

1 **II. RULES AND STATUTES**

2 The City of Clyde Hill seeks declaratory relief pursuant to RCW 34.05.240, RCW 80.04.110,
3 WAC 480-09-230, WAC 480-09-420(5)(a), RCW 34.05.082 and WAC 480-09-500. RCW
4 80.28.050 is also cited in the argument in support of this motion.

5 **III. MOTION**

6 3.1 The City of Clyde Hill, Complainant and Petitioner, moves for a summary determination of
7 the stipulated issues and for an Order granting the relief requested by Clyde Hill.

8 3.2 This motion is based upon the pleadings, the Joint Statement of Issues, Stipulations of Fact,
9 and Stipulated Exhibit List dated August 1, 2001, previously filed with the Commission and the clear
10 unambiguous language of Puget Sound Energy's ("PSE") Tariff G, Schedule 70.

11 **VI. ISSUES**

12 The legal issues were stipulated between Clyde Hill and PSE in the "Joint Statement of Issues,
13 Stipulations of Fact, and Stipulated Exhibit List" dated August 1, 2001, previously filed with the
14 Commission. **The stipulated legal issues are as follows :**

15 4.1 Whether Schedule 70 or Schedule 71 applies to the work to be performed along 92nd
16 Avenue NE that is part of the conversion described in the City of Clyde Hill Complaint. Sub-issues are:

17 (a) Whether the conversion area in Clyde Hill along 92nd Avenue NE meets the
18 definition of an area that is "zoned in use exclusively for residential purposes" in PSE's Schedule 70; or

19 (b) Whether the language of PSE's Schedule 71, Section 2, relating to undergrounding
20 of facilities in "those portions of municipalities which are zoned in use for commercial purposes (and in such
21 other areas of such municipalities which have electrical load requirements which are comparable with
22 developed commercial areas)" applies to the Clyde Hill conversion area along 92nd Avenue NE.

23 4.2 Whether either Schedule 70 or 71 applies to private drives connecting to 92nd Avenue NE
24 and 94th Avenue NE that are part of the conversion described in the Clyde Hill Complaint. The sub-issue
25 is:

26 (a) Whether either Schedule 70 or 71 are applicable to the existing overhead facilities
27 that are currently located on private property and not in City rights-of-way along private drives connecting
28 to 92nd Avenue NE and 94th Avenue NE in the conversion area described in the Clyde Hill Complaint.

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V. PERTINENT FACTS

5.1 Clyde Hill and PSE have stipulated to the following facts. The stipulated facts are numbered 9 through 20 to coincide with the numbering of the "Facts Relating to Clyde Hill" in the "Joint Statement of Issues, Stipulations of Fact, and Stipulated Exhibit List":

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

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

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

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

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

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

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

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

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

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

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

24 20. The electrical distribution lines proposed to be converted to underground in the LID are
25 15,000 volts or less.

26 VI. SUMMARY ARGUMENT

27 6.1 The entire "conversion area" falls squarely within the specific language of PSE's Tariff G,
28 Schedule 70, Section 2. All of the criteria of Section 2 are met by the described underground conversion

1 improvements in the City of Clyde Hill's Local Improvement District No. 2001-01, Stipulated Exhibit F
2 (Ordinance No. 836). Those criteria are:

- 3 • Materials are equipment are available (not in dispute);
- 4 • Existing overhead distribution lines are 15,000 volts or less (Stipulated Fact No. 20);
- 5 • The conversion area is zoned and used exclusively for residential purposes (Stipulated Facts
6 Nos. 13, 14, 18 and 19) (Exhibit G - a zoning map showing "conversion area boundary");
- 7 • PSE has adequate operating rights throughout the entire "conversion area" (not in dispute
8 and see Stipulated Fact No. 12 regarding the existing overhead facilities along private drives); and
- 9 • The conversion area is at least one (1) city block in length (the entire conversion area is
10 composed of city blocks) (Exhibit D and G).

11 6.2 All of the criteria of PSE's Tariff G, Schedule 71, Section 2, are not met by the described
12 underground conversion improvements in the City of Clyde Hill Local Improvement District No. 2001-01.
13 The specific criteria which is not met is that:

- 14 • The conversion area is zoned in use for commercial purposes (and in such other areas of the
15 city which has electrical load limits which are comparable with developed commercial areas) (Exhibit G and
16 Stipulated Facts Nos. 13, 14, 18, 19 and 20).

17 6.3 Schedule 70 is applicable to the underground conversion of the overhead electrical
18 distribution lines in those portions of the conversion area described in Stipulated Finding No. 12 because all
19 of the criteria listed in Section 2 are met.

20 6.4 A summary determination should be issued by the Commission resolving all of the Stipulated
21 legal issues in favor of the City of Clyde Hill and ordering that PSE's Tariff G, Schedule 70, is applicable to
22 the entire underground conversion project described in City of Clyde Hill Local Improvement District No.
23 2001-01.

24 VII. LAW AND ARGUMENT

25 7.1 Statutes and case law. RCW 80.28.050 authorizes PSE to file a tariff with the Washington
26 Utility and Transportation Commission. It reads as follows:

27 Every gas company, electrical company and water company shall file with
28 the commission and shall print and keep open to public inspection schedules
in such form as the commission may prescribe, **showing all rates and**

1 **charges made, established or enforced, or to be charged or enforced,**
2 **all forms of contract or agreement, all rules and regulations relating**
3 **to rates, charges or service, used or to be used,** and all general
privileges and facilities granted or allowed by such gas company, electrical
company or water company. (Bold emphasis added.)

4 Once a tariff is filed and approved, it has the force and effect of law. General Telephone Company
5 v. City of Bothell, 105 Wn.2d 759, 583, 716 P.2d 879 (1986). Standard principles of statutory
6 construction apply to the interpretation of tariffs. The proper interpretation of a tariff is a question of law.
7 National Union Insurance Company v. Puget Sound Power and Light, 94 Wn.App. 157, 171, 972 P.2d
8 481 (1999). When language in a statute is plain and unambiguous, its meaning must be derived from the
9 words themselves. The legislative intent of an unambiguous statute is determined from the language of the
10 statute alone. Lakewood v. Pierce County, 106 Wn.App. 63, 70, - P.3d - (2001); Waste Management v.
11 WUTC, 123 Wn.2nd 621, 629, 869 P.2d 1034 (1994).

12 Only if a statute is ambiguous will a court resort to the rules of statutory construction. National
13 Union Insurance Company v. Puget Power, id; City of Lakewood v. Pierce County, 106 Wn.App. 63, 70,
14 - P.3d - (2001); and Davis v. Department of Licensing, 137 Wn.2d 957, 964, 977 P.2d 544 (1999),
15 where the court stated:

16 In judicial interpretation of statutes, the first rule is the court should assume
17 the legislature means exactly what it says. Plain words do not require
construction.

18 Only if a tariff is determined to be ambiguous, do the rules of statutory construction for the
19 determination of legislative intent apply. Lakewood v. Pierce County, *supra* at 70.

20 A statute is ambiguous only when it is fairly susceptible to two or more reasonable interpretations.
21 Lakewood v. Pierce County at 70; and Waste Management v. WUTC, *supra* at 629.

22 7.2 Section 2 of Schedule 70 is unambiguous and applicable to the entire conversion area in
23 Clyde Hill. Section 2 of Schedule 70 states as follows:

24 2. AVAILABILITY - Subject to availability of equipment and materials,
25 the company will provide and install a main distribution system and will
26 remove existing overhead electric distribution lines of 15,000 volts or less
27 together with company-owned poles following the removal of all utility wires
28 therefrom **in areas which are zoned and used exclusively for residential purposes**, provided that at the time of such installation the
company shall have adequate operating rights, and provided further that the
conversion area must be not less than one (1) city block in length, or in the
absence of city blocks, not less than six (6) contiguous building lots abutting
each side of the public thoroughfare with all real property on both sides of

1 each public thoroughfare to receive electric service from the main
2 distribution system. (Bold emphasis added.)

3 PSE, pursuant to RCW 80.28.050 quoted above, drafted and filed with the Commission Schedule
4 70 of Electric Tariff G that includes the above-quoted language from Section 2. The language of Section 2
5 is clear and unambiguous. The terms of art used in this section (i.e., "main distribution system",
6 "underground service lines", "conversion area and trenching and restoration") are clearly defined in Section 1
7 of Schedule 70. Here, the "conversion area" that is, "that geographical area wherein the company's
8 overhead electric distribution system is replaced or is to be replaced by an underground electric distribution
9 system," is described in Stipulated Fact No. 9 and graphically depicted in Exhibit G.

10 7.3 All criteria of Section 2 are met. As outlined in Section 4.1 of this pleading, all of the
11 criteria of Section 2 are met by the described underground conversion improvements in the City of Clyde
12 Hill's Local Improvement District No. 2001-01 Stipulated Exhibit F. The underground conversion
13 improvements are proposed in an area that is zoned exclusively residential and used exclusively for
14 residential purposes. There are no non-residential structures in the conversion area. Stipulated Facts Nos.
15 13, 14, 18 and 19. All of the existing overhead electrical distribution lines are at 15,000 volts or less.
16 Stipulated Fact No. 20. The conversion area is in excess of more than one city block in length and the
17 company has operating rights in the city right-of-way and in the private drives through easements.
18 Stipulated Fact No. 12.

19 7.4 Single-phase or three-phase, it does not matter. No reference is made in Schedule 70 to a
20 "three-phase feeder system." Whether or not the existing overhead electric distribution lines are single-
21 phase or three-phase is irrelevant to the availability of Schedule 70 per the clear unambiguous language of
22 Section 2. There is no ambiguity on this issue in Section 2. The Commission cannot read, or add into, the
23 tariff language that does not exist. Ambiguity can only exist where the language is susceptible to more than
24 one reasonable meaning. It is unreasonable to interpret Schedule 70 to exclude a three-phase feeder
25 system from the scope and coverage of the tariff when there is no language whatsoever in Section 2 that
26 identifies the phasing of the existing overhead electrical distribution lines as one of the criteria to be
27 considered in the "availability" of the tariff.
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1 7.5 Schedule 70 applies to the work to be performed in private easements and along 92nd
2 Avenue NE that is part of the conversion area because it is part of the "conversion area." The "conversion
3 area" meets all of the criteria of Section 2. Even that portion of the conversion area described in Stipulated
4 Fact No. 12, where the existing overhead lines are within easements along private drives, are within the
5 clear language and criteria of Section 2 of Schedule 70. The conversion area is clearly greater than one city
6 block in length. There is no language in Section 2 that provides for segmenting, or breaking down, a
7 contiguous conversion area into smaller segments for purposes of applications of the tariff. Therefore, there
8 is no basis in Section 2 to reasonably argue that the private drives are to be evaluated separately from other
9 segments of the conversion area.

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

13 7.6 Section 2 of Schedule 71 is also unambiguous but not applicable to the conversion area.
14 PSE's Tariff G, Schedule 71, is not applicable to the conversion area or any portion of it. All of the criteria
15 of Section 2 of Schedule 71 are not met by the described underground conversion improvements in City of
16 Clyde Hill Local Improvement District No. 2001-01. Specifically, the conversion area is not zoned, and
17 not used for, commercial purposes. Neither are there electrical load requirements within the conversion
18 area which are comparable with developed commercial areas. See Stipulated Facts Nos. 13, 14, 18, 19
19 and 20. In particular, Stipulated Fact No. 13 provides that:

20 13. Clyde Hill consists of approximately 2,900 residents and 1,100
21 households. There are two commercially developed lots within the
22 corporate limits of the city and certain public and private schools and
23 churches and city buildings, **all of which are located outside of the
conversion area and LID boundary and receive electric service from
service lines outside of the conversion area and LID boundary.** The
24 commercially developed lots contain a gas station/convenience store and a
Tully's Coffee Shop. (Bold emphasis added.)

25 Schedule 71 clearly does not apply to the conversion area or any portion of it. Schedule 71, like
26 Schedule 70, also makes no reference to the "phasing" of the existing overhead wires as a criteria for the
27 "availability" of the tariff. The "phasing" of the existing overhead wiring was not made an issue by the drafter
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1 of the tariff or by the WUTC in adopting the language of the tariff. Schedule 71, like Schedule 70, makes
2 the zoning and land uses within the conversion area the primary factor for the "availability" of either tariff.

3 In sum, Schedule 71 unambiguously does not apply to the conversion area described in the
4 stipulated facts and exhibits. Neither is there any conflict between Schedule 70 and Schedule 71 that needs
5 to be reconciled so that each tariff may be given affect. Lakewood v. Pierce County, *supra* at 71.

6 VIII. CONCLUSION

7 Schedule 70 applies to the underground conversion of existing overhead wires throughout the entire
8 conversion area, including the conversion work to be performed along 92nd Avenue NE and within the
9 private drives contiguous to the city streets in which the underground conversions are to take place. The
10 legal issues are to be resolved from the clear language of the tariffs themselves and without resort to
11 extrinsic evidence or to principles of statutory construction to ascertain the WUTC's intent when it
12 approved the tariffs. A ruling should be issued deciding the legal issues in favor of the City of Clyde Hill and
13 declaring that:

14 1. Tariff 70 applies to Clyde Hill Local Improvement District No. 2001-01 underground
15 conversion, which is in a residential area that is zoned and used exclusively for residential purposes,
16 regardless of whether the electrical system in the conversion area is single-phase or three-phase, or within
17 the public right-of-way, or within an easement along a contiguous private drive.

18 2. The maximum payment to PSE for the conversions described in Clyde Hill Local
19 Improvement District No. 2001-01 shall be the payment set forth in Schedule 70.

20 3. The City of Clyde Hill and the underground conversions described in Clyde Hill Local
21 Improvement District No. 2001-01 are vested under the now-existing version of Schedule 70.

22 DATED this _____ day of August, 2001.

23 OGDEN MURPHY WALLACE, P.L.L.C.

24
25 By: _____
26 Greg A. Rubstello, WSBA #6271
27 Attorneys for Petitioner
28 City of Clyde Hill

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I have this day served the CITY OF CLYDE HILL'S MOTION FOR
3 SUMMARY DETERMINATION, filed by the City of Clyde Hill, upon all parties of record in this
4 proceeding, via U.S. Mail:

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27 DATED at Seattle, Washington, this 10th day of August, 2001.

28 _____
Anita Griffin
Legal Assistant to Greg A. Rubstello