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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENT,

Petitioner,

DOCKET NO. UE-010778
(Consolidated)

v.

PUGET SOUND ENERGY, INC.,

Respondent.
.....

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

Petitioners,

DOCKET NO. UE-010911
(Consolidated)

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DECLARATION OF THOMAS W.
GUT IN SUPPORT OF CITIES'
MOTION FOR SUMMARY
DETERMINATION

Thomas W. Gut, declares as follows:

1. I am currently employed as the Assistant Engineering Manager for the City of SeaTac. I have held this position for approximately 2 years. Previously, I held the position as

1 Project Engineer II for the City of SeaTac for approximately 4 years. The main difference between
2 these two positions is that supervisory responsibilities are an additional function of the Assistant
3 Engineering Manager position. I am a registered Civil Engineer in the State of Washington.

4 2. I primarily serve as the project manager on numerous capital improvement projects.

5 My duties as project manager include:
6

- 7 • Manage engineering consultants hired by the City to develop plans for street
8 improvement projects.
- 9 • Supervise technicians and engineers assigned to various street improvement
10 projects in the City's Engineering Division.
- 11 • Coordinate utility work necessary to be incorporated into City street improvement
12 projects.
- 13 • Manage construction contracts for the City's street improvement projects.

14 3. I have been responsible for several street improvement projects that required Puget
15 Sound Energy ("PSE") to relocate its facilities or to place its overhead system underground under
16 Schedule 71. These completed projects include:
17

- 18 • South 176th Street Phase II (34th Avenue South to Military Road South)
- 19 • South 188th Street (Airport Tunnel to International Boulevard)
- 20 • Des Moines Memorial Drive South (South 188th Street to South 194th Street)
21 (substantially completed June 2001)
- 22 • South 170th Street Phase I (International Boulevard to 37th Avenue South)

23 While the city has completed the following projects, I was not directly involved with them.
24

- 25 • South 176th Street Phase I (International Boulevard to 34th Avenue South)

- International Boulevard Phase I (South 170th Street to South 188th Street)
- International Boulevard Phase II (South 188th Street to South 200th Street)
- 24th Avenue South / 28th Avenue South (South 188th Street to South 200th Street).

4. All of the above projects involved underground conversion of PSE's facilities under Schedule 70. The City's share of the total costs of underground conversion on these projects was 30 %. In all of the these projects, the majority of PSE's poles that were removed during the underground conversion would have been located in the new sidewalk and outside the widened roadway. As part of the underground conversion, PSE removed these poles and placed the wires and other equipment underground.

5. The City will be undertaking several other street improvement projects that require conversion of PSE's overhead facilities to underground. These include:

- South 170th Street Phase II, 37th Avenue South to Military Road South bid – May, 2001.
- International Boulevard Phase III (South 152nd Street to South 170th Street).
- International Boulevard Phase IV (South 200th Street to South 216th Street).

6. The City is currently engaged in Phase II of a street improvement project at South 170th Street between 37th Avenue South and Military Road South ("170th Street Project"). Phase II of the 170th Street Project consists of widening South 170th Street and adding curbs, gutters, sidewalks, a flashing beacon at 40th Avenue South, street illumination, and storm drainage facilities. The project requires conversion of all utilities to underground, including PSE's overhead electric facilities. The City issued its Notice to Proceed to the contractor on the 170th Street Project on July 11, 2001 to be effective on July 12, 2001.

7. The 170th Street Project is Phase II of street improvements to the South 170th Street. Phase I of this project extended from International Boulevard to 37th Avenue South. Because a

1 portion of the underground conversion area for Phase I is zoned and used for commercial purposes,
2 PSE performed the underground conversion for Phase I under Schedule 71. According to the City's
3 contract with PSE, the City's share of the total cost of the underground conversion was 30%. A
4 copy of the underground conversion contract for Phase I is attached as Exhibit A.
5

6 8. There is no difference in the road dimensions or poles in Phase I and Phase II of the
7 South 170th Street Project. In Phase II of the Project, several of the existing poles on South 170th
8 Street are located so that they would be in the center of the sidewalk if the electric system were not
9 converted to underground. If the poles remained in their current location, they would obstruct safe
10 pedestrian traffic. These poles would need to be relocated even if the system were not converted to
11 underground.
12

13 9. Although PSE performed the underground conversion for Phase I of the 170th Street
14 Project under Schedule 71 with the City responsible for 30% of the total costs of the underground
15 conversion, PSE is now claiming that the City is responsible for 70% of part of the costs. During
16 Phase I of the South 170th Street project, an identical road section was built and some poles were
17 also located in the center of the sidewalk. The dimensions of the road, the road widening, and the
18 new sidewalk are the same in Phase I of the project as they are in Phase II.
19

20 10. On January 29, 1999, the City, its consultant, and representatives from PSE, Qwest,
21 and AT&T met to discuss the specifics of accomplishing the conversion of overhead utilities to
22 underground for Phase II of the South 170th Street project. More than two years later on March 14,
23 2001, PSE presented the City with an Underground Conversion Agreement under Schedule 71 that
24 would have made the City responsible for 30% of the underground conversion costs. Before the
25 City signed the agreement, I inquired if Schedule 70 should be the appropriate schedule for the
26

1 South 170th Street Phase II project since the properties adjacent to the project are both zoned and
2 used exclusively as residential. PSE told me for the first time that since the project contained three-
3 phase distribution, PSE was going to do the underground conversion under Schedule 71. PSE later
4 changed the City reimbursement rate to 70% after SeaTac filed its complaint at the WUTC. PSE has
5 since changed the City rate again to one-quarter of the conversion cost at 30% and three-quarters of
6 the conversion cost at 70%.

8 11. The cost to the City under Schedule 70 for the underground conversion of Phase II of
9 the 170th Project is approximately \$34,561.00. The total cost of the underground conversion is
10 estimated to be \$454,870. At the 30% City reimbursement rate, the City's responsibility under
11 Schedule 71 would be approximately at \$136,461. At PSE's latest city reimbursement rate, the cost
12 to the City would be \$272,922, based on one-quarter of the conversion cost at 30% and three-
13 quarters of the conversion cost at 70%.

15 12. The City has adopted the King County Road Standards, 1993. Chapter 8 "Utilities"
16 states that on vertical curb type roads with a speed limit less than 40 mph, poles shall be placed clear
17 of sidewalks and at least five and one-half feet from the curb face in residential areas. The speed
18 limit in this portion of South 170th Street is 30 mph.

19 13. The South 170th Street project is funded primarily by Washington State
20 Transportation Improvement Board (TIB) grant funds and City funds.

22 14. The conversion of all utilities to underground is required on the 170th Street Project.
23 SeaTac Ordinance No. 97-1002 states: "It is found and determined by the City that the health and
24 safety, particularly the safety of the traveling public, and general welfare of the residents of the City
25 require that all such existing overhead facilities be relocated underground as soon as practicable in
26

1 accordance with the requirements specified herein and that all such new facilities be installed
2 underground, as specified herein.” Furthermore, Section 11.20.030 (D) “Underground
3 Requirements” states:

4 All extensions, relocating, or rebuilds of existing overhead electric and
5 communication facilities in areas zoned by the Comprehensive Zoning Ordinance of
6 the City as urban low density (UL), urban medium density (UM) and urban high
7 density (UH), shall be installed underground from and after the effective date thereof.

8 15. There has always been a verbal understanding between the City and PSE that PSE
9 will relocate their electric facilities, remove aerial electric wires and poles that obstruct construction
10 on City streets, and replace these with underground facilities within the City rights-of-way on
11 arterial streets. In fact, evidence of this verbal understanding is the fact that PSE has adhered to the
12 City’s verbal request in previous projects.

13 16. On July 12, 2001, PSE presented SeaTac with a draft underground conversion
14 agreement for Phase II of the 170th Street Project that required the City to purchase private
15 easements for its exclusive use and possession. Even though the draft underground conversion
16 agreement contained a reservation of rights on some of the issues in dispute and even though Phase
17 II of the 170th Street Project does not require any easements off the public rights-of-way, the City
18 objected to signing any such agreement. The City cannot agree to purchase easements for PSE’s use
19 under the terms in PSE’s draft underground conversion agreement. A copy of PSE’s draft
20 underground conversion agreement is attached as Exhibit B.

21 17. PSE refused to begin ordering materials or start on the underground conversion until
22 the City executed the draft underground conversion agreement. The project was already under way
23 by this point. In order to keep the project on schedule, the contractor required that the conduit for
24 the underground conversion of PSE’s overhead system be at the site no later than August 2, 2001.
25
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1 We were concerned that the contractor might charge delay damages against the City if the project
2 were delayed by PSE, so it was essential for PSE to order materials and begin work on the project.
3 In order to avoid delays and the risk of delay damages, the City finally agreed to execute an
4 agreement containing the objectionable terms, but preserving our rights on the issues in dispute
5 before the WUTC.
6

7 18. To the best of my knowledge, in the past PSE has not insisted that the City buy
8 private easements for PSE's use for any underground conversion projects. PSE may have purchased
9 easements at its own expense, but I have never seen any cost item for easements on invoices
10 submitted to the City by PSE. The only instance of which I am aware where an easement was in
11 PSE's name involved a road improvement project on Des Moines Memorial Drive South. On or
12 about October 2000, PSE identified the need to obtain an easement for their facilities on private
13 property while the project was under construction. At first, we tried to work with PSE to locate their
14 facilities within the right-of-way, but this was impossible due to inadequate space. By that time, the
15 City's consultant right-of-way agent had already completed his work on right-of-way acquisitions.
16 Consequently, we did not have right-of-way acquisition personnel available to negotiate an
17 easement. PSE approached the property owner to obtain an easement. The property owners
18 suggested that they would sign an easement on the condition that the City of SeaTac would extend a
19 water service line from the street to their property. The City agreed to go along with this proposal
20 only because the contractor had put us on notice that we would be liable for delay costs. Also, the
21 road was torn up and the contractor was available to extend the water service line at that time. We
22 never anticipated this issue until construction was well under way. To the best of my recollection
23 this was an isolated incident, not a standard practice for the City of SeaTac.
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1 19. The City's preference is to locate all of PSE's facilities within the existing right-of-
2 way. If it is determined that there is not sufficient space within the right-of-way to accommodate
3 PSE's facilities, the City of SeaTac will agree to buy easements in the City's name for space
4 sufficient to accommodate all utilities facilities. The City would purchase easements in the City's
5 name, but not for the exclusive use of PSE. The consequence of placing certain operations in the
6 existing rights-of-way is that the relocated facilities would be subject to the terms of the franchise
7 agreement just as the existing facilities are subject to the terms of the franchise agreement.
8
9 Additionally, the consequence of placing utility facilities outside the rights-of-way is that
10 development potential of adjacent private property is diminished.

11 I declare under penalty of perjury under the laws of the State of Washington that the
12 foregoing is true and correct.

13 Executed on August _____, 2001.

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17 THOMAS W. GUT
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the DECLARATION OF THOMAS W. GUT IN SUPPORT OF CITIES' MOTION FOR SUMMARY DETERMINATION filed by the Cities of Auburn, Bremerton, Des Moines, Federal Way, Lakewood, Redmond, Renton, SeaTac, and Tukwila, upon all parties of record in this proceeding, via facsimile, followed by U.S. mail, as follows:

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Dennis J. Moss, Administrative Law Judge
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250

DATED at Seattle, Washington, this ____ day of August, 2001.

Jo Ann Sunderlage
Secretary to Carol S. Arnold