce strict performance of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any instance.

2.2 This Agreement constitutes the entire agreement, and supersedes any and all prior agreements and understandings, of the parties with respect to the parties' reservation of rights regarding the Dispute. This Agreement cannot be amended except by written instrument signed by both parties.

2.3 This Agreement shall be interpreted, construed and enforced according to the laws of the State of Washington. This Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. Any action at law or in equity to enforce this Agreement shall be brought only in the Superior Court for Thurston County, Washington.

Company:

**Puget Sound Energy, Inc.**

By: Amy L. Towseley  
Name: Amy L. Towseley  
Title: Municipal Liaison Mgr.

City:

**City of Tumwater**

By: Ralph C. Osgood  
Ralph C. Osgood, Mayor

ATTEST:

Sheryl Wyatt  
City Clerk

Approved as to Form:

Christy A. Todd  
Christy A. Todd  
City Attorney