BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF AUBURN, CITY OF BREMERTON, CITY OF DES MOINES, CITY OF FEDERAL WAY, CITY OF LAKEWOOD, CITY OF RENTON, CITY OF SEATAC, CITY OF TUKWILA, Complainants, v. PUGET SOUND ENERGY, INC., Respondent.	NO. UE-010911
In the Matter of the Petition of CITY OF KENT, For Declaratory Relief Interpreting Schedule 71 of Electric Tariff G.	NO. UE-010778 DECLARATION OF ANDY LOWREY

I, Andy Lowrey, hereby declare under penalty of perjury under the laws of the State of Washington that the following are true and correct:

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1. I am a Project Manager, Major Projects for Puget Sound Energy, Inc. ("PSE"). My job duties include overseeing major system and public improvement projects including conversions of PSE's facilities from overhead to underground in South King County cities.

A. Conversions and Easements

2. I began my career with Puget Sound Power & Light Company ("PSP&L") in 1979 as a file clerk, then worked from 1980 to 1984 as a drafter in T&D engineering working on substation design drawings and other types of drawings. From1984 to 1986, I served as a drafter at the Des Moines Headquarters developing construction plans for all types of projects including conversions. From 1986 to 1990, I served as an Engineering Assistant at the Enumclaw Headquarters responsible for job package preparation including plans and estimating. I became a Customer Service Planner in approximately 1990, working in Olympia, then Enumclaw, then moving to the South King Service Complex in 1994 and was responsible for design, permit and easement acquisition, construction support, and job close out including billing.

3. I do not recall doing any conversions during this time in my capacity as a customer service planner, as I was working primarily new customer construction projects. However, I was aware and had been trained that whether on line extensions or conversions or any other application, PSP&L design criteria for underground electric systems was to place vaults, switches and transformers on easements on private property, not in city rights of way. I understood that this was for safety and operational reasons (to provide sufficient space to operate and maintain equipment without being in the right of way or traffic) and to avoid expensive future relocation of such facilities.

4. Around 1995, I became a Senior Customer Service Planner, working in PSE's South King Service Complex. I have been responsible for a

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number of conversions since 1997. During the 1997-99 time period, I was the Project Manager for the Main Avenue South conversion in Renton. The original design called for a number of easements on private property. I told Rich Evans, the City Engineer for Renton, that easements would need to be obtained from property owners in the area. Rich Evans told me that the city was in the process of purchasing a property with a structure that had to be demolished to make room for the street improvements. I gave Mr. Evans the option of approaching individual property owners for easements or consolidating as much of the pad mounted equipment as possible on one easement on the newly purchased property. I explained that in either case, if any compensation for the easements became necessary, those costs would be the City's. The City agreed to provide one large easement in PSE's name for placement of two switches, three transformers, and a flush mounted junction box.

5. After we redesigned the system to place the facilities on this easement, City Staff and the City Property Services Department recommended that the City Council approve the easement, but charge PSE $26,000 for the easement for our distribution facilities. Attached hereto as Exhibit A is a true and correct copy of a fax that Margo Cotter from PSE's real estate department sent to me on June 26, 1998, forwarding letters from the City to her on this issue. I told Mr. Evans that PSE refused to pay anything pursuant to Schedule 71 and Mr. Evans asked me to fax Mike Benoit at the City a copy of Schedule 71. Attached hereto as Exhibit B is a true and correct copy of Schedule 71 that I faxed to Mr. Benoit on June 26, 1998.

6. The City continued to dispute the issue for another few months. On July 15, 1998, I sent a letter to Mr. Evans, noting that the City had not signed an Underground Conversion Agreement because it did not agree with some of the terms in the Agreement, and suggesting that PSE and the City enter into a letter agreement of limited scope so that we could proceed with the project. Attached hereto as

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Exhibit C is a true and correct copy of the letter I sent to Rich Evans dated July 15, 1998. On September 9, 1998, Mark Quehrn, a Perkins Coie LLP attorney, sent the City an Underground Conversion Agreement to sign and a letter agreement through which the City would authorize and pay for the beginning of the work while the City Council reviewed the Underground Conversion Agreement. Attached hereto as Exhibit D is a true and correct copy of that correspondence from Mark Quehrn to Lawrence J. Warren at the City. Subsequently, I sent an estimate of the project costs to the City that clearly indicated that the estimate did not include the cost of easements and that such costs would be added to the City's bill. Attached hereto as Exhibit E is a true and correct copy of the letter that I sent to Rich Evans at the City dated September 22, 1998, which states "[a]dditional costs, if any, for redesign, construction delays, private property easements, etc. will [be] the responsibility of the City of Renton." He didn't return the signed letter to me.

7. On October 15, 1998, the City sent Mr. Quehrn a letter stating that the City had signed the letter agreement and that it had sent the Underground Conversion Agreement to the City Council. Attached hereto as Exhibit F is a true and correct copy of the letter from Mr. Evans to Mr. Quehrn dated October 15, 1998. On December 8, 1998, the City signed the Underground Conversion Agreement under which the City agreed to "furnish any and all operating rights required by the Company, in a form or forms satisfactory to the Company," and agreed that "[t]he Company…shall not be required to bear the costs of any easements." Attached hereto as Exhibit G is a true and correct copy of the signed Underground Conversion Agreement. Attached hereto as Exhibit H is a true and correct copy of the easement that the City eventually signed.

8. Thomas W. Gut states in his declaration of August 14, 2001 that there "has always been a verbal understanding between the City and PSE" about relocations or conversions. This is totally false. I have been involved with conversions for SeaTac since 1997. There has never been any "verbal understanding"

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about replacing overhead facilities with underground facilities "within the City rights-of-way on arterial streets." I have always tried to work with SeaTac to minimize the need for easements if there is some difficulty with obtaining easements or placing facilities on private property, but in my communications with SeaTac representatives, I have been clear that PSE will require easements for its facilities, and that PSE will not absorb the costs of the easements. Furthermore, I have made it clear to all municipalities where I perform conversion projects that PSE will not go to construction without a conversion agreement in place. Attached hereto as Exhibit I is a true and correct copy of a letter that I sent to Thomas Gut at the City of SeaTac dated August 13, 1998, which states: "Additional costs for redesign, construction delays, private property easements, etc. will [be] the responsibility of the City." In addition, my correspondence with other cities have been clear regarding easements. Attached hereto as Exhibit J is a true and correct copy of a letter that I sent to Ernest L. Berg at the City of Auburn dated May 19, 1998, which is another typical letter that I send to cities at the beginning of a conversion project. That letter states: "Additional costs, if any, for redesign, construction delays, private property easements, etc. will be the responsibility of the City of Auburn."

9. I have always been very clear with cities that PSE has the final say in designing its electric system, that easements will be required, and that PSE will not be responsible for the costs of easements. For example, in approximately 1998, when I discussed the Schedule 71 easement requirement with Rich Evans of the City of Renton for the Main Avenue South conversion, Rich said, "what does the tariff have to do with me?" He pointed to paragraph four of Schedule 71, and that it refers to property owners. I said he was right about property owners having to provide easements, but I told him that if he wanted the project to go forward, I suggested he take an active role in easement acquisition. I explained to him that under Schedule 71, PSE will not go forward with a conversion project

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without operating rights that are satisfactory to PSE. So if the City is not able to help convince property owners to grant easements to PSE without charge, the City's only option is to purchase the easements for PSE. And if the City refused to do so, the project would not go forward. I also had a conversation with Don Monaghan of SeaTac in September 1998 during the engineering and design phase of the 28th Avenue South conversion that we are finishing construction on now. I told him we would need easements for the job for our facilities. The City had to acquire some additional right of way for its road project. I suggested that the City hold off on sending out its right of way people until PSE had its easements prepared, so that property owners could be approached once on both right of way and PSE easement issues. I have also told Maiya Andrews of Des Moines ever since she started working on the Des Moines SR99 conversion in 2000 that PSE was going to need easements, that the easements would not be at PSE's or its ratepayers' expense, and that if the easements weren't provided there would be no conversion.

10. Mr. Gut and Cary Roe of Federal Way claim that they have "never seen any cost item for easements on invoices submitted to the City by PSE." That may be true, but it does not mean that PSE has been absorbing the costs of any easements. In the past, when I have needed to obtain easements for a conversion, I have sent a "Right of Way Request" to PSE's real estate department. Real estate then works on drafting up easements and property descriptions, and notifies me of any problems with getting easements. I do not recall PSE ever having to absorb the cost of an easement on any of my conversions. If real estate encountered problems with property owners, they would let me know and we would typically try to work out an alternate placement on different private property, or the city made arrangements with the property owners to obtain the easement on PSE's easement form.

11. Mr. Gut also makes inaccurate statements about the Des Moines Memorial Drive South conversion. PSE identified

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its need for easements long before the project went to construction. Attached hereto as Exhibit K is a true and correct copy of my Right of Way Request to PSE's real estate department. PSE's real estate department encountered difficulty getting property owners to agree to provide easements. I told Mr. Gut that we did not have our easements in place yet and could not move forward without them, as provided in the Underground Conversion Agreement. Attached hereto as Exhibit L is a true and correct copy of the Agreement for the conversion. It states: "The Company shall provide reasonable assistance in obtaining such operating rights, but shall not be required to bear the costs of any operating rights."

12. The City worked with PSE and with Sonic Collision, the owners of property on which we needed an easement for a J Box. The City ultimately agreed to extend the water service line to the property in exchange for an easement in PSE's name. Attached hereto as Exhibit M is a true and correct copy of SeaTac's letter to Sonic Collision dated January 4, 2001. We also redesigned the system to replace a pad mounted switch with a submersible switch to be located on the right of way in exchange for the City's agreement to pay for relocation of the switch in perpetuity. Attached hereto as Exhibit N is a true and correct copy of that Agreement.

13. I have been responsible for conversions where not all PSE pad mounted equipment was placed on private property, but only when I felt that such placement made sense from a financial and operational perspective. The primary financial concern is the cost of relocating an underground facility in the future if it is placed on rights of way. Because of the high cost of relocating pad mounted switchgear, it has been my understanding that PSE policy is that switches must always be placed on private easement. I have permitted a switch to be placed in a right of way only three times, as described below. Three-phase, pad-mounted transformers must also always be placed on easement. By contrast, where there appears to be a slim chance of any future relocation and some difficulty

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obtaining easements or some physical problem with placing facilities out of the right of way, it has been my understanding that flush mounted pull vaults and J-boxes might be placed in the right of way (except flush mounted feeder pull vaults that could be retrofitted with a switch). Single-phase mini transformers can also occasionally go in the right of way behind the sidewalk if there is enough space to maintain and operate the transformer. That is because of the small physical size and minimal financial exposure should relocation become necessary.

14. One occasion that I placed a switch in right of way was on the South 170th Street Conversion Phase I in SeaTac. I placed a submersible (total underground) switch rather than a pad mount switch within right of way for two reasons. First, because most of the property along the conversion contained small houses on small lots, this was not a typical commercial conversion with larger, commercial lots. An easement for a switch would likely have eaten up a large part of one of our customer's backyards. Second, because there was not enough space in the right of way to install and operate a pad mounted switch, I went to a submersible design to minimize the required operating space. It is my understanding that I was the first Project Manager at PSE to utilize the new submersible switchgear on a conversion project to resolve this type of problem. The problem with installing submersible switches is that they are twice as expensive as pad mount switches. On the other hand, I felt the exposure to PSE of future relocation was not very high with this type of flush mounted, submersible equipment installation in this particular area. This decision was a PSE judgment call, taking into account all the above circumstances.

15. The second occasion when I placed a switch in right of way was for in the City of SeaTac 28th/24th Ave South conversion, at the intersection of 28th Avenue South and South 192nd Street, otherwise known as the "Alaska Airlines switch." SeaTac was well aware that PSE would require easements for its facilities. Attached hereto as Exhibit O is a true and correct copy of my Letter to Dale Schroeder of the City

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of SeaTac dated June 8, 2000, where I state: "I would also like to emphasize that PSE has all along during planning for this project maintained our position that without easements, PSE could not proceed." I encouraged him to continue to work with PSE's real estate department to negotiate the easements. In the end, the property owners at the intersection with sufficient space for a switch on their property would not grant an easement, they would not even offer to sell an easement. I placed a pad mounted switch in the right of way after SeaTac agreed that it would be responsible for the costs of relocation in perpetuity. In addition to the "Alaska Airlines switch," PSE placed a second switch in the right of way under the same perpetuity agreement. Attached hereto as Exhibit P is a true and correct copy of the correspondence documenting that agreement.

16. The third occasion I placed a switch in right of way was the Des Moines Memorial Drive conversion described above, where PSE obtained the protection of a perpetuity agreement for future relocations.

17. The cities' declarations bring up a few conversions here and there where the number of easements were reduced or facilities were placed on rights of way. As I have described, sometimes the original design can be modified to reduce the number of easements or to concentrate facilities on a large easement if there is difficulty obtaining easements. However, there have also been cases in the past few years where conversions, in my opinion, do not comply with PSE's standards. I believe that these problem conversions have arisen partly out of serious intimidation and pressure by city staffs. I have found Federal Way particularly difficult to deal with over the past few years.

18. When Greg Zeller came into my department in April 2000, he insisted that Project Managers were supposed to ensure that PSE's pad mounted facilities were to be placed on easements, not in city rights of way, and that no conversion were to go forward without signed contracts. It seemed to me that when

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Greg became aware of the difficulties Project Managers were having, we got a lot more backup than we had gotten since the merger. Greg and Lynn Logen started dealing directly with cities on the difficult conversions. We were still able to redesign at times to reduce the numbers of easements from an initial design where that made sense, but we had backup in insisting that most of PSE's facilities be placed on easements, especially pad mounted switches and transformers.

19. In James F. Morrow's declaration of August 8, 2001, he claims it is Tukwila's standard practice "to locate underground services in the same rights-of-way with gas, water, telephone, and telephone services." But Exhibit A to his declaration just shows how much space is needed around a pad mounted switch. It does not say anything about putting such a switch in the right of way. Exhibit B to his declaration shows details of a cross section of a typical joint utility trench. There are no vaults, pad mounted switches or transformers referenced in the drawing. The joint utility trench cross section details shows standard separation of conduits in a right of way but has nothing to do with locating vaults, switches or transformers in rights of way.

20. Mr. Morrow also claims that he is worried about other utilities buying easements for facilities. The fact is that other utilities, particularly telecommunications utilities, often follow PSE into its easements. PSE permits placement of other utilities' facilities in its easements as long as they do not interfere with operation or maintenance of PSE's facilities. As I understand it, PSE's easements are not "exclusive."

21. Cary Roe's declaration that is not dated states that for the Federal Way South 348th Street conversion in 1995, PSE did not inform Federal Way that PSE required easements or that the City pay for such easements. That is not correct. I was not the Project Manager on that project, but I have reviewed the plans and file for the project. The file shows that Glen Thomas, the engineer for the project, was very clear with the City regarding easements. Attached hereto as Exhibit Q are true and correct

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copies of a number of documents from the project file. In the file, Mr. Thomas noted that the City had suggested to him that certain PSE facilities should be placed in City right of way, but that he had made it clear to the City that "without [the easements] we do not have a project." *See* Exhibit Q, p. 1. In a letter sent to the City that discussed the project estimate, Mr. Thomas specified that the City would be responsible for easements purchased by PSE in addition to the project cost: "In accordance with our filed rates, Schedule 71, the charge to the City of Federal Way is $36,094.50 due on completion of the project. Any easement paid by Puget will be additional." *See* Exhibit Q, p. 2. The Underground Conversion Agreement signed by the City states, "[t]he cost to Puget of any easement on privately owned property which Puget must obtain shall be reimbursed by the City." Attached hereto as Exhibit R is a true and correct copy of the executed Underground Conversion Agreement dated May 2, 1995. Notes in the file further indicate that after the Underground Conversion Agreement was signed, the City agreed to pay $450.00 to a property owner for an easement. The City asked that Mr. Thomas write the check and that PSE bill the City later. *See* Exhibit Q, p. 3. The file also indicates that Mr. Thomas followed through by requesting that a check be sent to the property owner. The request noted that the "City of Federal Way will reimburse us for this total amount." *See* Exhibit Q, p. 4. PSE got the easements it needed for the project. *See* Exhibit Q, p. 5. True and correct copies of PSE's check request and the purchased easement are attached as Exhibit S.

22. Cary Roe states that the City was not billed for the easement. The invoice he attached to his declaration is not the final bill for the project. A true and correct copy of the final invoice is attached as Exhibit T. I have not found any indication in the file that the $450.00 amount the City was supposed to reimburse PSE was billed separately to the City. It appears that the Project Manager did not break out the line item for this charge,

and instead included it as part of the total cost of the project that

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was shared by PSE and the City. Attached as Exhibit U is a true and correct copy of PSE's work order system detail charges information showing that the cost of the easement was billed to the work order for the job. It does not surprise me that this cost was not broken out and billed separately, given the small cost of the easement.

23. I took over the South 312th project in Federal Way from Mike Copps. By that time, the engineering was complete and the city's utility easement was already in place, I was just responsible for managing the construction and final billing. Mike Copps has the historical information on that issue. I had never seen such a city-held easement before for PSE's facilities but assumed Mike asked for and received approval to go forward with that easement.

24. I was responsible for the City of Federal Way South 320th Street conversion Phase I project. PSE did not place all of its facilities in the right of way. The City made it difficult for PSE to obtain easements for its facilities by purchasing exclusive landscaping frontage easement along a significant portion of the conversion route before any PSE easements were in place. The reasons the City feels it is necessary to pursue "exclusive" landscaping easements fronting its street improvement projects is unclear to me. It is my opinion that the exclusivity of these landscape easements was designed to exacerbate PSE's (and other utilities) attempts to secure easement, thus controlling what goes on beyond the edge of right of way and forcing PSE's facilities into the right of way.

25. PSE placed its flush mounted J-Boxes and pull vaults in the right of way. However, PSE placed its pad mounted transformers behind the right of way on private property, and placed a switch for the project on an easement PSE purchased. Also, there was inadequate space in the right of way for double feeder pull vaults, so PSE obtained an easement for overlap onto private property and onto the City's exclusive landscaping easement. The discussions with City staff over the issue of

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placement of the two feeder pulling vaults in question were interesting. One of the two flush mounted pulling vaults had to be placed partially onto private property because there was insufficient room in existing rights of way. The private property where the vaults would be placed was in the area where the City had obtained their exclusive landscaping easements. The City insisted that PSE could go ahead with installation because the private property behind rights of way, within the exclusive landscape easement area, according to City staff, is now considered part of the city's public thoroughfare and the installation would be no problem. I rejected this assertion and asked PSE's real estate department to obtain an easement for the pulling vault.

26. The 320th Street conversion is the only time I know of where PSE purchased easements for one of my Schedule 71 conversions. The cost of the easements will be billed to the City when the billing is sent out, as provided in the Underground Conversion Agreement for the project. A true and correct copy of that Agreement is attached as Exhibit V, which provides that PSE shall not be required to bear the cost of any necessary easements, and that the cost of such easements shall be reimbursed in full by the City.

27. Federal Way understands PSE's position related to placement of its facilities in rights of way with respect to operational and safety issues. Federal Way also understands the significant cost issues involved in whether PSE's underground facilities are on easements in PSE's name or in the right of way. I was responsible for a relocation of underground facilities in Federal Way in late 1999/early 2000 for Winco Foods Store at the intersection of Campus Way and First Avenue South. PSE has existing parallel feeder circuits in the area and PSE's existing underground facilities were located on both frontage easement and within rights of way. The City required Winco to dedicate an additional twenty feet of new rights of way and construct new turn lane channelization, thus widening the road exposing the buried feeders.

PSE required Winco, as a condition of new service, to provide

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replacement easement for PSE and pay PSE 100% of the costs of the relocation. Winco ended up paying over $200,000 for the relocation. Federal Way representatives were involved in numerous meetings regarding this relocation. The City has been even more aggressive with respect to easement issues ever since, doing everything they can to prevent PSE from placing any of its underground facilities on PSE easements.

B. SeaTac South 170th Street Conversion, Phase II (30%/70% issue)

28. I am the Project Manager on Phase II of the SeaTac South 170th Street Conversion. I was also the Project Manager on Phase I of the SeaTac South 170th Street Conversion. Thomas W. Gut states in his declaration of August 14, 2001, that SeaTac only paid 30% of the costs of the conversion for Phase I, although some of the existing poles would have been located in the middle of the sidewalk if they remained in place.[1] While Mr. Gut is correct, there is more to that story than in his declaration.

29. Phase I of South 170th Street was completed on September 21, 1999. PSE's Rate Schedule Interpretation No. E-71-3 had not yet been issued at that time. After I started being responsible for conversions in 1997, but before RSI E-71-3 was issued, I typically applied the 30% cost sharing to Schedule 71 projects if a lane was being added and the existing poles would be in the lane or sidewalk after the conversion.

30. I was aware of PSE's RSI E-71-3 when it was issued, but I was not thinking of the six inch requirement regarding the 30%/70% split at the time I issued the Underground Conversion Agreement for Phase II of the project. Planning for the conversion of South 170th Street took place in 1997 and 1998, and the project was initially planned to all be done in one phase. In the

[1] There seems to be a typo in Mr. Gut's declaration at paragraph 4. He states that the conversions he lists were done under Schedule 70, when in fact they were done under Schedule 71.

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middle of the design process the project was broken up into two phases, with Phase II being deferred while Phase I went forward. When I issued the Underground Conversion Agreement for Phase II, I gave SeaTac the 30% contribution requirement because that was consistent with Phase I. Mr. Logen later asked me for details about the project, including where the existing poles would be located after the street improvement project. I informed him that they would be more than six inches from the street side of the curb. When I did so, I was looking at plans that had been reduced to 11" x 17". I had to look at them with a magnifying glass. I thought I was correct about the pole placement, but found out later from enlarged plans that only six of the eight poles would be more than six inches from the street side of the curb.

31. Mr. Gut also claims that several other conversions were done in SeaTac based on a 30% contribution by the City. However, all of the conversion agreements for those projects were signed or sent out before RSI E-71-3 was issued on July 15, 2000.

C. Federal Way South 320th Street/23rd Avenue South Conversion

32. I am the project manager for the conversion that Federal Way has requested of PSE's overhead facilities along South 320th Street in Federal Way. All of the overhead facilities along South 320th Street are in PSE easement, and Federal Way's street improvements will not encroach on the easements.

33. Federal Way has also requested that PSE underground its overhead facilities on 23rd Avenue South between South 320th Street and South 322nd Street. All of PSE's facilities along 23rd Avenue South in the area of South 320th Street are already underground, except a single span of wire and two poles. The length of the overhead facility is 185 feet, and is far short of even one city block. In addition, after I quoted the project to the City, Federal Way came back to me and asked me to quote the project in two separate quotes because they wanted to handle it as two different projects.

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34. Neither of these two projects qualify for schedule 71 because the facilities along South 320th Street are off rights of way on a PSE easement and the length of the existing overhead system along 23rd Avenue South falls far short of the minimum required the continuous blocks specified in schedule 71.

Executed this _____ day of _____________, 2001, at ___________, Washington.

____
Andy Lowrey

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