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 LYNN F. LOGEN

I, LYNN F. LOGEN, 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 the Tariff Consultant for Puget Sound Energy, Inc. ("PSE"). My job duties include overseeing implementation and application of PSE's tariffs, including Schedule 71 of Electric Tariff G, which is at issue in this proceeding.

2. I have been PSE's Tariff Consultant since 1997. Prior to that, I held the position of Manager, Rates and Tariffs for seven years. In that position, I had the same job duties as I currently have as Tariff Consultant. For approximately 15 years prior to that, I held various management positions for PSE in rates and regulation, billing and customer service departments, which required extensive knowledge of PSE's tariffs. My training and responsibilities in my current position include understanding PSE's electrical system, including system requirements and costs.

3. PSE has not refused to relocate any of the overhead facilities that are at issue in this proceeding. PSE representatives, including myself, have repeatedly told representatives of the cities that PSE will relocate the existing overhead to new overhead locations if the cities are not willing to comply with the requirements of Schedule 71 to obtain conversion of the existing overhead to underground. Thus, the question is not whether the Pacific Highway South projects can proceed, but whether the cities are entitled to demand that PSE convert its overhead facilities to underground as part of that project, rather than moving the existing overhead to new overhead locations to accommodate the road project.

A. Safety, Operational and Cost Issues Associated with Placement of PSE's Underground Facilities

4. Pursuant to Section 4 of Schedule 71, PSE intends to design its underground system for the Pacific Highway South projects so that facilities other than cable and conduit are placed on private property, including pad-mounted facilities, vaults for junctions ("J-boxes"), vaults for pulling cable, transformers and associated vaults, and switches and associated vaults. As described in Mike Copp's declaration,

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PSE intends to do so for safety, operational and cost reasons. It may make sense during the course of construction to install some of these facilities in public rights-of-way, depending on the physical characteristics of the conversion areas and if there are difficulties obtaining easements from property owners, as described in the other declarations submitted with PSE's response. In particular, many flush mounted pull vaults and J-boxes are likely to be placed in the public rights-of-way.

5. However, the decision whether and when to do so is a matter that Schedule 71 leaves to PSE's judgment depending on the particular facts of a conversion. PSE's judgment whether to do so or not depends in part on the degree to which PSE is protected from having to absorb the costs of future relocations of facilities installed in public rights-of-way. PSE's facilities cannot be forced into the public rights-of-way merely because the cities wish to exert greater control over PSE's facilities or to avoid any cost responsibility for their decisions regarding where underground facilities are installed and when and whether to relocate these underground facilities in the future.

6. PSE's form easement preserves the setback requirements for PSE's facilities described in Mr. Copp's declaration, and prohibits uses of the easement area that are inconsistent with the continued operation, repair and maintenance of PSE's facilities. *See* PSE's Current Form Easement, Stipulated Exhibit 19, and PSE Standard 0300.8000, Easements, Stipulated Exhibit 20, true and correct copies of which are attached hereto.

7. When facilities are placed in public rights-of-way, which are controlled by municipalities and not PSE, PSE is subject to encroachment into the clearance zones around its facilities by other users of the right-of-way or adjacent property owners. These problems are not eliminated by placing facilities in planting strips or sidewalks.

Moreover, even if clearances for installation of facilities could be

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ensured in rights-of-way, permit and traffic-control requirements for work performed in rights-of-way can result in significant delays when PSE needs to access its facilities. This could result in lengthening the time of an outage when repair work must be performed to restore service in an area served by underground facilities. For routine maintenance of facilities in rights-of-way, PSE must obtain a permit from the relevant city. The time required for issuance of a permit varies by city, from seven to thirty days or more.

8. PSE's workers are also subjected to increased hazards if they must perform work in rights-of-way rather than on private property. The Cities note that lane closures are often used for work on overhead systems. However, while working on overhead systems, workers are either on the pole or in the bucket of a lift truck. By contrast, work on underground systems requires workers to stand in the street or in a trench below street level. They must often stand some distance from their vehicles to allow for clearances from the equipment. Thus, working on underground systems increases workers' exposure to the hazards of vehicular traffic.

9. The Cities claim that relocation costs are a cost of doing business for utilities. As a vague generality, that is true. However, PSE's entire system is designed using "least cost" methods in order to lessen the impact of construction costs, including costs for installation, conversion and relocation, on rates. Least-cost principles support designing underground systems so they are installed primarily on private property and not in public rights-of-way. Locating facilities on private property not only saves PSE from bearing cost responsibility for relocations, it also reduces the need generally for the facilities to ever be relocated, because they are out of the way of the public streets. Least-cost principles do not support installation of total underground equipment just so that facilities can be placed in public rights-of-way, as the Cities suggest, because that equipment is significantly more expensive than pad mounted equipment.

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10. If PSE had to pay for easements, then those costs would be capitalized, potentially resulting in increased rates to all ratepayers in the future. Similarly, if PSE is forced to install underground distribution systems in the rights-of-way, then PSE's construction costs will be greatly increased by the costs of relocating underground systems. The Cities claim that the cost of easements can be avoided if PSE locates its facilities in the rights-of-way, which it can do "for free." PSE faces many costs associated with installing its facilities on public rights-of-way rather than on easement, such as costs of relocation, permits, traffic control and street restoration. If facilities are undergrounded in rights-of-way rather than on easement, and must therefore be relocated at PSE's expense in the future, the costs of such relocations would ultimately flow through to ratepayers. Over time, the cost of relocating underground facilities is likely to be far more expensive than the cost of obtaining and purchasing easements.

11. PSE has long operated on the principle that the costs of undergrounding should be localized to the area in which the undergrounding occurs, and not spread throughout ratepayers in PSE's territory. If that model is to change, then fundamental questions would need to be addressed, including whether Schedule 71 should provide any subsidy for undergrounding, whether cost-causers should pay for relocation costs when undergrounded facilities are relocated, and whether areas with underground facilities should pay higher rates for electric service than areas with overhead facilities. The Cities claim that "rates are spread across classes, not geographic regions." Cities' Motion at 22. However, PSE has had different rates for rural and urban areas as well as for areas where power supply costs historically were different than for other areas. Rates based on such differences were approved by the Commission, and the Commission might well wish to approve higher rates for areas that have chosen to pursue installation of underground electric systems.

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12. The Cities claim that PSE avoids expenses associated with underground conversions because cities are required to pay for 100% of trenching, restoration and surveying costs, and 30% or 70% of the remaining costs of a conversion. Cities' Motion at 21-2. It is true that cities must pay such costs under Schedule 71. However, the cost sharing provisions of Schedule 71 are not a "benefit" to PSE, but rather to entities requesting conversions. While PSE subsidizes 30% or 70% of the costs of conversion under Schedule 71 other than trenching, restoration and surveying, Avista Corporation requires entities requesting conversions to pay 100% of the costs of such conversion. A true and correct copy of Avista's relevant tariff schedule is attached hereto as Exhibit R. I note that Avista also has discretion to determine where its underground facilities will be installed, and to require that easements be provided as a condition of a conversion.

B. Obtaining Easements Under PSE's Underground Conversion Agreement

13. The cities have refused to execute Underground Conversion Agreements for the Pacific Highway South projects. A copy of the form Underground Conversion Agreement ("Form Agreement") that the cities should sign if they wish for undergrounding to proceed on their projects is found at Stipulated Exhibit 16, a true and correct copy of which is attached to this declaration. PSE has also requested that the cities execute Engineering Agreements in order to permit engineering to go forward despite the cities' refusal to sign Underground Conversion Agreements. A sample Engineering Agreement is found at Stipulated Exhibit 15, a true and correct copy of which is attached to this declaration. The cities have also refused to sign such Engineering Agreements because they provide that '[t]he cost for obtaining any easements deemed necessary by PSE will be the City's responsibility."

14. The terms of the Form Agreement speak for themselves, and I do not repeat them here. However, I would like

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to explain the reasons for one provision. PSE's requirement that a city obtain PSE's approval for obtaining operating rights on private property before going out and getting any such rights is meant to ensure that PSE has a chance to inform the city about the form of easements that will be required, so that the city does not obtain insufficient easements and then have to return to the same property owners for revised easements. PSE does not care whether a city obtains the operating rights or asks PSE to do it, as long as the operating rights are on PSE's easement form and as long as the city reimburses PSE if PSE obtains the easement and has to pay the property owner for it.

15. I believe that PSE's Form Agreement is fully consistent with Schedule 71. However, after consideration of Kent's Motion, I believe that it would be appropriate to revise the Form Agreement in one respect, at Sections 1.b. and 8, regarding certain costs associated with easements.

16. Kent's Motion complains about being asked to pay 100% of all costs associated with easements, arguing that even if a property owner provides PSE with an easement for free, PSE nevertheless necessarily incurs some costs associated with determining what easement is required, drafting the legal description for the easement, preparing the easement, and similar tasks. To my knowledge, this particular objection to the Form Agreement had never been raised prior to Kent's Motion. I thought Kent's Motion raised a good point that I had not considered before, and I have further researched and thought about this issue.

17. I have concluded that Kent's point that a city should not have to pay 100% for *all* costs associated with easements is well taken, because it is true that PSE incurs certain costs as part of the total costs of a conversion even if a willing property owner provides an easement for free under Section 4 of Schedule 71. Such costs would include staff time to prepare and present easements and possible survey fees associated with preparation of the easement. PSE therefore is willing to roll all such costs into the

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costs of the conversion that it shares with cities rather than asking cities to reimburse 100% of those costs. Pursuant to Schedule 71, cities should still be required to pay 100% of (or reimburse PSE for 100% of) all payments actually made to property owners for the cost of an easement, including related attorneys' fees if the property owner is entitled to such fees pursuant to statute. Cities should also have to pay costs that a property owner would be required to pay in connection with providing an easement to PSE. Such costs include studies or surveys required by governmental agencies, as occasionally happens in wetlands areas. PSE requires the property owner to pay the costs of such studies and fees as part of the property owner's duty to provide an easement. Cities should also be required to pay the costs of any excise tax on an easement where compensation is paid for the easement. The Form Agreement should be revised accordingly.

18. While Schedule 71 does not explicitly set forth the procedure under which operating rights are to be provided in a city-driven conversion, the provisions in PSE's Form Agreement under which PSE will agree to obtain easements for cities on the condition that the cities reimburse PSE for the cost of the easements are fully consistent with Schedule 71. They represent an attempt to cooperate with cities to move conversions forward while still protecting PSE from having to absorb the costs of such easements, in violation of Section 4 of Schedule 71.

19. There are other provisions in the Form Agreement that are also not explicitly set out in Schedule 71, but that are consistent with Schedule 71 and have been developed over time to accommodate cities or others requesting conversions while protecting PSE's interests. For example, the provisions regarding Temporary Services make sense because there are times when it would be wasteful and inefficient to underground a portion of the overhead distribution system in order to ensure that the conversion meets the requirements of Section 2 of Schedule 71. Such a situation might arise when construction is planned in the near future that will eliminate service from that portion of the system or that will

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require placement of underground facilities in a place or manner that would not be possible at the time the rest of the conversion is performed, thus requiring almost immediate relocation of such facilities. The Temporary Services provisions of the Form Agreement protect PSE from sharing the costs of a conversion that does not meet the requirement of Section 2 that all distribution in a conversion area be converted to underground, while permitting limited overhead to remain in an area following a conversion to accommodate rational construction planning and implementation.

C. Relocation of Underground Facilities Located in Rights-of-Way Under PSE's Underground Conversion Agreement

20. I believe that the provisions in the Form Agreement regarding relocation of underground facilities located in right-of-way are also fully consistent with Schedule 71. In PSE's judgment, facilities such as cable and conduit (and sometimes flush mounted pull vaults and J-boxes) may be placed in public rights-of-way rather than on private property if the municipality requesting conversion agrees to pay the full costs of any relocation of such facilities that occurs within twenty (20) years of the time the new underground facilities are installed.

21. PSE is not obligated to undertake conversion projects without all of the easements that it deems necessary under Schedule 71. Thus, PSE could require that easements be provided for all of PSE's facilities, including cable and conduit, or that entities requesting conversions agree to pay for future relocation of such facilities in perpetuity. Instead, PSE will install cable and conduits in rights-of-way rather than on easements in exchange for a commitment from the cities that they pay for future relocations for twenty years.

22. This provision is intended to ensure that before cities request PSE to undertake a conversion project, cities plan ahead and make sure that they will not immediately relocate the newly undergrounded facilities. For example, cities should be incented to ensure that when underground facilities are installed in

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rights-of-way, they are installed in locations and at grades that minimize the likelihood of future relocations. Converting facilities to underground and relocating underground and pad mounted facilities is very expensive. If cities did not have to plan ahead before they requested utilities to undertake conversions and could require that the facilities be placed in rights-of-way and immediately relocated without any cost to the cities, cities would have little incentive to design and plan their projects to ensure that when underground electric systems are installed, such installation is relatively permanent.

23. The twenty year protection is adequate for PSE's conduit and cable, and in some circumstances for limited placement of flush mounted pull vaults and J-boxes. However, PSE requires even greater protection if it is to place facilities such as pad mounted transformers or switches in the rights-of-way. In PSE's judgment, such facilities should never be placed in rights-of-way unless PSE is protected from ever having to pay the costs of relocating such facilities. This type of equipment is the most complicated and expensive type of underground facility to install and relocate. Thus, before such facilities will be placed in rights-of-way, a municipality requesting the conversion must agree to relocate the equipment if the municipality ever causes the equipment to be relocated in the future.

24. The appropriateness of PSE's judgment with respect to this issue is demonstrated by PSE's recent negotiations with the City of Federal Way with respect to Phase I of its South 320th Street project. During discussions regarding the appropriate language in the Underground Conversion Agreement for future relocations, which are described in greater detail below, Cary Roe, Federal Way's Public Works Director, told me that I need not be concerned about future relocations because there was "no way in hell" that any facilities placed in the rights-of-way "would ever be moved" in the future.

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25. A short time later, while PSE continued to press the issue of future relocations, PSE discovered that the City planned to add an HOV lane as the next stage in its South 320th Street project, which would have required that many of PSE's facilities that Federal Way wished to have installed in the rights-of-way be relocated within a year or two of the initial installation. As part of the negotiations over and settlement of this issue, PSE's engineers worked with Federal Way's engineers to ensure that PSE's facilities would be placed in locations and at grades calculated to eliminate the need to relocate the facilities because of the HOV lane project. If Federal Way had been under no obligation with respect to the costs of future relocations, Mr. Roe's false assurances might have caused hundreds of thousands of dollars to have been wasted in relocating PSE's facilities shortly after they were initially installed underground. PSE's Form Agreement helps ensure that cost causers such as Federal Way take greater care with respect to the costs associated with relocating PSE's underground facilities.

D. Historical Underground Conversions Agreements

26. The cities are incorrect that the requirements in PSE's Form Agreement are new. The challenged provisions are consistent with PSE's Underground Conversion Agreements going back at least two decades. Attached hereto as Exhibit A through O are true and correct copies of several Underground Conversion Agreements that were entered into from 1982 to 2000 (along with applicable cover letters that were attached to PSE's file copies). Under each of those agreements and under the Form Agreement that PSE is currently asking cities to sign (1) PSE is not required to bear the cost of easements; (2) PSE is not obligated to purchase any easements in the absence of reimbursement by the City; (3) PSE is not obligated to undertake a conversion project without first being provided the necessary operating rights; and (4) PSE's obligation to absorb the costs of future relocations of facilities installed in public rights-of-way is limited.

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27. The specific language in PSE's Underground Conversion Agreements has changed over time. I have tended to revise Underground Conversion Agreements to clarify questions that have been raised by requesting entities and to address new issues and circumstances that have arisen in the context of particular conversions, such as the Temporary Service issue described above. Municipalities have also at times suggested revisions to contract language that PSE feels do not change the fundamental terms of the Agreement, but that the municipality is more comfortable with. Under such circumstances, PSE has often agreed to the requested change, and incorporated that change in future versions of the Form Agreement.

28. There is no question that the Form Agreement PSE is requiring the cities to sign is far more detailed (and repetitive) than earlier agreements. However, the fundamental requirements placed on cities have not changed. Although PSE believes that its historical Underground Conversion Agreements already clearly and explicitly set forth the cities' responsibilities with respect to easements and future relocations of property placed in rights-of-way, it would have been irresponsible for PSE to continue forward with its historical version of the Underground Conversion after cities began to claim that that language does not mean what it says. In addition, PSE has found it necessary to spell out the terms and conditions of conversions in far more detail than in prior years as it has become increasingly difficult to work with the cities in a cooperative and non-confrontational manner.

29. With respect to the question of future relocation of facilities, the earliest examples of Schedule 71 Underground Conversion Agreements that I have been able to locate to date do not contain a relocation provision. Within the historical agreements I have been able to locate, that provision first appears in the April 3, 1992 Underground Conversion Agreement for the Des Moines Marine View Drive South conversion. That Agreement provides:

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> In the event the City requires the relocation of any of the facilities installed under this Agreement prior to the expiration of twenty (20) years after completion of the conversion hereunder, the City shall bear the entire costs of such relocation.

Exhibit E, § 13. This Agreement was not the first time PSE required a city to execute an Underground Conversion Agreement with a relocation provision. As described above, I became responsible for interpreting PSE's Tariff in 1990. One of the first things I did was to gather samples of Underground Conversion Agreements that were being used by Customer Service Engineers throughout PSE's service territory. From those samples, which were not all exactly alike, I created a master agreement that is reflected in the 1992 Des Moines Agreement. The relocation provision found there came from some of the sample agreements I had collected. True and correct copies of two such agreements are attached hereto as Exhibits S and T. These are Schedule 70 agreements from 1987 and 1989. One contains a five-year relocation obligation, *see* Exhibit S at § 14, and the other contains a twenty year relocation obligation, *see* Exhibit T at § 9. PSE has consistently required relocation provisions in its Underground Conversion Agreements since the Des Moines Agreement, as demonstrated in Sections 13 or 14 of the attached historical agreements. Several Cities did manage to obtain qualifying language in the late 1990's under which they only agreed to use their "best efforts" not to require relocation of the new underground facilities. However, more recently, PSE has returned to the absolute language of its earlier Agreements.

30. Other than the few Agreements in the late 1990's when certain cities managed to obtain relocation provisions with the "best efforts" language, PSE's Form Agreement is fully consistent with its historical agreements. I have added a new concept to the Form Agreement that did not appear before: The reference to potential agreement between PSE and a city to place some facilities in the rights-of-way on the condition that the city agree to pay for the costs of relocation in perpetuity rather than for

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only 20 years. This addition is not meant to be an additional burden on cities, but rather to increase the options available to cities with respect to placement of underground facilities during conversions. It grew out of several examples in which PSE agreed to locate equipment such as a switch in the rights-of-way in exchange for a city agreeing to pay the costs of future relocation of the equipment in perpetuity, as described in Andy Lowrey's declaration. PSE normally would never agree to install such underground or pad mounted equipment in the rights-of-way in part because of the tremendous potential relocation liability. However, in those cases where placement on easement is unreasonably expensive or physically impossible, and if PSE can be assured that it has adequate clearances for its equipment, PSE is willing to place such equipment in the rights-of-way on the condition that PSE is not responsible for future relocation costs of such equipment. *See* Form Agreement, p. 3, § 1.e. The additional language was added to the Form Agreement to alert all cities to the possibility of making such arrangements in appropriate circumstances.

E. Recent Difficulties with Cities

31. The tendency for cities to seek greater control over PSE's system and to shift costs away from themselves and onto PSE is not new. PSE's project managers have had to be vigilant over the years to push back against such attempts, as described in the declarations filed with PSE's response brief. In the last few years, however, it is my impression that some cities have begun to push PSE even harder regarding these issues. I believe there are several reasons for the cities' efforts. It is my understanding that representatives for the petitioners have been meeting together in recent years and have made a concerted effort to coordinate their efforts to assert more control over the utilities that serve customers within the cities' boundaries, including PSE.

32. I also believe that the easement issue has come to a head because in the past, PSE and cities have often been able to obtain easements for PSE's facilities for free or for minimal amounts. That situation may well

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be different for the Pacific Highway South projects, where the necessary easements may cost tens or hundreds of thousands of dollars. In addition, some recent relocations of PSE's underground facilities located on private easements have brought home to cities the tremendous costs that are involved in relocating underground facilities. I believe that the cities wish to avoid facing such costs for future relocations by minimizing or eliminating PSE's placement of facilities on private easements.

33. Finally, at the time the cities began to push back particularly hard on PSE in the late 1990s, PSE's organizational structure was in flux due to the merger. Consequently, it appears that some cities may have gotten away with more than they should have with respect to particular conversions. For example, in the 256th Street Conversion in Kent, the Project Manager allowed more facilities to be placed on right-of-way and allowed PSE to do more of the undergrounding work than is consistent with PSE's standards. Such small successes appear to have emboldened cities to demand even more from PSE and to challenge the fundamental requirements of Schedule 71.

34. As I became aware that Project Managers were being pushed hard by cities on these issues, I worked to try to ensure that Project Managers complied with PSE's standards in the design and construction of PSE's underground distribution systems. I also made it clear that if cities gave Project Managers any trouble, they were to refer the matter to me and that they were not to give in to pressure by cities to place facilities in rights-of-way or to shift the costs of easements onto PSE.

35. The cities responded to my efforts by beginning to refuse to sign Underground Conversion Agreements. I insisted that PSE hold the line and refuse to proceed with conversions until an Agreement was in place. The cities responded with continuous threats to take their issues to the Commission, a course

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of action that I invited them to take if they disagreed with PSE's interpretation of Schedule 71. For whatever reason, cities chose not to come to the Commission on the Pacific Highway South projects until relatively late in the planning stages for those projects, perhaps after it became clear to them that PSE would not give in to their threats and would insist on execution of Underground Conversion Agreements in a form acceptable to PSE, before PSE would perform the conversions.

36. Over the last year, PSE has had a series of discussions with cities regarding Schedule 71 and the Form Agreement. I am not aware of anyone from PSE ever stating that PSE's requirement that cities provide or reimburse PSE for easements is "shift of policy," as James F. Morrow states in his declaration. Any such statement would have been incorrect, as described above and in the other declarations submitted with PSE's response, and as shown in the attached exhibits. It is true, as Mr. Morrow states, that PSE has been clear with cities that PSE's concerns with respect to placing facilities in public rights-of-way are financial as well as operational. There would be serious negative cost consequences to PSE if underground and pad mounted facilities are placed in public rights-of-way, and PSE is entitled, and I believe obligated, to take financial considerations into account when designing its underground systems.

F. PSE's February 2001 Filing of Clarifying Revisions to Schedule 71 in Docket No. UE-010168

37. I was responsible for developing the proposed revisions to Schedule 71, including the proposed Form Underground Conversion Agreements, that PSE filed with the Commission in February 2001, which was assigned Docket No. UE-010168.

38. PSE was not seeking to institute a "new scheme of rights, responsibilities, and cost allocation" under Schedule 71, as the cities claim. All PSE desired when making its filing in UE-010168 was to put an end once and for all to the increasingly aggressive attempts of cities such as the petitioners to force PSE's

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facilities off of private property and into public rights-of-way and to shift costs related to easement acquisition and future relocation costs from the cities to PSE, in violation of Schedule 71 and PSE's standards. I absolutely believe that that filing was fully consistent with Schedule 71 and PSE's standards as they currently exist, and for that reason informed the Commission in the advice letter that "[t]he rates and costs in the schedules remain unchanged as well as the costs and obligations of customers." A true and correct copy of PSE's February 7, 2001 advice letter to the Commission is attached hereto as Exhibit P, for the Commission's convenience

39. PSE withdrew the filing on the request of Staff and others, including the cities, that they have more time to review the filing. A true and correct copy of PSE's March 12, 2001 letter withdrawing the filing is also included in Exhibit P, at page 3. In the interim, the petitioners filed the petitions in this proceeding.

G. Federal Way's 312th and 320th Street Conversion in 2000

40. During the planning stages for Federal Way's the 320th Street project in 2000 (an earlier project than the one that is at issue in this proceeding where PSE's existing poles are located on easements), PSE tendered its then-current Underground Conversion Agreement to Federal Way. Federal Way objected to the Agreement, claiming that it was not consistent with the version of Underground Conversion Agreement that it had signed with respect to its 312th Street Project on July 8, 1998.

41. In his declaration, Cary Roe asserts that PSE's Underground Conversion Agreements changed in 2000 because the new version required the City to pay for private easements. He claims that the 312th Street Agreement did not require the City to obtain or pay for private easements for PSE. *See* Roe Decl., ¶ 9. It is incomprehensible to me how Mr. Roe could read the 312th Street Agreement to mean that the City was not obligated to pay for private easements in PSE's name.

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42. The 312th Street Agreement states:

> The Company shall provide reasonable assistance in obtaining operating rights as may be necessary to permit the Company to construct, operate, repair, and maintain all electrical facilities installed by the Company pursuant to this Agreement. *The Company shall not be required to bear the costs of any necessary easements.* The cost to the Company of any easements on privately owned property which the Company must obtain *shall be reimbursed in full by the City* pursuant to paragraph 5 above.

Exhibit I, p. 4, § 8 (emphasis added). Such language is clear on its face. It acknowledges that PSE's facilities will be placed on easement and requires Federal Way to reimburse PSE *in full* for *any* easements on privately owned property that PSE required.

43. The focus of the dispute and negotiations between Federal Way and PSE regarding the 320th Street Agreement was not the operating rights provision, but rather the future relocation provision. The Underground Conversion Agreement that PSE initially tendered to the City for the 320th Street Project clarified what could have become a contested issue in the relocation provision used for the 312th Street Project. I executed the agreement used for the 312th Street Project, which contained the following relocation provision:

> In the event the City requires the relocation of any of the facilities installed under this Agreement prior to the expiration of twenty (20) years after completion of the conversion hereunder, the City shall bear the entire cost of such relocation.

Exhibit I, p. 6, § 14. I then sent the Agreement to the City for the City to execute. The City executed the agreement as requested, but it also added and initialed interlineation in an attempt to change Section 14 as follows: "In the event the City requires the relocation of any of the facilities installed under this Agreement prior to the expiration of twenty (20) years after completion of the conversion hereunder, the City shall bear the entire cost of such relocation, *unless otherwise provided in the Franchise*

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Agreement between the parties set forth in Ordinance No. 98-315." *Id.* (emphasis added) PSE did not agree to or initial that interlineation.

44. The Underground Conversion Agreement that PSE tendered to the City for the 320th Street project clarified the future relocation issue in order to reduce the likelihood that the City would challenge its relocation obligation in the future. The amended provision stated:

> *Notwithstanding any provision to the contrary in any franchise agreement now in place or subsequently entered into by the Company and the City*, in the event the City requires (*or takes any action which has the effect of requiring*) the relocation of any of the facilities installed under this Agreement prior to the expiration of twenty (20) years after completion of the conversion hereunder, the City shall reimburse the Company for costs incurred by the Company in connection with relocation.

The City would not agree to the new language, and we engaged in extensive negotiation over the issue. Ultimately, after efforts that included moving the locations of some facilities, PSE felt that it had assurances with respect to the 320th Street project that PSE's facilities would be protected from future relocation. I therefore agreed to accept a relocation provision that the City was more comfortable with in order to settle the dispute and permit the conversion to go forward. *See* Exhibit O, p. 5, § 14. I also agreed because in that case, there were delays with the design of the underground system for which PSE was responsible, so I felt it was fair under the circumstances to permit the conversion to move forward without further delay caused by disputes over the precise form of the Underground Conversion Agreement.

H. Schedule 71 Does Not Apply to PSE's Overhead Facilities Located on Private Property

45. During the eleven years that I have been responsible for PSE's tariff interpretation and application, I have consistently interpreted Schedule 70 and Schedule 71 to apply only to conversions of PSE's facilities located in rights-of-way, and not on

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private property under a PSE easement or by prescriptive right. This interpretation of Schedules 70 and 71 was passed on to me by my predecessor, Bill Baker, under whom I worked for six years prior to his retirement. Where PSE's existing overhead facilities are located on private property under a PSE easement or by prescriptive right, PSE generally has been willing to convert the facilities to underground, but requires the applicant to pay 100% of the costs of the conversion.

46. If an entity requests undergrounding of overhead facilities, PSE looks to see which tariff schedule applies to the conversion, if any. At times, a project may be subject to more than one schedule, or portions of the project may meet tariff requirements, while others do not. PSE's overhead facilities along 23rd Avenue South in Federal Way near South 320th Street span less than one city block. If PSE's overhead facilities located on easements on 320th Street were subject to Schedule 71 relocation, then PSE would permit the conversion of the 23rd Avenue South facilities under Schedule 71 because the facilities essentially just "turn the corner," and are part of the same physical stretch of facilities, thus would be included in increasing the length of the conversion area. However, because Schedule 71 does not apply to the South 320th Street facilities, the 23rd Avenue South facilities must be considered on their own to determine whether they are eligible for conversion under Schedule 71. They do not meet the requirements of Section 2 of Schedule 71 because they do not span at least two city blocks.

47. PSE is willing to convert all of these facilities to underground, but only if Federal Way pays 100% of the costs of the conversion.

I. PSE's Rate Schedule Interpretation No. E-71-3

48. In my position as Tariff Consultant, I regularly get questions from Project Managers, other PSE employees and customers throughout PSE's service territory regarding various tariff schedules. Over the years, Schedule 71 has given

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rise to more questions than any other PSE tariff schedule. I have found Schedule 71 to be particularly difficult to apply because of the number of conditions to work through to determine whether it applies at all and for determining when a requester must pay 30% or 70% of the costs of the conversion. The cost sharing provisions give rise to many disputes with requesters, as they often seek to press PSE to find that Schedule 71 applies to conversions where it does not, and to obtain a determination that permits them to pay only 30% rather than 70% of a conversion. In addition, each conversion presents different factual circumstances and complications. I found I was spending what I felt was an excessive amount of time dealing with answering questions about Schedule 71 from the field, and I was concerned about whether Project Managers were applying Schedule 71 consistently to similar conversions.

49. I thus developed a list of questions and answers to address topics that had been raised over the years with respect to Schedule 71. Rate Schedule Interpretation E-71-3 reflects those questions and answers. PSE's Rate Schedule Interpretation No. E-71-3 is Stipulated Exhibit 21, a true and correct copy of which is attached hereto. RSI E-71-3 was issued by Steve Secrist, Director – Rates & Regulation, to whom I report.

50. RSI E-71-3 directly addresses the question of when "the Company's overhead system is required to be relocated due to the addition of one full lane or more" within the meaning of Schedule 71. In answering this question, I was not attempting to determine when a particular city might want to relocate poles or even be required to relocate poles pursuant to some standard it had adopted. Different cities have different standards for determining that question. I was concerned with establishing an objective standard that could be applied uniformly across PSE's service territory to determine when a municipality would be required to pay 30% rather than 70% of the costs of a conversion.

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51. Because PSE is required by WAC 296-45-045 to comply with the requirements of the 1997 National Electrical Safety Code (NESC), I determined that we should follow the standard of NESC 231.B, which requires poles to be a minimum of six inches from the street side of the curb. A true and correct copy of NESC 231.B, which has been designated Stipulated Exhibit 22, is attached hereto. I did not feel it would be appropriate to base the Schedule 71 criteria on a King County standard or other standard that a city might adopt because that would not be consistent throughout PSE's service territory. In addition, if city standards were the rule, then a city could adopt any standard it wanted and thereby obtain better treatment than other cities receive under Schedule 71.

J. SeaTac South 170th Street Conversion

52. 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 of the South 170th Street Conversion, although some of the existing poles would have been located in the middle of the sidewalk if they remained in place. While Mr. Gut may be correct, Phase I of South 170th Street was completed in September 1999. PSE's RSI E-71-3 only became effective on July 15, 2000.

53. I did not review the Underground Conversion Agreement for Phase II of the South 170th Street conversion in SeaTac before it was tendered to SeaTac by the Project Manager, Andy Lowrey. I relied on Mr. Lowrey to comply with Schedule 71 and RSI E-71-3 and to issue an appropriate Underground Conversion Agreement. When questions arose regarding whether Schedule 70 or 71 should apply to the conversion, I investigated the details of the conversion, including asking Mr. Lowrey where the existing poles would be located with respect to the new project. He informed me that they would be more than six inches from the street side of the curb. On the basis of that information, I revised the Schedule 71

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Agreement that had been tendered to SeaTac to reflect 70% contribution rather than 30% contribution, and I and PSE's attorney explained the change to SeaTac at the time we tendered the revised Agreement.

54. During the parties' discussions regarding the stipulated facts for this proceeding, SeaTac proposed a stipulated fact stating that 2 of the 8 existing poles in the conversion area would be located in the driven surface of the new lane, or within six inches of the street side of the curb. Mr. Lowrey was on vacation at the time, but I confirmed the truth of SeaTac's proposed fact by consulting with Mr. Lowrey's temporary replacement. It is my understanding that he had to look at enlarged, computer versions of drawings for the project to determine where the existing poles would be located after the road improvements. Because of this clarification of the facts, PSE agreed that SeaTac would only have to pay 30% of ¼ of the costs of the conversion, but SeaTac must still pay 70% of the remaining ¾of the costs of the conversion.

55. PSE has never refused to relocate the poles in Phase II of the South 170th Street project. SeaTac has never requested that the poles be relocated. Instead, it has insisted that PSE convert the overhead facilities to underground. In order to avoid any delays to the street improvements on the City of SeaTac's 170th Street Project pending the Commission's resolution of the parties' disputes regarding such conversion, PSE and SeaTac negotiated and entered into an interim agreement with reservations of rights under which PSE's overhead facilities will be converted to underground, with the ultimate terms and conditions of that undergrounding to depend on resolution through litigation of issues raised in this proceeding and in Docket No. UE-010778. A true and correct copy of that interim agreement is attached hereto as Exhibit Q (without the alternative Underground Conversion Agreements that are referenced in the interim agreement and attached thereto). Based on the interim agreement, PSE has begun ordering and delivering materials to the project, and SeaTac's

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contractors have begun work, without any delay to the City's project.

56. Attached hereto as Exhibit U is a true and correct copy of a letter to me from Tom Brubaker, Deputy City Attorney from Kent dated April 10, 2000.

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

_____
Lynn F. Logen

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