

1 references the land uses receiving electrical current from the overhead facilities to be placed
2 underground. Unreasonable interpretations do not create ambiguity in the clear language of
3 Section 2 simply because another interpretation by conceivable. State v. Tili, 139 Wn.2d
4 115, 985 P.2d 365 (1995).

5 2.6 The factual statements about 92nd Ave. N.E. in the Response from PSE, including the
6 Declaration of Lynn Logan are a distortion of the function, use and character of the street.
7 The Clyde Hill City Administrator Mitchell Wasserman disputes the factual averments
8 made by PSE and Lynn Logan in his attached Declaration (Attachment B). Unlike Mr.
9 Logan who offers no credible verification for his statements from documents identifying the
10 character, use or function of 92nd Ave. N.E., Mr. Wasserman provides such supporting
11 documents to verify his statements. To the extent the Commission determines the character,
12 use or function of 92nd Ave. N.E. even relevant to the issue of the application of Schedule
13 70, Mr. Wasserman's description provides the only credible description upon which the
14 Commission may rely.

15
16 **b. The Three-Phase Distribution System.**

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18 2.7 The existence of the three-phase feeder system along 92nd Ave. N.E. is factually irrelevant
19 except to advance the *boot strapping* arguments advanced by PSE. The phasing of the
20 overhead facilities is not an identified criterion in section 2 of schedule 70.

21 2.8 By PSE's own admissions in its arguments and factual averments, the existence of the three
22 phase *feeder backbone* is necessary only to provide non-residential loads to non-residential
23 users somewhere outside of the conversion area and somewhere outside the City of Clyde
24 Hill. PSE does not even disclose where the commercial users necessitating the three-phase
25 *feeder backbone* are located. PSE only identifies such users as being in *other areas in*
26 *PSE's system that require three-phase service*. See PSE statement of fact no. 20.

27 2.9 PSE even acknowledges that, *[I]n general, PSE installs single-phase systems in areas*
28 *that are purely residential, and does not install three-phase systems in a residential*

1 *area unless load exists in the area that needs such a system. Normally, residential*
2 *areas are served by a single-phase branch of PSE's system that at some point ties into*
3 *one phase of PSE's three-phase feeders. In residential areas, any three-phase system*
4 *is generally limited to feeder backbone to carry load that the single-phase systems tap*
5 *off of, or to carry load from one commercial area to another through the residential*
6 *area... . See PSE statement of fact no. 19.*

7 2.10 The three-phase overhead distribution feeders along 92nd Ave. N.E. in Clyde Hill are there
8 only for the benefit of PSE and downstream commercial users outside of Clyde Hill. It is
9 unreasonable and against the public policy in RCW 80.28.074 and RCW 80.28.020 that
10 Clyde Hill and its residents within the conversion area defined by the LID boundary would
11 pay any percentage of the extra costs of undergrounding the three-phase distribution
12 feeder. Application of schedule 70 fairly and reasonably charges Clyde Hill and its residents
13 for the conversion of the electrical facilities desired by them. The additional costs are fairly
14 and reasonably assumed by PSE and/or by the commercial users needing the three-phase
15 distribution system in their rates and charges.

16 2.11 Section 2 of Schedule 70 make clear that as long as the existing overhead electric
17 distribution lines are of 15,000 volts or less, there is no other characteristic of the existing
18 overhead lines to be considered in determining the application of schedule 70.

1 discrimination in rates as argued by PSE violates RCW 80.28.020, RCW 80.28.074 (3),
2 RCW 80.28.080²

3 2.15 The reference to “public thoroughfares within the Conversion Area” in subsection 3.b. of
4 schedule 70 does not preclude application of the financial arrangements required by
5 schedule 70 from application to private drives within the conversion area. “Centerline foot”
6 can be as easily measured along private drives as it can along public thoroughfares. Simply
7 because the drafter of the tariff was thinking the usual and not the practical realities of the
8 real world where sometime in communities like Clyde Hill there are residential lots off of
9 private drives as well as public streets that does not excuse the appropriate application of
10 the tariff to the residential underground conversion.

11 2.16 PSE’s assumption (for which it offers no authority) that it can simply charge whatever it
12 wants in the absence of a tariff, is contrary to statute and case law. See RCW 80.28.050
13 requires schedules showing all rates and charges. No electric company can charge or
14 demand or collect or receive a greater or less or different compensation for a service as
15 specified in its schedule filed and in effect at the time. In another circumstance where a tariff
16 did not cover all real world situations the Court did not allow the unilateral imposition of
17 charges. *In the absence of any tariff provision covering the matter, the plaintiff would*
18 *be entitled to receive the reasonable value of the service rendered, and we uphold the*
19 *trial court in its holding that the reasonable value of the service was the through rate*
20 *on the loads which were shipped through, and the local rate on the abandoned car*
21 *from the loading point to the point where the car was unloaded and abandoned.*
22 Chicago, Milwaukee, and St. Paul R.R. Co. v. Frye & Co., 109 Wash. 68, 74, 186 P. 668
23 (1919).

24 2.17 The issue of whether or not PSE can be required to underground its facilities on private
25 drives either by the property owner or the City of Clyde Hill raised by PSE in paragraphs
26

27 ² PSE argues it can charge 100% of what it determines to be the costs of conversion outside of any tariff required by RCW
28 80.28.050 for all rates and charges made, and further required by RCW 80.28.080 which prohibit charges outside of a
published tariff.

1 63 through 66 of its Response is a red herring. The issue before the Commission is what can
2 be charged for the conversion. It does not matter if the conversion occurs voluntarily by
3 PSE or due to the demand of the City or of the property owner. The authority of Clyde Hill
4 to demand the underground conversion on private drives is not an issue for the Commission
5 to decide. Clyde Hill seeks a determination of the applicable charges regardless of how the
6 conversion comes about.

7
8 **C. Power of the Commission to Require That The Existing Rates In Schedule 70 Remain**
9 **In Effect For Clyde Hills LID Underground Conversion Project As Part Of Its Order.**

10
11 2.18 PSE notes correctly that there is no Washington State case law on the issue of whether or
12 not Clyde Hill has a vested right to complete its LID project subject to the rates currently in
13 effect by the existing applicable tariff in schedule 70. The California case it cited, Hargrave
14 Secret Service v. PT&T, 78 CPUC 201, 1975 Cal. PUC LEXIS 306 (1975) is wholly
15 inapplicable. Aside from being decided under California law, it dealt with a totally different
16 set of facts that did not involve rates or charges. It dealt with the desire of local private
17 investigators to be listed in the yellow pages under the heading “Investigators” rather than
18 “Detective Agencies”.

19 2.19 It is unnecessary for the Commission to make new law on the issue of the vesting of tariff
20 rates and charges to a project of a City or a property owner. Existing Washington State law
21 already authorizes the Commission to order the existing rates in Schedule 70 not be
22 changed or altered for the Clyde Hill project. RCW 80.04.150 provides that when the
23 Commission finds that charges that are the subject of a complaint *are sufficiently*
24 *remunerative to the public service company affected thereby, it may order that such*
25 *rate, toll, rental or charge shall not be changed, altered, abrogated or discontinued*
26 *...without first obtaining the consent of the commission authorizing such change to be*
27 *made.* RCW 80.28.020 authorizes the Commission to determine *the just, reasonable, or*
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DATED this 1st day of September, 2001.

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

By: _____
Greg A. Rubstello, WSBA #6271
Attorneys for Petitioner
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 1st day of September, 2001.

28

Anita Griffin
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