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8	BEFORE THE WASHINGTON UTILITY AND TRANSPORTATION COMMISSION				
10	CITY OF SEATAC,				
11	Petitioner,	DOCKET NO. UE-010891			
12	v.				
13	PUGET SOUND ENERGY, INC.				
14	Respondent.				
15					
16	CITY OF CLYDE HILL,	DOCKET NO. UE-011027			
17	Petitioner,				
18	v.	CITY OF CLYDE HILL'S REPLY TO PSE'S RESPONSE TO MOTIONS FOR SUMMARY			
19	PUGET SOUND ENERGY, INC.	DETERMINATION AND CROSS-MOTION			
20	Respondent.				
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22	I. RULES AND STATUTES				
23	The City of Clyde Hill in this reply makes citation to the following rules and statutes: RCW				
24	80.04.015, RCW 80.04.150, RCW 80.28.020, RCW 80.28.050, RCW 80.28.074, RCW 80.28.080,				
25	RCW 80.28.090, RCW 80.28.100, WAC-80-030, and WAC 480-80-120.				
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II. REPLY 1 2 PSE is wrong for the following reasons: 3 A. 92nd Ave. N.E. in Clyde Hill 4 5 Street Use, Function and Character. 6 a. 7 2.1 Schedule 70 applies to the conversion of PSE's existing overhead facilities to underground 8 within the entire boundary of the conversion area, including along the 92nd Ave. N.E. 9 portion of the conversion area (Attachment A), described in Clyde Hill Ordinance #836 10 creating LID # 2001-01. 11 There is a single conversion area (Attachment A) with a single unbroken boundary wherein 2.2 12 all overhead electrical facilities are to be converted to underground facilities. 13 The single conversion area in question, including 92nd Ave. N.E. is used exclusively for 2.3 14 residential purposes consistent with both the area zoning and the actual land uses within the 15 conversion area. There are no commercial electrical load users within the conversion area 16 17 (or even within the entire City of Clyde Hill) served by the overhead electrical facilities to be 18 undergrounded by the LID conversion project. There are no non-conforming commercial 19 land uses uses pre-existing the residential zoning of the conversion area There are no commercial land uses present due to authorization by special or conditional use permit. 20 21 2.4 The dual criteria of Section 2 of Schedule 70, to wit: (1) residential zoning and (2) 22 exclusive residential use compliment each other. Exclusive residential use refers to the land uses actually located and receiving electricity within the conversion area despite the land use 23 zoning designation. 24 2.5 The argument by PSE that street traffic is determinative of whether or not a conversion area 25 26 is used exclusively for residential purposes is ludicrous and wholly unreasonable. No street 27 is used for residential purposes. Streets are used for transportation purposes. The only 28 reasonable interpretation of Section 2 is that the criteria of exclusive residential use {GAR488654.DOC;1/00019.050018/900000}

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

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

b. The Three-Phase Distribution System.

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

- 2.8 By PSE's own admissions in its arguments and factual averments, the existence of the three phase *feeder backbone* is necessary only to provide non-residential loads to non-residential users somewhere outside of the conversion area and somewhere outside the City of Clyde Hill. PSE does not even disclose where the commercial users necessitating the three-phase *feeder backbone* are located. PSE only identifies such users as being in *other areas in PSE's system that require three-phase service*. See PSE statement of fact no. 20.
- 2.9 PSE even acknowledges that, [I]n general, PSE installs single-phase systems in areas that are purely residential, and does not install three-phase systems in a residential

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

- 2.10 The three-phase overhead distribution feeders along 92nd Ave. N.E. in Clyde Hill are there only for the benefit of PSE and downstream commercial users outside of Clyde Hill. It is unreasonable and against the public policy in RCW 80.28.074 and RCW 80.28.020 that Clyde Hill and its residents within the conversion area defined by the LID boundary would pay any percentage of the extra costs of undergrounding the three-phase distribution feeder. Application of schedule 70 fairly and reasonably charges Clyde Hill and its residents for the conversion of the electrical facilities desired by them. The additional costs are fairly and reasonably assumed by PSE and/or by the commercial users needing the three-phase distribution system in their rates and charges.
- 2.11 Section 2 of Schedule 70 make clear that as long as the existing overhead electric distribution lines are of 15,000 volts or less, there is no other characteristic of the existing overhead lines to be considered in determining the application of schedule 70.

Schedule 71 Does Not Apply to Facilities Along 92nd Ave. N.E. c. 1 2 2.12 Schedule 71 does not apply to the underground conversion of PSE electrical facilities along 3 92nd Ave. N.E. in Clyde Hill because the criterion of Schedule 70 are met for the entire 4 conversion area. The electric distribution lines are of 15,00 volts or less. The entire 5 conversion area is zoned and used exclusively for residential purposes. PSE has operating 6 rights along 92nd Ave. N.E. The *Conversion Area* ¹ is not less than one (1) city block in 7 length. The remainder of section 2 is inapplicable because it is alternative language 8 applicable only if the Conversion Area is less than one (1) city block in length. 9 2.13 Schedule 71 does not apply to the underground conversion of PSE electrical facilities along 10 92nd Ave. N.E. in Clyde Hill because the Conversion Area (a geographical area) is neither 11 zoned or used for commercial purposes and does not have electrical load requirements 12 which are comparable with developed commercial areas. See section 2. Availability of 13 Schedule 71. All of the electrical load requirements for the three-phase electrical distribution 14 system are outside of the conversion area and of Clyde Hill. 15 16 17 **B.** Private Drives in Clyde Hill. 18 2.14 The underground conversion of the existing overhead electric facilities along private drives 19 within the Conversion Area is also subject to Schedule 70. The public v. private argument 20 is spurious. What difference in conversion costs does it make if the road is private or 21 22 publicly owned? PSE offers no reason for difference. Why should the property owners along a private drive not benefit from the fair and reasonable rate approved for residential 23 underground conversions in schedule 70? Why should they be discriminated against? Such 24 25 26

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¹ Conversion Area is a specifically defined term: That geographical area wherein the Company's overhead electric distribution system is replaced or is to be replaced by an underground electric distribution system. Thus, the term refers to a geographic area not segments within a geographic area defined by street classification and further refers generically to "overhead distribution system" and not to a "single phase distribution system."

discrimination in	n rates as	argued by	PSE	violates	RCW	80.28.020,	RCW	80.28.0)74 (3)
RCW 80 28 080	\mathcal{L}^2								

- 2.15 The reference to "public thoroughfares within the Conversion Area" in subsection 3.b. of schedule 70 does not preclude application of the financial arrangements required by schedule 70 from application to private drives within the conversion area. "Centerline foot" can be as easily measured along private drives as it can along public thoroughfares. Simply because the drafter of the tariff was thinking the usual and not the practical realities of the real word where sometime in communities like Clyde Hill there are residential lots off of private drives as well as public streets that does not excuse the appropriate application of the tariff to the residential underground conversion.
- PSE's assumption (for which it offers no authority) that it can simply charge whatever it wants in the absence of a tariff, is contrary to statute and case law. See RCW 80.28.050 requires schedules showing all rates and charges. No electric company can charge or demand or collect or receive a greater or less or different compensation for a service as specified in its schedule filed and in effect at the time. In another circumstance where a tariff did not cover all real word situations the Court did not allow the unilateral imposition of charges. In the absence of any tariff provision covering the matter, the plaintiff would be entitled to receive the reasonable value of the service rendered, and we uphold the trial court in its holding that the reasonable value of the service was the through rate on the loads which were shipped through, and the local rate on the abandoned car from the loading point to the point where the car was unloaded and abandoned. Chicago, Milwaukee, and St. Paul R.R. Co. v. Frye & Co., 109 Wash. 68, 74, 186 P. 668 (1919).
- 2.17 The issue of whether or not PSE can be required to underground its facilities on private drives either by the property owner or the City of Clyde Hill raised by PSE in paragraphs

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² PSE argues it can charge 100% of what it determines to be the costs of conversion outside of any tariff required by RCW 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.

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

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

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

2.19 It is unnecessary for the Commission to make new law on the issue of the vesting of tariff rates and charges to a project of a City or a property owner. Existing Washington State law already authorizes the Commission to order the existing rates in Schedule 70 not be changed or altered for the Clyde Hill project. RCW 80. 04.150 provides that when the Commission finds that charges that are the subject of a complaint are sufficiently remunerative to the public service company affected thereby, it may order that such rate, toll, rental or charge shall not be changed, altered, abrogated or discontinued ...without first obtaining the consent of the commission authorizing such change to be made. RCW 80.28.020 authorizes the Commission to determine the just, reasonable, or

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sufficient rates, charges, regulation, practices or contracts to be thereafter observed and in force, and to fix the same by order.

III. CONCLUSION

Schedule 70 applies to the underground conversion of existing overhead wires throughout the entire conversion area, including the conversion work to be performed along 92nd Avenue NE and within the private drives contiguous to the city streets in which the underground conversions are to take place. The current schedule 70 should apply to the Clyde Hill Local Improvement District underground conversion project unaffected by any future change in schedule 70 or the approval of any new rates or charges in other tariffs for the underground conversion work identified in City of Clyde Hill Local Improvement Ordinance No. 836. A ruling should be issued deciding the legal issues in favor of the City of Clyde Hill and declaring that:

- 1. Tariff 70 applies to Clyde Hill Local Improvement District No. 2001-01 underground conversion, which is in a residential area that is zoned and used exclusively for residential purposes, regardless of whether the electrical system in the conversion area is single-phase or three-phase, or within the public right-of-way, or within an easement along a contiguous private drive.
- 2. The maximum payment to PSE for the conversions described in Clyde Hill Local Improvement District No. 2001-01 shall be the payments set forth in current Schedule 70, notwithstanding any change in the current Schedule 70, or the adoption of any other tariff changes prior to the completion by PSE of the conversion proscribed in Clyde Hill Local Improvement District Ordinance 836.

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1	DATED this 1st day of September, 2001.
2	OGDEN MURPHY WALLACE, P.L.L.C.
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4	By: Cros A. Dubetello, WSDA #6271
5	Greg A. Rubstello, WSBA #6271 Attorneys for Petitioner City of Clyde Hill
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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:
5	Kirstin S. Dodge
6	Perkins Coie
7	411 - 108 th Avenue NE, Suite 1800 Bellevue, WA 98004
8	Simon Fitch
9	Office of the Attorney General
10	900 Fourth Avenue, Suite 2000 Seattle, WA 98164-1012
11	Scattle, WA 90104-1012
12	Mary M. Tennyson Office of the Attorney General
13	1400 South Evergreen Park Drive SW
14	PO Box 40128 Olympia, WA 98504-0128
15	Olympia, WA 98304-0128
	Dennis J. Moss, Administrative Law Judge Washington Utility and Transportation Commission
16	1300 South Evergreen Park Drive SW
17	PO Box 47250 Olympia, WA 98504-7250
18	Olympia, WA 96304-7230
19	Carol S. Arnold Preston Gates Ellis
20	701 Fifth Avenue, Suite 5000
21	Seattle, WA 98104-7078
22	DATED at Seattle, Washington, this 1st day of September, 2001.
23	
24	
25	Anita Griffin Legal Assistant to Greg A. Rubstello
26	Legal Assistant to Greg 11. Ruosteno
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