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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,

NO. UE-010911

Complainants,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

In the Matter of the Petition of

NO. [UE-010778](#)

CITY OF KENT,

DECLARATION OF GREG ZELLER

For Declaratory Relief Interpreting
Schedule 71 of Electric Tariff G.

I, Greg Zeller, 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. Since February 2001, I have been the Manager, Total Energy System Planning for Puget Sound Energy, Inc. ("PSE"). My current job duties are not related to conversions.

However, I have historical experience with PSE's conversions of its overhead facilities to underground from my career with Puget Sound Power & Light Company ("PSP&L") and PSE.

2. I began working for PSP&L as an entry-level drafter in 1973, working on projects in Renton. I worked my way up through increasingly progressive engineering responsibilities over the next ten years. From 1984 through 1986, I was a Customer Service Engineer responsible for projects involving industrial areas in Des Moines and Kent. From 1986 through 1990, I was the Supervisor of the customer service engineering group that was responsible for the Kent, Des Moines and Normandy Park area as well as surrounding areas of unincorporated King County. From 1990-1992, I was the Engineering Manager of PSP&L's South King County Division, responsible for Auburn, Federal Way, Des Moines, Enumclaw as well as surrounding areas of unincorporated King County. From 1984 to 1992, I worked on and was aware of how PSP&L handled conversions and easement issues, as described in more detail below.

3. In 1992, I moved into PSP&L's general office and worked on projects that were not related to conversions. However, my job duties returned to conversion issues in April 2000, when I became Manager, Project Services for PSE. In approximately May 2000, I was made Interim Director, Major Projects for PSE, and had continued responsibility for relocations and conversions, where I remained until February 2001. In these capacities, I oversaw PSE's Project Managers (formerly called Customer Service Engineers) who were working on relocations, conversions and other utility work.

4. In my training with PSP&L, I was taught to design underground electrical systems to place vaults, transformers and switches on easements on private property rather than in city rights of way, not only for conversions

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but for all projects undertaken by PSP&L. I understood this to be an important rule of system design, for operational, safety and cost reasons. As I understood it, PSP&L needed to ensure that there would be sufficient space around its facilities to be able to operate and maintain them without having employees have to work in lanes of traffic. PSP&L also needed to protect itself from having to relocate underground facilities, since they are much more expensive to place and relocate than the comparable overhead facilities.

5. From 1986 through 1990, as Supervisor of the customer service engineering group that was responsible for Kent, Des Moines and Normandy Park area as well as surrounding areas of unincorporated King County, I was responsible for assuring that the staff was getting underground conversion contracts executed for all conversions. I understood those contracts to require that easements would be provided for placement of PSP&L's facilities such as vaults, switches and transformers, at no cost to PSP&L. I found that junior engineers did not always know that they should obtain a contract before proceeding with a conversion, and I made sure that they learned they had to get the contracts signed before investing PSP&L's resources in a conversion. I also checked to make sure that they were placing our pad mounted facilities on private property on easements as a rule, and that they had an acceptable reason for placing any other PSE facilities in public right of way.

6. When an easement was needed for PSP&L facilities, the Customer Service Engineer would send a "right of way request" to PSP&L's real estate department to secure an easement on a particular parcel. The real estate department obtained the legal description and contacted the property owner. If the property owner refused to provide an easement or demanded to be paid, real estate would contact the Customer Service Engineer. Since PSP&L was not required to pay for any easements, the Customer Service Engineer generally would work with a city to try to resolve the

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situation. Sometimes cities were able to work things out with property owners. It was not uncommon for a Customer Service Engineer to redesign a project to place the facility on a different piece of private property, where it might be easier to obtain an easement. I do not recall any case in which PSP&L paid a property owner for easements related to a conversion, except when it did so on behalf of a City to be reimbursed by the City.

7. I have reviewed PSE's files regarding the West Meeker Street Conversion in Kent in 1984. Attached hereto as Exhibit A is a true and correct copy of the Underground Conversion Agreement executed by Kent and dated May 21, 1984 for that conversion. The Agreement states:

City recognizes that Puget requires the owners of real property to be served by the Main Distribution System to provide, at their expense, space for all underground electrical facilities which must be located on *privately owned property* and that said owners shall grant such operating rights as may be necessary therefor. *The City recognizes that the procurement of such operating rights is a prerequisite to release this conversion project for construction. Puget shall use its best efforts to obtain the same but; will not be required to pay for an easement.*

Exhibit A, ¶ 8 (emphasis added). In conformity with PSP&L's standard practice, the PSP&L engineer sent a "Right-Of-Way Request" to PSP&L's real estate department to secure easements on several parcels. Attached hereto as Exhibit B is a true and correct copy of the Right of Way Request for the project dated February 23, 1984. PSP&L obtained the requested easements, true and correct copies of which are attached hereto as Exhibit C. There is no indication in the file that the property owners demanded any compensation for the easements.

8. It is interesting to note that PSE is currently relocating some of its facilities that were placed underground as part of the West Meeker Street Conversion in 1984. The City of Kent is paying 100% of the costs of relocating PSE's facilities that were placed on easement as opposed to in the public right of way. I believe that as PSE

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facilities in some of these older conversions have started to be relocated in recent years, cities such as Kent have been forced to face up to the costs involved in relocating underground facilities. In my opinion, the cities have increased their pressure to force PSE's facilities off of private property and easements and onto public rights of way so that the cities have greater control over the facilities and do not have to absorb future relocation costs.

9. As described above, I was not involved with conversions from 1992 until April 2000. I returned to having responsibility for conversions in April 2000, when I became Manager, Project Services. In that position, the entire project management group reported to me. By that time, the title of the person responsible for conversions had changed from Customer Service Engineer to Project Manager. As I became aware of the details of conversion projects, I felt that some project managers had drifted away from PSE's standards with respect to placing PSE's facilities such as vaults, transformers and switches on private property on easements. In my opinion, this was due in part to project managers being very busy and in part to some discontinuity in training and experience that resulted from the merger with Washington Natural Gas in 1997, in which project managers with gas experience started being assigned to manage electric projects, and had to learn about PSP&L's electric system and Tariff.

10. I also became aware that certain cities were seeking to push project managers into not obtaining easements with respect to conversion projects to keep projects on schedule. It was my understanding that representatives of the cities had begun meeting as a group and that they were pushing back on PSE's conversion contract requirements including that easements be provided for underground conversions. At that time, PSE and the cities had begun the early planning phases with respect to sections of the Pacific Highway South projects.

11. Once I became aware of these issues, I began directing the project managers to adhere to PSE's standards with

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respect to the design of underground systems. I reminded project managers that underground conversion agreements must be signed before moving forward with any conversion. I also demanded that systems be designed so that pad mounted switches and transformers would be placed on private property on easements. I was aware that some vaults and transformers were being placed in rights of way under appropriate circumstances and in PSE's sole judgment. For example, it sometimes made sense to place surface-mounted pull vaults in rights of way to make pulling cable easier (to avoid adding bends to the conduits that the cables were being pulled through, thereby limiting the pulling distances). Also, I felt that single-phase, pad mounted transformers could sometimes be placed in rights of way if there was difficulty obtaining easements, due to the smaller size of such transformers.

12. However, I did not and do not feel that placement of three-phase, pad-mounted transformers or switches in rights of way is appropriate, because of the difficulties associated with operation and maintenance of such facilities in rights of way and the tremendous costs associated with relocation of such underground facilities. I also did not and do not feel it is appropriate to place pull vaults and mini transformers in rights of way as a matter of course, merely because cities object to PSE placing the facilities on easements or to paying for the easements. Deviations from PSE standards are only to be on a case-by-case basis and in the sole judgment of the PSE designer, in consultation with supervisors.

13. The Kent 256th Street Conversion was not typical with respect to placement of PSE's facilities. When I began my tenure as Manager, Project Services, this project was already underway, so I was not involved in any of the decisionmaking. I was, however, aware of some aspects of the project as it was going forward, and I have reviewed the project file. I believe that, under considerable pressure from the City of Kent, the project

manager for the 256th Street Conversion, Dan Swan, exercised his

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discretion regarding the placement of easements for such projects in a way that is not consistent with PSE's standards. Mr. Swan is currently out on medical leave and we are unable to contact him. However, I remember Mr. Swan expressing his frustration with dealing with Kent on the conversion.

14. The project was initially to be a relocation, but then changed to an underground conversion project, as shown in the project log for the South 256th Street project, a true and correct copy of which is attached hereto as Exhibit D (except that a list of PSE employees and phone numbers has been redacted from page 1). The underground conversion was designed to require six easements. An easement request was sent to PSE real estate to prepare the necessary easements. *See* Exhibit D, 07-15-99 entry. On September 3, 1999, Thom Davis, a real estate consultant for PSE, sent a letter to Jerry McCaughan of the City of Kent enclosing six easements in PSE's standard form so that the City could negotiate with the property owners and obtain the easements. Attached hereto as Exhibit E is a true and correct copy of that letter. The project file does not contain copies of the enclosures referenced in the letters. The City responded by requesting that PSE obtain the required easements rather than the City because the City did not have staff available to do the negotiations. It appears that PSE understood that PSE would obtain the easements and that PSE would bill the City for the easements at the end of the project. That understanding is reflected in the handwritten note on Exhibit E which states: "Per Jerry the City doesn't have the time nor the resources to negotiate easements for PSE." It is also reflected in the 09-21-99 entry in the project log, which states: "Thom Davis informed me that Jerry McCann [sic] (City of Kent) told us that they preferred that we obtain our own easements. Thom will charge his time to the order and we will bill the City with the final billing." Subsequently, Mr. Swan and Dennis Johnson, a design engineer for the City of Kent, agreed to redesign the project such that fewer easements were required. *See*

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Exhibit D at 10-27-99 entry. I do not understand why Mr. Swan agreed to place many of PSE's other facilities in the right of way.

15. The costs for two easements that were obtained, for \$2,356.00, should have been billed to the City under Schedule 71 and the Underground Conversion Agreement for the project. A true and correct copy of that Agreement dated April 14, 2000, is attached as Exhibit F. The Agreement states that "the City shall at its expense obtain...[a]ny and all operating rights required by the Company pursuant to paragraph 8 of this Agreement, in a form or forms satisfactory to the Company." Exhibit F, ¶ 4(B)(b). Paragraph 8 provides, among other things: "If requested by the City, the Company shall provide reasonable assistance in obtaining such operating rights, but shall not be required to bear the costs of any operating rights," and that the cost "of assisting in obtaining any such operating rights on privately owned property shall be reimbursed in full by the City...." The costs of the easements were billed through from PSE's real estate department to the work order number for the project. However, I have been unable to determine to date whether the cost was broken out and billed separately to the City at 100%.

16. As tensions with the cities increased over issues surrounding PSE's Underground Conversion Agreement, I began working extensively with Lynn Logen, PSE's Tariff Consultant. Several cities were challenging PSE's right to place its facilities on easements, and claiming that they had no obligation to absorb the costs of easements. Among other things, they started to claim that PSE's historical Underground Conversion Agreements did not place any responsibilities on them with respect to easements, and that PSE must pay for any easements. In response, Mr. Logen and I worked together to make the agreement even more explicit with respect to the cities' responsibilities consistent with our past practices and Schedule 71.

17. The cities then began to balk at signing the more explicit agreements. It appeared that some cities had adopted a

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tactic of delaying signing any agreement until the last minute, and then threatening PSE with delay damages when PSE insisted that easements must be obtained for the conversion. Mr. Logen and I were not willing to play that game any longer, as we felt the cities were abusing project managers and ignoring PSE's Tariff requirements. I thus put my foot down, refused to permit underground conversions to proceed without a proper contract in place, and instead insisted that PSE would relocate overhead facilities, if necessary, but would not perform underground conversions without a contract in place that assured that PSE would be able to place its facilities on easements without being forced to absorb the costs of the easements. Unfortunately, by then, a few conversions had been performed or were underway in which cities had managed to intimidate project managers into going forward with conversions that did not meet PSE's standards.

Executed this ____ day of _____, 2001, at _____, Washington.

Greg Zeller

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