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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF AUBURN, CITY OF BELLEVUE,  
CITY OF BREMERTON, CITY OF DES  
MOINES, CITY OF FEDERAL WAY, CITY  
OF LAKEWOOD, CITY OF REDMOND,  
CITY OF RENTON, CITY OF SEATAC,  
CITY OF TUKWILA,

Complainants,

vs.

PUGET SOUND ENERGY, INC.

Respondent.

Docket Nos. UE-010911 and  
UE-010778 (Consolidated)

DECLARATION OF CARY ROE IN  
SUPPORT OF CITIES' MOTION FOR  
SUMMARY DETERMINATION

Cary Roe declares as follows:

1. I am over the age of eighteen, and am competent to testify. I am the Public Works Director for the City of Federal Way. I have held this position since 1994. I am a licensed professional engineer in the State of Washington.

2. My responsibilities with the City include directing the planning, scheduling and execution of construction and maintenance projects to meet the City's transportation needs, including transportation system planning, design and construction, maintenance services, real

1 property services management and acquisition, reviewing and approving municipal engineering  
2 and public works plans and drawings submitted by City engineers, developers and other  
3 engineers, directing the inspection and review of construction projects, assuring compliance with  
4 state and local laws, and supervising engineering and street maintenance.

5           3. I have been responsible for oversight of several street improvement projects that  
6 required Puget Sound Energy (“PSE”) to convert its overhead facilities to underground.

7 Undergrounding of electrical facilities is required by the Federal Way City Code, which states  
8 that, during construction of most substantial road improvement projects, existing electrical  
9 facilities must be placed underground. Section 16-47 states that “A relocation necessitated by a  
10 public works project including, but not limited to, road realignment, widening or sewer and  
11 water main projects, a major rebuild, or replacement of existing aerial facilities (three or more  
12 spans and/or 500 feet or more) shall be underground and a permit from the city public works  
13 department shall be required. . . .” In addition, the Washington State Department of  
14 Transportation Roadside Safety Design Manual (April 1998) specifies that clear zones be  
15 provided along all traveled roadways for recovery of errant vehicles that may leave the roadway.  
16 The Manual provides for a range of clearances based on the speed and volume of traffic traveling  
17 along a particular roadway, and the Manual specifically identifies “wooden poles or posts with a  
18 cross-sectional area of greater than 16 square inches (most PSE electric poles fit this description)  
19 as hazards requiring mitigation. The Manual recommends that cities “remove objects that are  
20 hazards when feasible.” A copy of excerpts from the Design Manual is attached as Exhibit “A”.

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23           4. To the best of my knowledge, until recently PSE has never insisted that the City buy  
24 exclusive private easements for PSE’s use for any of these underground conversion projects. PSE

1 may have purchased or obtained easements at its own expense, but I have never seen any cost  
2 item for easements on invoices submitted to the City by PSE. This is demonstrated by the  
3 examples described below.

4           5.       In 1995, the City directed PSE to convert its overhead facilities to underground  
5 for the South 348<sup>th</sup> Street project. As part of the project, the City purchased right-of-way for the  
6 street project and associated utilities, and PSE installed its lines underground within that right-of-  
7 way, along with other utilities (including water, sewer, natural gas, and telephone). The City  
8 permitted PSE to install two vaults, one of which was installed within the right-of-way, the other  
9 was installed on an easement that I understand PSE obtained for no cost. PSE did not invoice  
10 the City for any costs associated with easement acquisition, but only for materials and work.  
11 (PSE's invoice is attached as Exhibit "B" and incorporated herein by reference.) At no time  
12 during the 348<sup>th</sup> Street project did PSE inform the City that it required that PSE facilities be  
13 installed in private, exclusive easements in PSE's name, or that the City pay for such private,  
14 exclusive easements in PSE's name.  
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16           6.       The Underground Conversion Agreement between the City and PSE for the South  
17 348<sup>th</sup> Street project is consistent with PSE's actions during the project. The Underground  
18 Conversion Agreement stated

19                   The parties acknowledge that under Schedule 71, the owners of real  
20 property within the Conversion Area must provide at their expense, space  
21 for all underground and surface mounted electrical facilities located on  
22 privately owned property, and must grant such operating rights as may be  
23 necessary to permit Puget to construct, operate, repair and maintain all  
24 electrical facilities installed by Puget pursuant to the Agreement. Puget  
25 shall provide reasonable assistance in obtaining such operating rights, but  
shall not be required to bear the costs of any easements. The cost to Puget  
of any easements on privately owned property which Puget must obtain  
shall be reimbursed by the City pursuant to paragraph 5 above.

1 This language does not require that PSE's facilities be installed in private, exclusive  
2 easements in PSE's name, or that the City pay for such easements; instead, it merely  
3 acknowledges (consistent with Paragraph 4 of Schedule 71) that the owners of real  
4 property within the Conversion Area must provide adequate space for PSE facilities, and  
5 that PSE is not required to bear the cost of obtaining property necessary for such  
6 facilities. In the South 348<sup>th</sup> Project, the City acquired right-of-way property at the City's  
7 cost, and PSE located its facilities in the right-of-way. The Agreement did not require  
8 the City to obtain or pay for private easements for PSE's exclusive use, nor did PSE  
9 request that the City do so.

11 7. The Conversion Agreement for the 348<sup>th</sup> Street project also acknowledged  
12 that future relocation costs would be paid by PSE if the franchise agreement provided  
13 such an allocation:

14 In the event the City requires the relocation of any of the facilities  
15 installed under this Agreement prior to the expiration of twenty (20) years  
16 after completion of the conversion hereunder, the City shall bear the entire  
17 costs of such relocation, unless it is determined in a franchise agreement  
between Puget and the City that costs of relocated facilities installed under  
this Agreement should be allocated in a different manner.

18 (Emphasis added.) The Federal Way/PSE Franchise does provide that PSE pay relocation  
19 costs. Paragraph 14.3 of the PSE Franchise provides that "Franchisee shall relocate such  
20 Facilities within the Franchise Area at its sole cost and expense so as to accommodate the street  
21 improvement project or other City use.

22 8. In 1998, the City directed PSE to convert its overhead facilities to underground  
23 for the South 312<sup>th</sup> Street project. As part of the project, the City purchased a three-meter  
24 (approximately 10-foot) utility easement in the City's name for the installation of underground

1 utilities. See Exhibit "C" attached hereto and incorporated by reference. The easement is  
2 part of the City's right-of-way, and as such is part of the area covered by the City/PSE  
3 Franchise. PSE installed its facilities underground within that easement, along with other  
4 utilities (including water, sewer, natural gas and telephone). PSE also installed its above-  
5 ground equipment within the City's easement or right-of-way. PSE did not invoice the  
6 City for any costs associated with easement acquisition, but only for engineering, labor,  
7 inspection services and materials. PSE's invoice is attached as Exhibit "D" and  
8 incorporated herein by reference. At no time during the 312<sup>th</sup> Street project did PSE  
9 require that PSE facilities be installed in private, exclusive easements in PSE's name, or  
10 that the City pay for such private exclusive easements in PSE's name.  
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12 9. The Underground Conversion Agreement between the City and PSE for the  
13 South 312<sup>th</sup> Street project is consistent with PSE's actions during the project. The Underground  
14 Conversion Agreement stated:

The Company shall provide reasonable assistance in obtaining operating  
rights as may be necessary to permit the Company to construct, operate,  
repair, and maintain all electrical facilities installed by the Company  
pursuant to this Agreement. The Company shall not be required to bear  
the costs of any necessary easements. The cost to the Company of any  
easements on privately owned property which the Company must obtain  
shall be reimbursed in full by the City pursuant to paragraph 5 above.

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19 This language does not require that PSE's facilities be installed in private, exclusive  
20 easements in PSE's name, or that the City pay for such easements; instead, it merely  
21 acknowledges (consistent with Paragraph 4 of Schedule 71) that adequate space must be  
22 provided for PSE facilities and that PSE is not required to bear the cost of obtaining  
23 property necessary for such facilities. In the South 312<sup>th</sup> Street project, the City acquired  
24

1 an easement at the City's cost and in the City's name for the PSE underground and  
2 above-ground facilities, and PSE located its facilities in the easement area. The  
3 Agreement did not require the City to obtain or pay for private easements for PSE's  
4 exclusive use, nor did PSE request that the City do so.

5           10. In 2000, the City directed PSE to convert its overhead facilities to underground  
6 for the SR99/South 320<sup>th</sup> Street project. As part of the project, the City purchased property and  
7 easements for the street project and associated utilities, and PSE installed its facilities  
8 underground within the right-of-way, along with other utilities (including water, sewer, natural  
9 gas, and telephone). PSE also installed its above-ground facilities on the City's property or  
10 right-of-way.  
11

12           11. Immediately prior to bidding its work on the SR99/320<sup>th</sup> Street project, PSE  
13 introduced a new conversion agreement and requested the City sign it before PSE would  
14 underground its facilities. This was the first time the City learned of PSE's request for private,  
15 exclusive easements in PSE's name. The new language proposed in the conversion agreement  
16 by PSE to which the City objected stated in Paragraph 4(B):  
17

18           In addition the City shall at its expense obtain the following:

- 19           (a) Any and all operating rights required by the Company, in a form or forms  
20           satisfactory to the Company, to allow the Company to construct, operate,  
21           repair and maintain the Main Distribution System within the City right-of-  
22           ways in the Conversion Area.

23           And in Paragraph 8:

24           The Company shall provide reasonable assistance in obtaining such operating  
25           rights, but shall not be required to bear the costs of any operating rights. The cost  
26           to the Company of assisting in obtaining any such operating rights on privately  
27           owned property shall be reimbursed in full by the City pursuant to paragraph 4(B)  
28           above.

1 (Emphasis added.) PSE explained that a “form satisfactory to the Company” would  
2 require private, exclusive easements in PSE’s name. The City complained that the new  
3 conversion agreement was being introduced too late in the project and was too different  
4 from the past agreements that had been signed in that it would have required the City to  
5 pay for private easements in PSE’s name and pay for relocation if necessary within 20  
6 years even if the Franchise provided otherwise. After the City complained, PSE agreed  
7 to use a conversion agreement similar to that used for the 312<sup>th</sup> Street project.  
8

9 12. The Underground Conversion Agreement signed by the City and PSE for the  
10 320<sup>th</sup> Street project is consistent with PSE’s actions during the project. The pertinent language in  
11 the 320<sup>th</sup> Street Conversion Agreement states:

12 The Company shall provide reasonable assistance in obtaining operating rights as  
13 may be necessary to permit the Company to construct, operate, repair, and  
14 maintain all electrical facilities installed by the Company pursuant to this  
15 Agreement. The Company shall not be required to bear the costs of any necessary  
16 easements. The cost to the Company of any easements on privately owned  
17 property which the Company must obtain shall be reimbursed in full by the City  
18 pursuant to paragraph 5 above.

19 This language does not require that PSE’s facilities be installed in private, exclusive easements  
20 in PSE’s name, or that the City pay for such easements; instead, it merely acknowledges  
21 (consistent with Paragraph 4 of Schedule 71) that adequate space must be provided for PSE  
22 facilities, and that PSE is not required to bear the cost of obtaining property necessary for such  
23 facilities. In the South 320<sup>th</sup> Street project, the City acquired property and easements at the  
24 City’s cost for the PSE underground and above-ground facilities, and PSE located its facilities in  
25 that property and easement area. The Agreement did not require the City to obtain or pay for  
private easements for PSE’s exclusive use.

1           13.     PSE did not demand exclusive private easements during either the S. 348<sup>th</sup> Street  
2 or S. 312<sup>th</sup> Street projects. It was only when directed to underground facilities in the South 320<sup>th</sup>  
3 Street project, in 2000, that PSE introduced a new conversion agreement requiring exclusive  
4 private easements for its.

5           14.     The City has also directed PSE to convert its overhead facilities to underground in  
6 the following projects: 23<sup>rd</sup> Avenue Project; SR 99 HOV Lanes, Phase I; SR 99 HOV Lanes,  
7 Phase II. For each of these projects, PSE has tried to force the City to sign an underground  
8 conversion agreement that was unacceptable to the City. The draft underground conversion  
9 agreement PSE insisted that the City sign required that the City pay for the cost of operating  
10 rights satisfactory to PSE. PSE indicated that these operating rights were required to be private,  
11 exclusive easements in PSE's name. PSE refused to perform the underground conversion until  
12 the City executed the unacceptable agreement. The City has no objection if PSE wishes to locate  
13 its facilities for these projects outside the rights-of-way on these projects if permitted by the  
14 Federal Way Zoning Code. *See, e.g.*, Federal Way City Code Section 22-389 (only property  
15 owner or owner's agent may apply for Process III project approval). However, the City is not  
16 willing to pay for private easements for PSE's exclusive use.

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18           15.     The City does not understand PSE's stated need for private easements. The City  
19 is generally willing to help accommodate PSE's need for adequate operating space, and in  
20 specific instances when conflicts with other utilities are documented to the City's satisfaction, or  
21 other circumstances indicate that additional right-of-way is needed to provide adequate room for  
22 operation and maintenance of utility facilities, Federal Way would be willing to obtain additional  
23 property or easements as necessary. Such property would be owned in the City's name,  
24

1 however, and would be public right-of-way available for PSE's use as "Franchise Area" under  
2 the Franchise.

3 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
4 August \_\_\_\_, 2001.

8 \_\_\_\_\_  
CARY ROE

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25 Declaration of Cary Roe in Support  
of Cities Motion for Summary Determination - 9

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