

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 CITY OF SEATAC,)
4 Complainant,)
5 v.) Docket No. UE-010891
6 PUGET SOUND ENERGY, INC.,) Volume 2
7 Respondent.) Pages 72 - 174
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8 CITY OF CLYDE HILL,)
9 Complainant,)
10 v.) Docket No. UE-011027
11 PUGET SOUND ENERGY, INC.,) Volume 2
12 Respondent.) Pages 72 - 174

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14 An oral argument in the above matter
15 was held on October 11, 2001, at 9:32 a.m., at 1300
16 South Evergreen Park Drive Southwest, Olympia,
17 Washington, before Administrative Law Judge DENNIS J.
18 MOSS, Chairwoman MARILYN SHOWALTER, Commissioners
19 RICHARD HEMSTAD, PATRICK J. OSHIE.
20

21 The parties were present as follows:
22

23 PUGET SOUND ENERGY, INC., by KIRSTIN S.
24 DODGE, Attorney at Law, Perkins Coie, 411 108th Avenue
Northeast, Suite 1800, Bellevue, Washington 98004.

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1 CITY OF CLYDE HILL, by GREG A. RUBSTELLO,
2 Attorney at Law, Ogden Murphy Wallace, 1601 Fifth
3 Avenue, Suite 2100, Seattle, Washington 98101-1686.

4 CITY OF SEATAC, by CAROL S. ARNOLD, Attorney
5 at Law, Preston Gates Ellis, 701 Fifth Avenue, Suite
6 5000, Seattle, Washington 98104.

7 THE WASHINGTON UTILITIES AND TRANSPORTATION
8 COMMISSION, by MARY M. TENNYSON, Senior Assistant
9 Attorney General, 1400 South Evergreen Park Drive
10 Southwest, Post Office Box 40128, Olympia, Washington
11 98504.

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28 Kathryn T. Wilson, CCR

29 Court Reporter

P R O C E E D I N G S

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JUDGE MOSS: Good morning, everyone. We are convened this morning for the purpose of having oral argument with respect to pending motions and cross-motions for summary determination in the consolidated proceedings styled, City of SeaTac against PSE, Docket No. UE-010891, a complaint and petition for declaratory relief; and City of Clyde Hill against PSE, Docket No. UE-011027, again a complaint and petition for declaratory relief. We earlier consolidated these proceedings; they having issues of law and fact in common.

We will take appearances, and then we will proceed immediately to the oral argument. By prior discussion in a prehearing, the City of SeaTac will go first with 15 minutes allocated. The City of Clyde Hill will go second with 15 minutes allocated, and PSE will have 20 minutes, then we will have Staff, a few comments from Staff, and then we will have an opportunity for rebuttal, and since Staff's participation had not previously been made concrete, we will allow PSE to have an opportunity to speak to anything Staff may raise as well, and Ms. Tennyson, you passed out some handouts for the Bench. Will you tell

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1 us quickly what those are?

2 MS. TENNYSON: The first document is a copy
3 of Chapter 35.96 RCW, titled "Electric and
4 Communication Facilities Conversion to Underground."
5 This does contain a declaration of public interest and
6 purpose that Staff thought was relevant to these
7 proceedings, so we have that for reference.

8 The second document is a copy of Puget Sound
9 Energy's Electric Tariff G, Schedule 70, titled
10 "Conversion to Underground Service in Residential
11 Areas." It is a two-sided copy with the entire tariff
12 there. We have Schedule 71 as the next document. All
13 of these we would intend to have available for the
14 commissioners for both the morning and the afternoon
15 proceedings.

16 The third document in the packet is a copy of
17 Puget Sound Energy's Electric Tariff G, Schedule 80,
18 entitled "General Rules and Provisions," and this is
19 referenced in the Schedule 70 and 71, so just in case
20 there were questions that you had relating to those.
21 The next one is Puget's Electric Tariff G, Schedule 85,
22 line extensions. We just had the one. I can refer to
23 a definition that's contained in there in comments, and
24 likewise, Schedule 86 on service lines, this is
25 referenced in Schedule 70 and 71, so we have a copy

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1 available in case there are questions about what it
2 said.

3 JUDGE MOSS: Let's take appearances; City of
4 SeaTac?

5 MS. ARNOLD: Carol Arnold; Preston, Gates,
6 and Ellis.

7 JUDGE MOSS: City of Clyde Hill?

8 MR. RUBSTELLO: Greg Rubstello from Ogden,
9 Murphy, Wallace on behalf of Clyde Hill.

10 MS. DODGE: Kirstin Dodge with Perkins Coie
11 on behalf of Puget Sound Energy.

12 MS. TENNYSON: Mary M. Tennyson, senior
13 assistant attorney general for Commission staff.

14 JUDGE MOSS: I previously discussed with you
15 off the record that we would take the format of
16 questions coming freely from the Bench. During the
17 course of your argument, I will watch the time and make
18 sure nobody gets shortchanged, and we do have the
19 morning available to us, so I think we will have plenty
20 of time to hear things out, so with that, Ms. Arnold?

21 MS. ARNOLD: Thank you, Judge Moss. Good
22 morning, Commissioners. I would like to introduce
23 first of all the senior assistant attorney for the City
24 of SeaTac, Mary Mirante, who is directly behind me, and
25 Tom Gut, who is the assistant engineering manager for

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1 the City of SeaTac. Also with us are representatives
2 from the City of Tukwila and the City of Des Moines.

3 In looking over my notes for this morning's
4 talk, I was struck by how short SeaTac's brief is in
5 this case. Our opening brief was six or seven pages
6 long, and the briefs in this afternoon's cases are very
7 thick, 60 pages plus. So I first thought, Gosh, maybe
8 I left something out of that brief; it's so short, but,
9 in fact, this case is really very straightforward and
10 very simple. The City of SeaTac is widening South
11 170th Street. South 170th Street was a two-lane
12 street. It's now being widened. It will have three
13 lanes. As part of this project, the electric and
14 telephone utilities are being placed underground.

15 South 170th Street is in residential
16 neighborhood. I think it's Exhibit "A" to Mr. Gut's
17 declaration shows an aerial photograph of the South
18 170th Street area, the conversion area. In fact, a
19 young woman was in my office a couple of weeks ago
20 interviewing for a job. She said she lived in SeaTac.
21 She gave me her address, and I said, "You know, I have
22 a picture of your house," and, in fact, her house was
23 on this picture. (Indicating.) As you can see from
24 the aerial photograph, the conversion area is
25 exclusively residential. The parties agree that it is

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1 residential.

2 Exhibit B to Mr. Gut's declaration is a
3 zoning map for the City of SeaTac, and the conversion
4 area is in the yellow portion that is marked
5 "residential," so the area is zoned residential, and
6 that fact is also undisputed. The other map that's
7 attached to Mr. Gut's declaration shows the conversion
8 area in yellow also. This is the comprehensive plan
9 that shows that the City of SeaTac has planned this
10 area to be residential and to continue to be
11 residential. So there is no dispute that the
12 conversion area is used exclusively for residential
13 purposes and is zoned residential.

14 CHAIRWOMAN SHOWALTER: As you read the
15 briefs, you can look at the tariff from the city's
16 point of view or zoning point of view and see that
17 something is zoned for residential or that there are
18 houses, resident houses in the area. You can look at
19 it that way, or you can look at it from an electrical
20 point of view, and then what you see is not houses and
21 people. You see one-phase and three-phase wires going
22 through.

23 The general question I have of you is this is
24 an electric tariff. It is not a city zoning law. So
25 one way, and I think it would be the city's way, is the

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1 words say "zoning, exclusively used for." The other
2 way is Puget is looking at the electrical system.
3 Another way would be to say it's really both at once.
4 The tariff says "zoned for," and "zoning" is, I think,
5 a land-use term, but "exclusively used for" can mean a
6 number of things.

7 The question I have for you is why should we
8 keep our eye on the physical, residential, housing,
9 zoning side of things exclusively and not also look at
10 the system electrically?

11 MS. ARNOLD: We had the same question in
12 preparation for this case, so the City of SeaTac
13 authorized us to retain Curt Bagnall, who is an
14 electrical engineer. He's a senior project manager
15 with CH2M Hill, and he has experience in designing
16 distribution systems, and we asked him exactly that
17 question, because, of course, as the chairwoman
18 appointed out, the plain language of the tariff makes
19 Schedule 70 apply to this conversion area because it's
20 zoned and used exclusively for residential purposes.
21 Puget earlier this year refiled that tariff, a revised
22 version of it, that had an exception in there for
23 three-phase distribution system. They withdrew that
24 tariff for reasons of their own, so we are now left
25 with the existing tariff that has no exception.

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1 CHAIRWOMAN SHOWALTER: But there again, that
2 begs the question of whether that is simply a
3 clarification of something that's implicit already in
4 the tariffs, both 70 and 71, and the cost studies and
5 what is reasonable and unreasonable or whether it
6 really isn't there. Let me ask you a few questions.
7 Let's suppose we have Bill Gates house that uses a huge
8 amount of electricity, I'm assuming, and requires
9 three-phase electrical wiring to it, but let's say it
10 sits in something that genuinely is a residential area.
11 Do you see that as under Schedule 70, or would that be
12 one of the carve-outs that 71 provides that is other
13 areas that require the same loads.

14 MS. ARNOLD: If it were Bill Gates house, I
15 really don't know. I'm not sure I can answer that
16 question. The particular area that is at issue doesn't
17 have Bill Gates house in it and is served exclusively
18 by single-phase house drops, and I don't think there is
19 any dispute about that. Mr. Bagnall said that Mr. Gut
20 observed it, and Puget agrees that in this case the
21 house drops are all single phase. I understand that
22 Puget's tariffs do permit a homeowner to ask for
23 three-phase service if they have some particular
24 reason, if they run some type of machinery that they
25 can ask for it, but in this case, there isn't any.

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1 CHAIRWOMAN SHOWALTER: Do you agree that in
2 at least some situation Schedule 71, which refers to
3 other areas, meaning other than commercial that have
4 the same load requirements, that there is some ability
5 of Schedule 71 to carve out from Schedule 70?

6 MS. ARNOLD: I do agree with that --

7 CHAIRWOMAN SHOWALTER: Is this one of those
8 instances? Is an arterial that goes through a
9 residential area a carve-out, in essence, because the
10 arterial itself is used for cars going faster? Then
11 you wouldn't think of it as a residential street, but
12 from an electrical point of view, it's a conduit. It's
13 a little highway system for something other than
14 residential use.

15 MS. ARNOLD: To go back to your first
16 question, Schedule 71 in its "availability" section,
17 it's talked about areas that are used for commercial
18 purposes and other areas which have electrical load
19 requirements which are comparable to develop commercial
20 loads, so Bill Gates' house might fall under Schedule
21 71 in that respect, but this one doesn't, and I think
22 everyone agrees that the three-phase system is not used
23 here to serve the conversion area. Like you say, it's
24 a highway; it's a super highway through the residential
25 neighborhood. Now --

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1 CHAIRWOMAN SHOWALTER: That just begs the
2 question of the highway isn't there to serve the
3 residential area. The highway is there as a conduit to
4 another area, but does that make the highway an area
5 not used exclusively for residential purposes?

6 MS. ARNOLD: The answer to that question is
7 no. Puget uses three-phase systems throughout its
8 distribution system because of the way the system is
9 designed, and they need three-phase systems to serve
10 large load in other areas, but I submit to the
11 Commission that if Schedule 70 is interpreted to permit
12 nonapplication in cases where Puget's own load serving
13 requirements require them to use three-phase circuits
14 that Schedule 70 has no meaning. Puget uses
15 three-phase circuits throughout its system in all kinds
16 of residential areas, and the Schedule doesn't have any
17 meaning. Now, if Puget --

18 CHAIRWOMAN SHOWALTER: Let's me stop on that.
19 I do have one last question here. If you say here that
20 a three-phase arterial going through a residential
21 area. Let's say it's to serve a residential area so
22 take out the commercial end point. If that's the case,
23 and then doesn't that mean that the reimbursement rate
24 for that three-phase system is at a rate that
25 admittedly is too low? If there is an ambiguity,

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1 shouldn't we try to reconcile an ambiguity so the
2 reimbursement rate that is being paid is somewhat
3 comparable to the expense? I understand you don't
4 think there is as ambiguity and that may settle it, but
5 do you agree that if this is a residential area subject
6 to Tariff 70 that the reimbursement rate is quite
7 clearly -- did not take into account the three-phase
8 system?

9 MS. ARNOLD: The Commission's duty here, of
10 course, is to look at the tariff as it is written and
11 as Puget filed it and as the Commission approved it.
12 There is nothing in the record that would indicate
13 that -- the original filing apparently was made in
14 1984, and Puget at that time submitted some cost
15 information in support of the tariff, and that cost
16 information, of course, is obsolete and unverified,
17 untested. Maybe someone looked at it back in 1984, but
18 someone hasn't looked at it for a long time, so if
19 Puget believes that Schedule 70 did not adequately
20 recover the costs that it needs to have recovered, then
21 Puget needs to file a new tariff so that the Commission
22 can review to find out whether that rate is just and
23 reasonable, but this is the tariff that we have to live
24 with today, and this tariff is quite clear that it
25 includes whatever system is in an area that's

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1 exclusively used for residential purposes and zoned for
2 residential.

3 So I think the answer to your highway
4 question is no. Even though the highway -- if Puget
5 also made the argument that since it's an arterial
6 street it carries traffic to other areas, but this is
7 not I-5. This is still a small road. Even with the
8 widening, it's only three lanes wide, and it's through
9 a quiet residential area. There is not that much
10 traffic, and I think that's in the record, in fact,
11 that this doesn't carry that much traffic. So the
12 argument is the same for the electrical system. Just
13 because Puget's electrical system there carries to a
14 larger load someplace else doesn't mean that this
15 conversion area which is at issue should not be subject
16 to Schedule 70.

17 CHAIRWOMAN SHOWALTER: Thank you.

18 COMMISSIONER OSHIE: Ms. Arnold, I guess part
19 of my question was answered, and I guess there is still
20 some loose ends at least for me. How does SeaTac or
21 your client reconcile the cost study that was performed
22 in 1984 or near 1984 that was the basis for the payment
23 rate that's included in Schedule 70? The information
24 I'm specifically referring to is that it's my
25 understanding based on the information provided by the

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1 Company that in the development of that rate, of the
2 \$20.33 percent line rate, that there were six
3 residential areas originally looked at. Four were
4 included in the cost study, and two were excluded
5 because they included a feeder line. Isn't that really
6 the circumstance that we have here?

7 MS. ARNOLD: The Commission has to make its
8 decision based on the facts before it. No one here was
9 there in 1984. We don't know why Puget excluded those
10 costs. We don't know why Puget proposed Schedule 70 in
11 the way that they did. If Puget back in 1984 had
12 intended to exclude three-phase feeders from Schedule
13 70, the tariff could have explicitly stated that, and
14 we know that because when Puget refiled Schedule 70 in
15 February of this year, they did explicitly exclude
16 three-phase feeders. So rather than speculate what was
17 intended back in 1984, we are left with the present
18 tariff and the language of the tariff.

19 COMMISSIONER OSHIE: Wouldn't you agree that
20 at least by implication of the information of the cost
21 study that if they would include the feeder routes that
22 the cost per center line foot would be higher in a
23 conversion of this nature?

24 MS. ARNOLD: I don't know that, because even
25 the very limited information that Puget has from 1984

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1 didn't say what the costs would be for the three-phase
2 feeder.

3 COMMISSIONER OSHIE: Why do you think they
4 excluded the feeder lanes or feeder routes?

5 MS. ARNOLD: I don't know, and I don't think
6 anybody here today does know.

7 CHAIRWOMAN SHOWALTER: I thought there was
8 somewhere in the record where at the time of the cost
9 study that Puget said, "We removed these because they
10 are three-phase." I'm not sure they said, "and here's
11 why we removed it," but the strong implication was,
12 "This is not residential so we didn't have to."

13 MS. ARNOLD: No. I think we could look at
14 it, but I think they just said, we've excluded them
15 without giving any reason why they excluded them, and
16 we don't know why they excluded them. It's possible
17 that those three-phase feeders were in commercial
18 areas. We don't know what the circumstances were about
19 why they included those. Those might have been new
20 developments wherein possibly they used three-phase
21 feeders in new developments. I just don't know, and I
22 don't think the record shows.

23 JUDGE MOSS: Let me put a hypothetical to
24 you. Suppose this project involved South 170th Street
25 for four blocks that run directly into International

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1 Boulevard and turns the corner there and goes for four
2 blocks down International Boulevard. Which schedule
3 would apply?

4 MS. ARNOLD: Then Schedule 70 would apply to
5 the residential portion and Schedule 71 would apply to
6 the commercial section.

7 JUDGE MOSS: Even though the area of the
8 project clearly involves a commercial area that
9 requires three-phase power?

10 MS. ARNOLD: The part of the project that
11 involved the commercial area that was in the commercial
12 area, the issue is where is the conversion area. The
13 issue is not what does this electrical feeder feed
14 into. The area that is the conversion area is what
15 determines whether Schedule 70 applies or whether
16 Schedule 71 applies.

17 JUDGE MOSS: The conversion area can then be
18 split up into little segments depending on the
19 character of the land use adjacent to the street even
20 in the circumstances that I described. Is that what
21 you are saying?

22 MS. ARNOLD: What the tariff says is that the
23 conversion area must not be less than one city block in
24 length or less than six contiguous building lots
25 abutting each side of the public thoroughfare with all

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1 property -- and here is the key -- on both sides of
2 each public thoroughfare to serve electric service from
3 the main distribution system. So you have to look at
4 what the real property on both sides of the public
5 thoroughfare is used for.

6 JUDGE MOSS: My question is assuming we have
7 the configuration for the project I described. Do we
8 look at that as one or two conversion areas?

9 MS. ARNOLD: Two conversion areas.
10 "Conversion area" is defined as the geographical area
11 where the overhead system is to be replaced by an
12 underground system.

13 JUDGE MOSS: In this instance, it includes
14 both commercial and residential.

15 MS. ARNOLD: No. In this instance, it
16 includes only exclusively residential.

17 JUDGE MOSS: In my hypothetical.

18 MS. ARNOLD: You have two conversion areas.

19 CHAIRWOMAN SHOWALTER: All parties recognize
20 that one contiguous project can be divided into both
21 commercial and residential. It's just that you are
22 dividing it by geographical area and looking at the use
23 of houses or facilities in that area; whereas Puget is
24 dividing the project in a different way. They are
25 dividing it by arterial or the nature of the electric

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1 facilities that run through, but that each of you
2 recognizes that one whole project isn't defined by a
3 little piece of it.

4 MS. ARNOLD: Yes, I think that's right. I'm
5 not sure I answered Judge Moss's question correctly.

6 JUDGE MOSS: Let me change my hypothetical.
7 It may make it easier. Let's assume the project down
8 170th Street is just as it is but that in the middle of
9 the project -- the project is six blocks long. At the
10 third block, there is a commercial building with
11 refrigeration unit requiring three-phase power.

12 Fourth, fifth, and sixth blocks residential; first and
13 second blocks residential. What rate schedule applies?

14 MS. ARNOLD: I think that in case if the
15 project area that's to be converted is not exclusively
16 used for residential, then I think Schedule 70 doesn't
17 apply, and I think I answered your question wrong about
18 that mixed use area close to International Boulevard,
19 because Schedule 70 says that the conversion area must
20 be used exclusively for residential purposes, which we
21 do have here. There isn't any refrigeration plant or
22 whatever in the middle of this. This is houses only,
23 and in fact, a different part of SeaTac very close was
24 converted last year under Schedule 71 because it was a
25 commercial area. Although it had houses in it, it

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1 wasn't exclusively used for residential purposes, and
2 that was done under schedule 71.

3 JUDGE MOSS: I have one more question along
4 this line, and that is accepting what you just said as
5 true, wouldn't your interpretation of the tariff open
6 the door to a city developing a road-widening project
7 in phases so that in one phase, it could take care of
8 the two blocks on 170th Street that run into
9 International Boulevard, and the segment of
10 International Boulevard to which 71 would apply, I
11 think you just said, and then the next 10 miles of
12 South 170th Street would be another phase, and then you
13 would say Schedule 70 applies. Wouldn't that route
14 lead to an irrational result, because if it was all
15 done as one project, Schedule 71 would apply?

16 MS. ARNOLD: I've got two answers to that.
17 One is that cities don't plan streets on an irrational
18 basis. There is a six-year plan and a ten-year plan,
19 and they plan long ahead, and Puget can participate in
20 that planning. So they don't decide to do a street
21 improvement based on decisions like that. It's part of
22 a long-term plan. It has to do with where the funding
23 is coming from and other things. So that's the first
24 answer to that.

25 The second answer to that is carried to the

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1 extreme, that reasoning would mean that Schedule 70
2 would have no meaning whatsoever because Puget could
3 then argue, Well, there is a gas station three miles
4 away, so therefore, this area isn't residential, and
5 even though the conversion area that is the subject of
6 debate is exclusively residential, down the street,
7 there is a gas station, so therefore, the area is not
8 exclusively residential. This part of the Puget Sound
9 area is the most heavily populated, I think, of all of
10 Puget Sound, and the commercial and the residential
11 areas are very close together, and that reading of
12 Schedule 70 would just read it out of existence.

13 JUDGE MOSS: It would still exist, even under
14 Puget's interpretation, for those areas that are
15 residential and have one-phase systems, wouldn't it?

16 MS. ARNOLD: If there are any, but cities
17 don't usually do a major street and improvement project
18 on a small street that would have nothing but
19 three-phase. The system has three-phase throughout it
20 because that's how the power is delivered to serve
21 loads. Just like every residential neighborhood has
22 arterial streets nearby because it's necessary, but if
23 we are going to read Schedule 70 to apply only to these
24 little streets that have only three-phase, Schedule 70
25 doesn't have any function anymore.

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1 JUDGE MOSS: Let's take about five more
2 minutes with this and then we will need to move to the
3 next.

4 MS. ARNOLD: I was talking earlier about
5 Mr. Bagnall's testimony, and he does testify as a
6 qualified electrical engineer that Puget uses
7 three-phase circuits throughout its distribution
8 system. He says also that the single-phase 200-amp
9 distribution voltage circuit could easily serve the
10 residential load on South 170th. He says there is
11 about 40 houses in the conversion area, and those could
12 easily be serviced with a single-phase feeder. The
13 three-phase feeder, he says, is used to serve much more
14 load than is in the actual conversion area, so the
15 three-phase feeder is -- for Puget's purposes and
16 Puget's position that since the street is used for
17 their three-phase feeder that it's commercial, again,
18 just wipes Schedule 70 off the map.

19 CHAIRWOMAN SHOWALTER: You said twice now it
20 would be meaningless or Schedule 70 would be of no
21 value, but why isn't it a rational system? It may or
22 may not be what the tariff is saying, but why wouldn't
23 it be rational that if it is one-phase to the
24 residential houses, it's Schedule 70, and if it's the
25 three-phase, it's Schedule 71. I'm not saying that's

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1 what the tariff is say, but why would that be
2 meaningless? People that have one-phase pay one rate.
3 People that have three-phase pay another rate.

4 MS. ARNOLD: The houses on South 170th are
5 all single-phase service. The drops to those houses,
6 every one of them -- I don't think there is any
7 disagreement -- is single phase. So if the tariff were
8 to say that a conversion area that serves customers who
9 receive service under single phase, we wouldn't have
10 any dispute at all.

11 Now, if Puget changes the tariff and says
12 that only single-phase feeders when they are converted
13 underground will be subject to Schedule 70, then we
14 have a different situation, but our obligation here is
15 to look at what the existing tariff says and apply it.

16 CHAIRWOMAN SHOWALTER: I agree. We would
17 have to do that, but if we interpret it to be your
18 amended example; that is, if we interpret it to mean 70
19 as one-phase and 71 as three-phase, why is that
20 meaningless?

21 MS. ARNOLD: Perhaps "meaningless" is too
22 harsh a word. It's certainly inconsistent with what
23 the tariff says, and our obligation is to look at what
24 the plain language of the tariff says, and I think both
25 Puget and the cities in both of these cases that the

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1 Commission hears this morning and the afternoon have
2 quoted various cases that say we must look at the plain
3 meaning of the tariff unless it's ambiguous, and here
4 the tariff really isn't ambiguous. It's pretty
5 straightforward.

6 COMMISSIONER HEMSTAD: Of course, both sides
7 argue that the language is plain, and therefore should
8 be read what each side believes it should be read.
9 That doesn't inherently mean it is ambiguous, but it
10 certainly raises the question of how the two parties
11 can look at the same language and read it entirely
12 differently. If when asked the question what is the
13 purpose of the tariff, how would you answer that?

14 MS. ARNOLD: The purpose of the tariff is to
15 define who pays how much of an underground project, and
16 both Schedule 70 and 71 allocate the cost of
17 undergrounding, and for our purposes, the cities that
18 have decided to take a street improvement project that
19 involves undergrounding, so the question is how much
20 does each party pay.

21 COMMISSIONER HEMSTAD: I find myself troubled
22 with the hypotheticals that have been posed. Your
23 position is that because this is 100 percent a
24 residential neighborhood, then one tariff applies, but
25 if it had been 98 percent residential and 2 percent

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1 commercial, then a different tariff applies would
2 apply.

3 MS. ARNOLD: Yes, sir, that's correct,
4 because the tariff provides that it applies to an area
5 which is used exclusively for residential purposes --

6 COMMISSIONER HEMSTAD: Even though the cost
7 consequence of those two examples would be very
8 substantially different.

9 CHAIRWOMAN SHOWALTER: Isn't another way to
10 interpret Commissioner Hemstad's question that if it
11 were 98 percent residential and 2 percent commercial,
12 you would divide it into two areas. The 98 percent
13 would pay at the 100 percent residential rate, and 2
14 percent would pay commercial.

15 MS. ARNOLD: I don't think that's correct. I
16 think we are dealing with conversion areas, which is
17 defined as a geographical area that's being converted
18 at one given time, and if the city is going to convert
19 an area that's exclusively residential, it's going to
20 be under Schedule 70. If there is one gas station in
21 there, which I think, by the way, is the situation in
22 Clyde Hill -- I may be wrong. I don't want to speak
23 for him, but if there were one gas station there, it
24 might switch it over to Schedule 71 because then it's
25 no longer exclusively residential.

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1 COMMISSIONER HEMSTAD: That's what I find in
2 a certain sense troubling because tariffs are intended,
3 I suppose, construction tariffs like this to have some
4 relation to cost, and so the accident, put it that way,
5 of a gas station within an exclusively residential
6 neighborhood would have a very substantial difference
7 in cost sequence. Does that follow?

8 MS. ARNOLD: I don't disagree with that. If
9 Puget had not withdrawn it's revised Schedule 70, we
10 would have a whole different discussion going on here.
11 We would be discussing what are the cost consequences
12 of three phase versus single phase. We would be
13 discussing what would be the just and reasonable rate
14 to be applied under those circumstances, but that's not
15 the tariff that we have before us, and Puget is
16 responsible for filing and maintaining its own tariffs,
17 and Puget did file a tariff that said just what you are
18 suggesting, that --

19 COMMISSIONER HEMSTAD: We don't know why they
20 withdrew it --

21 MS. ARNOLD: No, we don't, but they did.

22 COMMISSIONER HEMSTAD: It could be an
23 infinite number of reasons that could be completely
24 unrelated to this issue.

25 JUDGE MOSS: Being mindful of the time, I

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1 wonder if we shouldn't move on to Clyde Hill.

2 CHAIRWOMAN SHOWALTER: Just one last
3 follow-up here. The trouble with your interpretation
4 is that if you focus -- if you say that a conversion
5 area is defined by the most expensive use, if there is
6 a single gas station in a big area, then the
7 consequences are that depending on how big an area is
8 converted at one particular moment versus over a period
9 of years, for example, you can get different results.
10 That seems very arbitrary. It seems a much more
11 harmonious view to say that areas that are commercial
12 are Schedule 71. Areas that are residential are 70.
13 It all begs the question of whether this arterial going
14 through this project is, but shouldn't we interpret the
15 tariffs so that the amount that people pay doesn't
16 depend on the timing or the sequencing of when a
17 particular block is converted or not.

18 MS. ARNOLD: We don't know why Puget filed
19 the tariff that said if it's used exclusively for
20 residential purposes, Schedule 70 applies. I don't
21 know what their reasoning was at that time. Electrical
22 distribution systems, as far as we know, have always
23 used three-phase feeders for the backbone of the
24 system, so presumably when this was filed, and when the
25 cost information was filed also in 1984, Puget had a

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1 reason for saying that if the conversion area was
2 exclusively used for residential purposes, Schedule 70
3 would apply rather than Schedule 71.

4 CHAIRWOMAN SHOWALTER: It's Puget's tariff,
5 but we approved it so it's our tariff.

6 MS. ARNOLD: That's true.

7 JUDGE MOSS: Let's move on and hear from
8 Clyde Hill and we can return to questions later.

9 MR. RUBSTELLO: Good morning. I first wanted
10 to thank you for allowing us to have this oral
11 argument. I think it's important to not only clarify
12 any facts but to have this dialogue that you've just
13 had in terms of getting questions asked, and I'm going
14 to be happy to do that with you, and I'd like to
15 address some of the same questions and give you some
16 answers that were addressed in the previous
17 conversation.

18 I've placed up on the tripod a map of the
19 City of Clyde Hill. We have some very good stipulated
20 facts in this case. Clyde Hill is virtually entirely a
21 residential community. There are only two commercial
22 businesses in the entire city, and those are the two
23 pink shaded dots up in the left-hand corner. One is a
24 gas station mini-mart at a freeway intersection. The
25 other is a Tully's coffee shop. Otherwise, the entire

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1 town is residential, and the conversion area, which is
2 outlined in the pink line, is entirely residential, and
3 PSE has stipulated in the facts that the two commercial
4 users in town receive their electricity from a
5 different distribution system. They don't receive it
6 from the distribution that runs through the conversion
7 area, and that the only commercial businesses that are
8 alleged by PSE to be used by this three-phase wire that
9 runs down 92nd Avenue Southeast, which is outlined in
10 green on my map, are somewhere outside of the City of
11 Clyde Hill. They don't say where they are, how far
12 away they are, but they are not in Clyde Hill and they
13 are not within the conversion area.

14 I take a slightly different look at the
15 language in Schedule 70 that talks about being zoned
16 for and being used exclusively for residential
17 purposes. I believe that that language includes not
18 only the zoning point of view, but it does include the
19 electrical distribution point of view, because you have
20 a two-part test here. First they say, is this zoned
21 residential? Is it intended to be used for residential
22 purposes, and the second component of that test is the
23 reality check. We look at the actual uses. Are they,
24 in fact, residential other than residential uses that
25 are there because we had some other zoning that

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1 pre-existed the residential zoning, or is there some
2 use there that got there because the municipality has
3 granted a special use permit or a conditional use
4 permit? Depending upon the city and how they do
5 things, have they allowed other than residential uses
6 to be within that area that will require, that will
7 require the higher loads, that require different types
8 of electrical distribution facilities than are required
9 by residential uses? But the facts are clear here with
10 respect to Clyde Hill, there are only residential uses.
11 The three-phase wire is not there because the people in
12 Clyde Hill need it but because the people within the
13 conversion area need it.

14 JUDGE MOSS: Let me interrupt you for a
15 second. You said if the city permits the area to be
16 used for other than residential purposes. Why isn't
17 PSE's use of that arterial or street as a route for its
18 three-phase power system, why doesn't that constitute
19 the city allowing it to be used rather than residential
20 purposes since the three-phase clearly is not required
21 for the residential area?

22 MR. RUBSTELLO: Because the definition does
23 not go to the use made by the type of distribution
24 system that is within the area --

25 JUDGE MOSS: Why don't we look at that --

00101

1 MR. RUBSTELLO: The only criteria within
2 Section 2 is that the overhead distribution lines be of
3 15 thousand volts or less, period. That is the
4 criteria with respect to the distribution system. The
5 other criteria relates to the land uses which are
6 served by the distribution system.

7 CHAIRWOMAN SHOWALTER: You are looking only
8 at Schedule 70, and I think you have to look at 70 and
9 71 together. They are both valid tariffs, so you have
10 to decide whether the language of 71 is adequate to
11 scoop up out of Tariff 70. This situation, that is, is
12 an arterial through a residential area and other area
13 with load requirements which are now -- I can see two
14 answers to that question, but isn't that the question?

15 MR. RUBSTELLO: Exactly, and I think if you
16 look at the language in Schedule 71, that really helps
17 clarify the language in Schedule 70, because what does
18 that language within the parenthesis say: "And in such
19 other areas of such municipalities which have
20 electrical load requirements which are comparable with
21 developed commercial areas." They are speaking
22 directly to the electrical load requirements of the
23 uses within the area. That's exactly what they are
24 referring to. Schedule 71 --

25 CHAIRWOMAN SHOWALTER: How do we know that?

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1 That gets to the nub of the matter. You are looking
2 at -- you would say, The houses in the area don't have
3 load requirements comparable to commercial, but Puget
4 would say, This arterial is required to carry this load
5 for the benefit of the system.

6 MR. RUBSTELLO: This goes to one of the other
7 questions that was asked when we look at overall
8 fairness of these rates. You look at both schedules.
9 One is 30 percent and one is 70 percent. Neither one
10 of them are 100 percent, and I ask myself, Why is that?
11 I'm not a maker of tariffs. I haven't been down here
12 looking at tariffs, but obviously, there isn't 100
13 percent cost recovery. Obviously, there are some
14 principles of fairness that went into the development
15 of these rates with some consideration that residential
16 users should pay a lesser percentage than commercial
17 users perhaps because commercials are business. They
18 are income-producing properties. They are getting
19 electrical services which they can in turn charge their
20 customers, get money back to help pay for that where
21 residential users are not.

22 There is obviously, apparently, some
23 percentage of the cost factor that the Commission and
24 PSE decided that they were going to recover through
25 some other means, whether it was in their overall rates

00103

1 or some other changes. There isn't 100 percent cost
2 recovery within either one of these two tariffs, and
3 one of the questions that I posed in my brief was, why
4 should these citizens of Clyde Hill, who are strictly
5 residential users, we don't need three-phase wire going
6 down 92nd Avenue in Clyde Hill to service Clyde Hill
7 and to service those users. PSE needs it because they
8 apparently want to serve somebody else somewhere else
9 off of that same distribution system, and why should
10 the ratepayers in Clyde Hill be burdened by the
11 additional cost of that three-phase-type wiring to
12 convert it when they didn't need it there in the first
13 place. Shouldn't the people who need that extra load
14 capacity be paying for that charges. So I think there
15 is fairness in these rates the way they are structured;
16 certainly as they apply, at least as we are arguing, as
17 they apply to the City of Clyde Hill.

18 92nd Avenue, again, to answer another one of
19 your questions, it isn't a through street taking people
20 elsewhere, and we have provided the affidavit of the
21 city administrator Mitch Wasserman that points out what
22 92nd Avenue that's consistent with the language in the
23 city's plan. It's simply a collector arterial that
24 provides a means for people who live alongside of 92nd
25 Avenue to get in and out of their homes. It's not a

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1 through street that's there to provide access to
2 Bellevue as was mentioned in one of the declarations
3 provided by PSE. It's simply a local collector street,
4 the lowest level of arterial within the City of Clyde
5 Hill's comprehensive plan.

6 I have argued in my brief, two briefs, that
7 you can see that our conversion area is one contiguous
8 area. It's not segmented here. We are not trying to
9 play games with the tariff. We are not trying to
10 segment things, and you asked the question, Well,
11 couldn't cities segment projects to try to get around
12 the tariff --

13 CHAIRWOMAN SHOWALTER: Actually, mine was the
14 opposite. I think it makes less sense to make
15 something whole and dependant on a little part than it
16 does to break it up --

17 MR. RUBSTELLO: That may be a deficiency in
18 the existing tariff. Certainly, we have language,
19 "exclusively used," and if that gas station that's
20 sitting up there at that interchange was within that
21 conversion area, you can darn well bet, consistent with
22 what PSE has argued, they would be telling you that
23 this entire conversion area needed to be under the
24 Schedule 71 rate, and maybe one could argue if the
25 theory behind these rates is similar to what I just

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1 talked about, well, if that municipality wants to mix
2 commercial with residential in that kind of way and
3 it's going to benefit that community and those users to
4 have that type of distribution line, there is some
5 equity in that.

6 Although, one could certainly argue that --
7 perhaps exclusively and how you used and interpreted
8 the term "exclusively," does that mean one house --
9 Bill Gates isn't in Clyde Hill. He's in Medina down
10 the road, but if Bill Gates were in this and with all
11 his electronics he required a huge distribution load,
12 does that mean that it would be fair for everyone else
13 within all these other residential uses to pay a
14 commercial rate? I don't know. One could argue both
15 ways on that, but that simply isn't the issue that we
16 have before us and certainly not under the facts that
17 we have under the City of Clyde Hill.

18 CHAIRWOMAN SHOWALTER: I wanted to ask you a
19 little bit about the private roads, because that's one
20 of the issues your case raises. I guess first, just as
21 a matter of the tariff, it does get to this issue of
22 conversion area, because again, if you look at an area,
23 regardless of what's in it, if it's at least a block
24 long, it qualifies. On the other hand, if you are
25 looking functionally at an area and might divide it up

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1 into commercial or residential or, in this case, a
2 private road, the consequences are quite different, and
3 why should we be reading into this tariff the private
4 roads with their different legal relationship to Puget
5 as Puget has pointed out.

6 MR. RUBSTELLO: I don't think it's a question
7 of reading in. I think it's a question of reading out,
8 because if you look at the availability section, the
9 language of Section 2, and the basic criteria is, I
10 really don't think it makes a clear distinction, if any
11 distinction, between a public road and a private road.
12 The key language that Puget points out is some in
13 Section 3(b) going to the \$20.33 per center line foot
14 of public thoroughfares.

15 I've argued in my brief, and the more I've
16 thought about it, it seems to me reasonable and
17 consistent with how you determine your rates and the
18 statutes and the regulations that you have is what
19 would be the basis to discriminate in a rate structure
20 between -- and I've marked on my map the private roads,
21 which are really private streets, but the private
22 roadways in orange, and within this conversion area,
23 there is just another street, a means of access to the
24 houses that are off those streets. They have the same
25 kind of overhead lines. There is nothing different

00107

1 about them.

2 What would be the rational basis to
3 discriminate with the charges to the people that live
4 in the houses off those private streets from the people
5 who live in the houses off of the public streets?
6 Remember that Clyde Hill has formed a local improvement
7 district --

8 JUDGE MOSS: Let me interrupt you for a
9 minute, and let's get this question focused here. Do
10 you want us to read out the word "public" in the
11 section you recited to us?

12 MR. RUBSTELLO: I think it's superfluous.

13 JUDGE MOSS: You believe we should ignore it?

14 MR. RUBSTELLO: Yes. I don't think that
15 literally that you are required to be confined to just
16 a public road. I think when it was drafted, that's
17 probably what the drafter was thinking, but it applies
18 equally well to a private road.

19 CHAIRWOMAN SHOWALTER: One answer would be
20 neither 70 nor 71 applies in that situation because of
21 its terms, but therefore, the question reverts to
22 statute, and we have to impose a reasonable rate, and
23 that reasonable rate in that situation might be the
24 same residential rate, but that's a little bit of a
25 different question whether Puget is obligated in the

00108

1 first place to do the underground thing. The rate is
2 one thing.

3 MR. RUBSTELLO: But that's a different
4 question. In terms of obligation, can we force Puget
5 to do the undergrounding or can the property owner.
6 That's not really the issue here, and that issue will
7 get addressed. This issue here is if that happens,
8 either because PSE is forced to do it or because they
9 agree to do it, what is the charge? What is the
10 reasonable charge?

11 We have argued in our briefs that if, in
12 fact, you determine that Schedule 70 had to be
13 literally applied to public road, then what do you do,
14 because there is no other tariff? PSE says, "We can
15 charge them 100 percent of the cost." How? Why?
16 Based on what tariff? That doesn't seem reasonable and
17 seems discriminatory.

18 CHAIRWOMAN SHOWALTER: If there is no tariff,
19 that doesn't mean there is nothing that can be done.
20 There is a statute, so a statute would say --

21 MR. RUBSTELLO: -- charge a reasonable rate,
22 and that's consistent with my argument. If that's the
23 situation, then I think the case law that says there is
24 no tariff, you look to the most applicable tariff to
25 establish the rate, and clearly, the most applicable

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1 tariff rate is Schedule 70, because there is no
2 reasonable basis even argued by PSE why their costs
3 would be higher or why a different rate should apply to
4 the owners of property the private drives.

5 JUDGE MOSS: We are familiar with the line of
6 authority that requires public utilities to relocate
7 lines when those lines need to be relocated to
8 accommodate a city's road projects. Is there a similar
9 line of authority you would cite us to with respect to
10 a utility's obligation to undertake the more expensive
11 undergrounding in that instance?

12 MR. RUBSTELLO: On a private --

13 JUDGE MOSS: Private or public. Isn't the
14 utility's responsibility under the line of authority
15 that's been cited to us to relocate the facilities in
16 those circumstances which would allow for overhead
17 facilities to be moved to a new location as opposed to
18 a more expensive undergrounding?

19 MR. RUBSTELLO: With all due respect, I
20 didn't come prepared to argue that today. We are
21 certainly looking at that issue because it's an issue
22 that's going to have to be addressed in terms of
23 getting that underground conversion accomplished, but
24 that is not the issue that this commission deals with.
25 Assuming it's going to get done --

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1 JUDGE MOSS: Do you contend that the city has
2 the right to compel PSE to underground these
3 facilities?

4 MR. RUBSTELLO: I think we have a means to do
5 that. I think we are going to be able to have a means
6 to do that and we are working on that right now. I
7 believe the city will have a means to do that.

8 COMMISSIONER HEMSTAD: I don't understand
9 what you mean when you say "a means."

10 MR. RUBSTELLO: A means, it's just like
11 because there is statutory authority and there is case
12 law interpreting those statutes --

13 JUDGE MOSS: Cite us to the statute that
14 requires them to underground facilities that need to be
15 relocated versus relocating them to another overhead
16 facility. Is there such a statute or case authority
17 that says a city has the power to do that?

18 MR. RUBSTELLO: To relocate overhead lines?

19 JUDGE MOSS: To require undergrounding.

20 MR. RUBSTELLO: Yes, there is statutory and
21 there is case law authority that says cities can do
22 that.

23 JUDGE MOSS: Cite me to that, please.

24 MR. RUBSTELLO: If you look at the City of
25 Bothell case, the question wasn't whether we could

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1 require them to do it, the City of Bothell could
2 require the undergrounding, it was that if you did,
3 what was going to be the cost, and in that case, the
4 Court said you have to follow the tariff. There is a
5 more recent case authority out of the Federal District
6 Court that took a different point of view.

7 JUDGE MOSS: But is there any case authority
8 that says when a city's project requiring a utility to
9 relocate its facilities, the city can require that
10 those be relocated to an underground location as
11 opposed to an overhead location?

12 MR. RUBSTELLO: Is there a specific statute
13 that says that? Yes, I believe the City of Bothell
14 case, the City of Edmonds case both say that. We have
15 the right to regulate the use of our right-of-way, and
16 that clearly comes from statutory common law and common
17 law authority.

18 JUDGE MOSS: That wouldn't apply in the case
19 of the private.

20 MR. RUBSTELLO: It may. Let's put it this
21 way. We don't have any case law. I don't believe
22 there is any case law in Washington state on that
23 particular issue, and that may well come within that
24 authority. I believe that also the cities have broad
25 police power authority, and we have broad power locally

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1 to pass local regulations with respect to the
2 infrastructure -- where it is; how it's placed up -- as
3 long as it's reasonable and there is a public purpose
4 behind it, and I believe that within our police power
5 and common law authority that municipalities do have
6 the means of requiring a utility to underground even if
7 the overhead distribution lines are on private
8 easements and out of the public right-of-way.

9 JUDGE MOSS: Why don't we take about three
10 more minutes.

11 MR. RUBSTELLO: Before I quit, I also wanted
12 to make clear that the City of Clyde Hill's position in
13 response to a comment from Commissioner Hemstad is yes,
14 we believe that the language of the tariffs are clear
15 and they don't require interpretation in requiring you
16 to go to other documents or to receive other extrinsic
17 evidence to interpret them. The only party here that's
18 arguing that is PSE.

19 SeaTac and Clyde Hill are both arguing that
20 the language is clear and it's unambiguous. PSE is
21 arguing that it is ambiguous, and therefore, you need
22 to go back and start looking at all these other
23 background documents and other documents to interpret
24 what the language of the tariffs mean, i.e., their
25 prior rate studies, but the city's position is there is

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1 not that ambiguity. Such interpretation has been
2 offered by PSE that you look at the kind of traffic
3 that is going down the roadway is an unreasonable
4 interpretation of the clear language of the tariff and
5 that that is not licensed to go beyond the four corners
6 of the two tariff documents.

7 JUDGE MOSS: You mentioned a couple of times
8 potential deficiencies in the tariff, and in light of
9 the argument that you just made, I want to ask you if
10 the tariff, ambiguous or unambiguous, has been
11 consistently interpreted by the Company over a long
12 period of years to apply in the fashion the Company now
13 says it applies. That is to say, whenever three-phase
14 is involved, 71 applies. Whenever one-phase is
15 involved, 70 applies. To put it in a nutshell, that is
16 what PSE is saying, and they're saying they've been
17 interpreting and applying this tariff language for many
18 years. Should we ignore that argument and that fact?

19 MR. RUBSTELLO: Yeah, I think you should.
20 This is the law. I've been representing cities for
21 over 25 years, and we have a lot of codes; we have a
22 lot of ordinances, and sometimes we people don't follow
23 them, and for long periods of time, people don't follow
24 them, but you know, the law is very clear.

25 Even though there is a long past history of

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1 not following that code or that ordinance, that doesn't
2 make it right, and when it's enforced the way it should
3 be, all that prior history doesn't mean anything. It
4 should have been enforced right in the first place. If
5 that's what's happened, I don't know if that's the way
6 it's always been or not, but here, this is the first
7 time I know of that it has been called into question as
8 to what this mean.

9 If there have been prior interpretations by
10 this commission that interpreted that language that
11 created a body of law as an administrative agency as to
12 what that meant, that's an entirely different story,
13 but if PSE has been doing things that you weren't
14 particularly aware of and only involved some other
15 parties who are not here today, should that govern how
16 you read these tariffs? Absolutely not.

17 JUDGE MOSS: I thank you again for being
18 mindful of the time. We should turn to PSE at this
19 point.

20 MS. DODGE: Thank you, Your Honor. I think
21 it's clear that this case turns on whether the areas in
22 question are used exclusively for residential purposes
23 or not, and the petitioners' arguments do ignore
24 Puget's electric system in their interpretation of the
25 tariff, which is a strange thing to do, as Chairwoman

00115

1 Showalter noted, when the entire purpose of the tariff
2 is to govern what will happen with Puget's electrical
3 facilities and under what terms and conditions.

4 Also with respect to Clyde Hill and the
5 private drive's issue, they ignore Puget's property
6 rights. Puget draws the line, ultimately, for what is
7 exclusively residential use versus what is not
8 exclusively residential use at whether you have a
9 single-phase or three-phase system in the area. That
10 doesn't mean you ignore what's happening on the ground.
11 You do look at is this a major arterial running through
12 an area? In this case, for SeaTac, we clearly have an
13 arterial that runs from one commercial area to another.
14 In Clyde Hill, there is a dispute on that. I don't
15 think it's material because ultimately, it's undisputed
16 that there is a three-phase system running along 92nd
17 Avenue, and I've taped Stipulated Exhibit D to the wall
18 just to assist a little bit. The yellow highlighting
19 is 92nd Avenue Northeast, and that is the section of
20 this LID project area that Puget believes falls under
21 Schedule 71. It has a three-phase system. That means
22 it has electric load requirements that are comparable
23 with commercial developed areas.

24 Puget has not taken the fact of that 92nd
25 Avenue and said, Okay, you've got to pay Schedule 71

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1 for your entire LID. Puget has looked at the portions
2 of that LID area that have single-phase service, and
3 those are highlighted in pink, and Puget will apply
4 Schedule 70 to those areas. There are streets
5 extending into the residential area on the right, and
6 there is another small section at the bottom of
7 Stipulated Exhibit D.

8 CHAIRWOMAN SHOWALTER: I want to ask you a
9 question. Let's say there is an exclusively
10 residential area, and three-phase is going only for the
11 purpose of a feeder to a residential area. There is no
12 commercial use in the picture at all in this question.
13 In that instance, does Schedule 70 apply because it's
14 exclusively residential, or is there a carve-out
15 because it's a feeder?

16 MS. DODGE: It's not exclusively residential
17 because of the feeder.

18 CHAIRWOMAN SHOWALTER: Doesn't that mean in
19 virtually all residential areas, there will be feeders
20 that aren't residential from an electric point of view?

21 MS. DODGE: Not necessarily, but it may well
22 be true that you have an area with residential
23 dwellings that there is a feeder that goes into that
24 area so that you can just get more single-phase
25 circuits tapping off of that three-phase, and depending

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1 on when conversions are done, you may have entire
2 blocks of conversions that only involve the
3 single-phase and they are all going to fall under
4 Schedule 70. You may have some overlap, and those that
5 are single-phase would fall under the Schedule 70, and
6 those that are three-phase would be Schedule 71.
7 That's focusing on the electric system and cost issues.

8 CHAIRWOMAN SHOWALTER: So you say in that
9 instance where it's only residential, people living in
10 it, that that residential -- what we would think of as
11 a residential area for zoning purposes is not used
12 exclusively for residential because there needs to be a
13 three-phase wire going to it?

14 MS. DODGE: I think you should separate
15 zoning from the electrical system. You will have large
16 tracks of residential areas that don't have any
17 three-phase feeder whatsoever, but you will have
18 situations where you may have a three-phase feeder
19 running through an area, and it may go from one
20 commercial area to another.

21 You can picture a cul-de-sac that ends at a
22 national park or something. The electrical system just
23 ends at a certain point, and there may be a three-phase
24 feeder running into the middle of that and then you
25 have your single-phase branching out. Nevertheless,

00118

1 the portion of that area that has the three-phase
2 feeder in it has electric load requirements comparable
3 with a commercial system. Three-phase is comparable
4 with commercial areas.

5 CHAIRWOMAN SHOWALTER: If that's the case, is
6 it your view that's not used exclusively for
7 residential, or it is used for residential but there is
8 a carve-out under 71 because it's comparable, or are
9 they one in the same thing?

10 MS. DODGE: It's both, because the "used
11 exclusively for residential purposes" in Schedule 70
12 goes to how's the area used.

13 CHAIRWOMAN SHOWALTER: On that question, I
14 wonder if you are proving too much. Take a residential
15 area, UPS trucks go through it. All types of
16 commercial activity takes place in residential areas.
17 It doesn't mean they are not exclusively used for
18 residential areas, or at least there is not a single
19 residential area that doesn't have commercial activity
20 going on.

21 MS. DODGE: But we are speaking of conversion
22 of Puget's distribution system, and a distribution
23 system has more -- by its nature, it's a network, and
24 by its nature, it is never serving only a single
25 residential area. It will connect into other areas.

00119

1 CHAIRWOMAN SHOWALTER: I wanted to put the
2 question to you that was raised, which is why should
3 the people of Clyde Hill pay the higher rate when it
4 isn't for the benefit and doesn't really relate to
5 their LID.

6 MS. DODGE: They are converting to
7 underground for their benefit. They would like the
8 esthetic benefits from going overhead to underground,
9 and some say it will benefit property values and so
10 forth to do that kind of undergrounding, so they are
11 benefitting from the underground conversion. They are
12 the cost causers. They are causing the undergrounding
13 to be done, and it's undisputed that it's significantly
14 more expensive to underground a three-phase system than
15 a single-phase system because you have to build two
16 systems underground to serve the same function as the
17 overhead system that existed.

18 It doesn't make sense to me, this concept
19 that it's not fair. Again, the undergrounding benefits
20 them. They are the cost causers, and Clyde Hill is
21 arguing it's the commercial users of the three-phase
22 system that ought to pay, but the commercial users
23 don't get any benefit from Clyde Hill residents
24 choosing to underground this portion of the system.
25 The commercial users are just as happy to have that

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1 three-phase feeder remain overhead forever. There is
2 no reason they should pay for the choice of residents
3 within Clyde Hill to go underground on that.

4 Also, the people in Clyde Hill do benefit
5 from that three-phase system. First of all, they use
6 it. Their lines tap off of it. Also, they benefit
7 from having the increased reliability that's provided
8 by the three-phase system. Unlike some folks who have
9 just single-phase service, they have some redundancy
10 that other people don't have.

11 JUDGE MOSS: But that has nothing to do with
12 the reason the three-phase system was installed, does
13 it? You didn't do it to provide redundancy to Clyde
14 Hill.

15 MS. DODGE: I think for those portions that
16 have three-phase, that would be a recognized benefit.

17 JUDGE MOSS: That's an artifact. In other
18 words, PSE doesn't make decisions about installing
19 three-phase through a residential area on the basis of
20 providing increased reliability to the residents. It
21 makes that decision based on the need to provide
22 three-phase power somewhere further along the system;
23 is that right?

24 MS. DODGE: I think it's probably more of a
25 load-based issue at that point. I think it would

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1 depend on where this three-phase system runs.

2 JUDGE MOSS: If it was a very large
3 residential area so that it had a significant load, is
4 the suggestion that PSE might choose to install a
5 three-phase system into that type of area and then
6 serve different parts of the large suburban development
7 off the three-phase rather than installing one-phase
8 throughout?

9 MS. DODGE: I think there, the purpose of
10 three-phase is to deliver load to the single-phase
11 branches, not for redundancy, per se.

12 JUDGE MOSS: Are there areas where there is
13 no commercial use at all nor is PSE putting a
14 three-phase system through such area to reach other
15 commercial areas? Are there residential areas that
16 require the installation of a three-phase system in
17 order to serve the residential customers within the
18 area? That's the question I'm trying to ask.

19 MS. DODGE: I don't know, but there may well
20 be because it would make sense. You can get more load
21 out to single-phase branches, and if it happens to not
22 be a through, that may be possible. I don't know. I
23 think in that case, again, you have the carve-out of
24 Schedule 71 that would apply to the portion of the
25 system that's three-phase.

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1 JUDGE MOSS: Does PSE contend in this case
2 with respect to the South 170th Street project that it
3 has a three-phase system in place there as a necessary
4 element of serving the residences?

5 MS. DODGE: Not per se. It's part of its
6 distribution backbone.

7 JUDGE MOSS: What about Clyde Hill?

8 MS. DODGE: Clyde Hill, I think it's part of
9 the distribution system that runs through Clyde Hill --

10 JUDGE MOSS: Necessary to serve Clyde Hill;
11 that's the question.

12 MS. DODGE: I'm a little hung up because I'm
13 not familiar enough with the overall engineering of
14 that region, so I don't want to mess it up.

15 JUDGE MOSS: I appreciate that.

16 CHAIRWOMAN SHOWALTER: But in general, at
17 least as I read your brief -- I'm looking at Paragraphs
18 19 and 20 -- as I understand it, a three-phase system
19 is a backbone. A backbone to what is an open question.
20 It could be commercial or large tracks of residential.

21 MS. DODGE: Yes, it's a backbone. And in
22 that regard, we talked a little bit about the cost
23 study that was submitted in 1984 with Schedule 70. The
24 exact language there was work schedules were obtained
25 for past conversions. It was found only six were in

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1 residential plats and suitable for further study. Two
2 of these had to be eliminated because they included
3 feeders running through these areas. It's clear that
4 Puget felt that if you had feeder, it had to be
5 eliminated, even if it were running through a
6 residential plat.

7 CHAIRWOMAN SHOWALTER: I remember reading
8 that.

9 MS. DODGE: It's Addendum Page 9 to Puget's
10 brief.

11 CHAIRWOMAN SHOWALTER: This isn't what I
12 read, but it's the same thing.

13 MS. DODGE: So I understand, and I think
14 there is some validity to Clyde Hill's position that
15 you are looking at the tariff itself. Of course,
16 that's what you are doing, but when you have a
17 situation such as the present where the parties are
18 fighting over what "exclusively residential" means, and
19 clearly, we don't agree that our interpretation is so
20 unreasonable that you don't even look to questions of
21 statutory interpretation or looking through the
22 legislative history.

23 We believe that it is part of the inquiry
24 here and that when you've got pretty clear evidence,
25 and you don't always have that in looking back at some

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1 of the tariff filings, but here, it's pretty clear and
2 pretty straightforward in the cost study that there was
3 no intention by Puget to include this kind of feeder in
4 covering the cost of residential conversions, and we've
5 also submitted uncontested declaration that, Look, this
6 is how we've applied it going back. It's what we think
7 makes sense, and this is what we think this language
8 means in the tariff.

9 So again, they haven't raised it on oral
10 argument, but the question was raised in the briefs, is
11 Puget discriminating? Absolutely not. It goes to the
12 single-phase. Clearly, Clyde Hill has had the benefit
13 of those portions of the project that are single-phase.
14 It will have Schedule 70. For SeaTac, they have the
15 yellow line running through. They don't have the
16 conversion of any side streets.

17 Unless there are more questions on that, I
18 thought I would talk about the facilities on private
19 drives for a minute.

20 COMMISSIONER OSHIE: I have a question,
21 because it relates back to what I understand your basic
22 position to be and that is we look to the electrical
23 system. We don't look to the area that it serves
24 necessarily, but we look to the system to determine
25 whether Schedule 70 or 71 applies. In other words, we

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1 look to whether it's single-phase or three-phase, and
2 it's a system issue not an area issue, and my question
3 is, if that were to be true and we were to find that to
4 be true, what do we do with the language in Section 2
5 of 70 that says, and I'll just quote: "The Company
6 will remove existing overhead electrical distribution
7 lines of 15 thousand volts or less together with the
8 Company-owned poles following the removal of all
9 utility wires therefrom in areas which are zoned and
10 used exclusively for residential purposes."

11 Now, if it were only the electrical system
12 that we were concerned with, why wouldn't it read:
13 "Following the removal of all utility wires used
14 exclusively for residential purposes." What is added
15 by "in areas which are zoned"?

16 MS. DODGE: I don't think it's right to look
17 only at the electric system. You would look at the
18 physical characteristics and the electric system, and
19 partly because, as you say, it says areas which are
20 zoned, so first inquiry, how is it zoned? So the
21 Company does look at that. It's an important
22 consideration.

23 CHAIRWOMAN SHOWALTER: So in other words, you
24 are saying you have to meet two thresholds; the
25 land-use zoning threshold and the electric threshold.

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1 MS. DODGE: Yes.

2 CHAIRWOMAN SHOWALTER: So if there was a gas
3 station for some old house -- I've got one in my
4 neighborhood, a frog pond. I'm sure it has residential
5 wiring or probably does, but yet it's a commercial
6 establishment -- that would be, quote, residential from
7 an electric point of view, but it would not be
8 residential from a zoning point of view, so it would
9 fail on one test.

10 MS. DODGE: Yes.

11 COMMISSIONER OSHIE: I guess PSE's position
12 is that it fails because it's a three-phase system.
13 I'm still confused, I guess, as to your interpretation
14 of what those words mean in areas which are zoned and
15 used exclusively for residential purposes.

16 MS. DODGE: The "used exclusively for
17 residential purposes" can have a practical real estate
18 land use application as well as an electric application
19 --

20 COMMISSIONER OSHIE: Isn't that the City of
21 Clyde Hill's position? It's exclusively residential
22 use. It's exclusively a residential area, but you are
23 saying that because it has a feeder system running
24 through it, then Schedule 71 applies.

25 MS. DODGE: Because they are ignoring the

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1 electric sense of the term "used exclusively for
2 residential purposes." You have to read Schedule 70
3 and 71 together, and then you do look at the carve-out
4 in 71.

5 COMMISSIONER OSHIE: I don't know why the
6 language is there if it has -- I don't see how it has
7 any real meaning, because it could just say, "removal
8 of all utility wires used exclusively for residential
9 purposes." Doesn't that accomplish the same goal?
10 That's really what you are saying. You are saying only
11 the wires that are used exclusively for residential
12 purposes should be considered under Schedule 70.

13 MS. DODGE: I think that there is a purpose
14 to the zoning as well. If you have an area that's
15 zoned commercial, you don't want to put in a
16 single-phase underground. You will want to put in
17 three-phase underground, and then you have the similar
18 cost issues that you don't want to be applying a
19 Schedule 70 or residential conversion that's meant to
20 apply to certain bucket of costs, the single-phase
21 undergrounding. You don't want to apply that and put
22 in single-phase undergrounding in an area that's zoned
23 commercial.

24 COMMISSIONER OSHIE: I would certainly
25 understand that. I guess I don't have any further

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1 questions.

2 JUDGE MOSS: Isn't it PSE's position that if
3 there is three-phase power in the area, it is not ever
4 within the definition of "used exclusively for
5 residential purposes"?

6 MS. DODGE: Right.

7 JUDGE MOSS: So doesn't that make the zoning
8 language surplusage?

9 MS. DODGE: For that particular example, yes,
10 but there will be other examples of conversions where
11 it will not be surplusage.

12 JUDGE MOSS: When would it ever apply? PSE's
13 position is also that if it's single-phase, then it's
14 residential because three-phase is required for
15 commercial, if I understood what you just said.

16 CHAIRWOMAN SHOWALTER: That was my example.
17 There are grandfathered places in residential areas
18 that have, I'm certain in old neighborhoods, old
19 wiring, and they are even in areas that are zoned
20 residential, but there are establishments in areas that
21 are zoned residential that are not residential.

22 MS. DODGE: Then we would be in a situation
23 of having a place that's not being used exclusively for
24 residential purposes.

25 CHAIRWOMAN SHOWALTER: I was just going to

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1 say that the fact that there can be nonresidential uses
2 in an area zoned for residential use can be true even
3 if you are simply looking at this all from the zoning
4 point of view. That's a separate question. You need
5 to have basically two pairs of glasses on. One is the
6 zoning pair of glasses. The other is the electrical
7 pair of glasses, but even on the zoning pair of
8 glasses, there is a difference between "zoned for" and
9 "used exclusively for."

10 MS. DODGE: Yes. That's why applying tariffs
11 is not the easiest thing to do, because you have many
12 different factual situations on the ground, and it's a
13 matter of working through the requirements in the
14 tariff and looking at your situation on the ground and
15 applying it to each specific situation, but part of
16 what's in front of the Commission today is clearly
17 there is a fundamental dispute here about whether Puget
18 is permitted to say three-phase and single-phase have a
19 meaning within Schedule 70 when they apply this tariff.

20 With respect to the facilities on private
21 drives, the green highlighting are the facilities in
22 question. It's been stipulated that those are private
23 drives. They are not public thoroughfares. Clyde Hill
24 referred to the public thoroughfare language in Section
25 3(b) of Schedule 70, but it also appears in Section 2

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1 where the tariff refers to property abutting each side
2 of the public thoroughfare with all real property on
3 both sides of each public thoroughfare to receive
4 electric service from the main distribution system.

5 I think it is important that Puget has
6 testified and understands this tariff and has applied
7 this tariff not to apply to facilities located on
8 private easement. In those situations, Puget has a
9 fundamental property right. It has a right to the
10 location of its facilities and to being able to
11 maintain them in their current form. There may be
12 cases where the Company prefers not to convert those
13 facilities to underground, and it needs to have the
14 ability to manage and make decisions about its own
15 property rights. When it files a tariff of general
16 applicability, it's looking at, Okay, if these
17 conditions are met, then we will form a conversion, and
18 what Puget thinks about the matter outside of the
19 tariff is really irrelevant, but when you have an
20 entire layer of property rights to deal with and how
21 Puget would like to deal with those property rights,
22 it's inappropriate to draft a tariff of general
23 applicability and extinguish Puget's property
24 interests.

25 Then when you get to the question, Okay, so

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1 Schedule 70 doesn't apply as well as Schedule 71, then
2 what is the right way? It certainly is reasonable to
3 charge your costs for undertaking a task. It seems to
4 me that that shouldn't be even something that would
5 come in question --

6 CHAIRWOMAN SHOWALTER: Then why is it 70/30
7 in the other instance?

8 MS. DODGE: That tariff was filed in '69 or
9 something like that. The legislative history is not
10 particularly good in terms of answering some of the
11 questions that come up 30 years later. So I don't know
12 exactly why you have the 30/70 split in Schedule 71.

13 COMMISSIONER HEMSTAD: If there is no or
14 minimal legislative history that one can read into it
15 that there is a mutual benefit shared between the
16 company and the ratepayers, and what that benefit is
17 going to be is arguable, but at least it was fine in
18 '73, why wouldn't there be a similar mutual benefit?

19 MS. DODGE: First, we should probably look at
20 Schedule 70, which looking at the cost study, Schedule
21 70 is meant to cover costs in residential areas, so the
22 question is that if Clyde Hill is right that Schedule
23 70 applies in this area and that Schedule 70 would
24 apply to these portions, and actually, those are
25 single-phase legs, and so we would be looking at

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1 applying what's in Schedule 70, I think.

2 CHAIRWOMAN SHOWALTER: But you would be
3 applying the Schedule 70 rate not because you think
4 Schedule 70 directly applies but because that private
5 area is comparable to Schedule 70?

6 MS. DODGE: I see. So you are raising the
7 question which tariff then; maybe it's 70 maybe it's
8 71?

9 CHAIRWOMAN SHOWALTER: I think the question
10 I'm looking at is does the private property sit outside
11 the tariffs, just happens to not have been covered, so
12 then you've got to figure out some reasonable rate if
13 the conversion happens, and a reasonable rate for
14 single-phase may well be exactly what the Schedule 70
15 rate is. As distinct from the question of does
16 Schedule 70 require the conversion underground to these
17 private portions.

18 MS. DODGE: Those are two different
19 questions.

20 CHAIRWOMAN SHOWALTER: So what's your answer
21 on the second question?

22 MS. DODGE: Of what is the reasonable rate?

23 CHAIRWOMAN SHOWALTER: No. Is undergrounding
24 required to be performed under Schedule 70 in these
25 private areas?

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1 MS. DODGE: No, it is not. The tariff speaks
2 of public thoroughfares, and the legal landscape
3 surrounding the filing and approval of the tariff is
4 one in which the Company is not required to do anything
5 with its facilities that are on the private property on
6 its own easements.

7 COMMISSIONER HEMSTAD: "Public thoroughfare"
8 is not defined in the tariff anywhere.

9 MS. DODGE: Not specifically, no, it's not.

10 COMMISSIONER HEMSTAD: You can have streets
11 that are open to public use that vary tremendously from
12 what one could call a private lane. Maybe that's the
13 case in a community like Clyde Hill, but there are
14 other private streets that remain important public
15 facilities. I cite one for example in this
16 neighborhood, the streets leading into the West Coast
17 Hotel just a few blocks from here is a private
18 thoroughfare, but very large numbers of cars use that
19 every day, and historically, its private nature has
20 been determined by once a year shutting the street off,
21 but anyone who lives here treats it as a public street.
22 Is it so clear when it says "public thoroughfare" that
23 that is meant in the sense of ownership, or is it in
24 the sense of use?

25 MS. DODGE: I think that if there weren't

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1 meant to be any weight placed on public in the legal
2 sense then it could have been left out. You would
3 simply talk about each side of a thoroughfare.

4 CHAIRWOMAN SHOWALTER: On the issue of what
5 you actually think these private places should pay in
6 the case of Clyde Hill, and I'm a little -- is it 100
7 percent --

8 MS. DODGE: It's 100 percent of the costs.

9 COMMISSIONER OSHIE: Let me make sure I
10 understand that. Your basis for that is under 3(b)(1)
11 because of the allocation of costs of \$20.33 per center
12 line of foot on all public thoroughfares? That's where
13 you find your foundation for your position? And I ask
14 you to reconcile if that's true. If you could
15 reconcile Paragraph 5 under "operating rights," because
16 under Paragraph 5 -- and if you look at Paragraph 2,
17 the availability section, one of the requirements is
18 that you have adequate operating rights, and operating
19 rights are defined as either coming from the
20 governmental authority or the owners of real property
21 within the conversion area, which I would assume to be
22 private property.

23 MS. DODGE: I think those are two different
24 things. In order for the Company to install facilities
25 underground, it does need to have operating rights to

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1 install facilities.

2 COMMISSIONER OSHIE: You're coming from a
3 governmental authority or private party. So they would
4 be available then to a private party as long as you had
5 the adequate operating rights. In other words, what
6 would be the use of having owners of real property,
7 therefore private property, within the operating rights
8 paragraph if it didn't apply to them?

9 MS. DODGE: Because the operating rights that
10 are referred to refer to rights for the facilities that
11 are going to be placed underground as part of the
12 conversion. Whereas the question of whether Puget has
13 to perform the conversion in the first instance or not,
14 you've got existing overhead facilities in place, and
15 the question where those existing facilities are placed
16 is partly what's going to determine whether Schedule 70
17 applies or not, whether the undergrounding is available
18 or not to begin with. Now, if the proposed project
19 does meet the requirements to obtain an undergrounding,
20 as part of that undergrounding, there has to be
21 adequate rights for the installation of the new
22 underground.

23 COMMISSIONER OSHIE: When I read the two
24 paragraphs together, I just assume that it would be
25 available, undergrounding would be available as long as

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1 at least one of the elements was met and that there are
2 adequate operating rights which could be obtained from
3 either a governmental authority, in other words, a
4 right-of-way, or an easement under real property from a
5 private party. When I read that together, I thought it
6 would apply to a private road as long as you could
7 obtain the operating rights at no cost to perform the
8 undergrounding function.

9 MS. DODGE: I think again you have to look at
10 the difference between -- you are talking about
11 conversion of existing facilities, and it may be that
12 you would be able to put these facilities underground
13 if you are given sufficient operating rights to do
14 that, to run your cable and to put in the facilities
15 you need to put in.

16 COMMISSIONER OSHIE: I don't mean to
17 interpret, and excuse me if I did, but I'm really
18 talking about whether the service is available.

19 MS. DODGE: It doesn't just say "Company
20 shall have adequate operating rights." It goes on to
21 talk about public thoroughfares. It sets a rate based
22 on public thoroughfares, and again, as we've argued, we
23 need to look as well at the legal landscape that
24 surrounded the filing of the tariff, which included
25 that Puget can't be forced to convert from overhead to

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1 underground when it's overhead is located in easements.

2 CHAIRWOMAN SHOWALTER: Maybe this could be
3 clarified. Let's take private roads out of this. If
4 you have just the normal situation of the city streets
5 and private houses on that city street, are there times
6 when you need the cooperation of the private landowners
7 who live on a city street? In other words, if you
8 don't have this unusual situation -- you have a normal
9 situation -- does Puget need to engage with at times
10 both the municipality as well as private property
11 owners who are on city streets?

12 MS. DODGE: Yes.

13 CHAIRWOMAN SHOWALTER: It seems like whether
14 there is private property or not doesn't address the
15 question of whether or not the tariff is available in
16 this more unusual situation. If availability is what
17 defines where it's available, then the rest of it is
18 who has to pay what? It's other additional
19 requirements in order to get the job done.

20 MS. DODGE: Availability is not the only
21 think that determines whether the conversion can occur
22 or not. Clearly, there are other requirements
23 throughout the tariff.

24 CHAIRWOMAN SHOWALTER: Right, but they are
25 cumulative on top of each other.

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1 MS. DODGE: Yes, they are cumulative. You
2 have to meet every requirement throughout the tariff.

3 COMMISSIONER HEMSTAD: Are there benefits to
4 the Company to underground?

5 MS. DODGE: I don't know. I guess I don't
6 know what the bottom-line answer would be. There are
7 potentially some benefits in terms of if you are in a
8 wooded area and you underground, you may have
9 significantly reduced outage problems from vegetation.
10 That would be a benefit.

11 COMMISSIONER HEMSTAD: And you don't have to
12 replace poles over the years.

13 MS. DODGE: That's true. Although, they have
14 the question of replacing underground cable, and how
15 long does your underground cable last versus your
16 overhead, and when you do have to repair underground,
17 is it more expensive to do so to switch out in
18 overhead.

19 COMMISSIONER HEMSTAD: But the only point I
20 was getting to is, if there are benefits to the Company
21 to underground, but a situation -- I'll call it a
22 private thoroughfare -- and the owners there are
23 required to pay 100 percent of the cost, isn't that a
24 windfall benefit to the company that --

25 MS. DODGE: I don't think that that's the

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1 case, that you could call it a windfall. First of all,
2 because in the case of Schedule 70, in that example, it
3 was meant to cover the costs, and Schedule 71, you are
4 looking at an overall commercial system, and so you may
5 be talking about different benefits in that kind of
6 situation where you are dealing with three-phase feeder
7 with the overall system with larger streets and that
8 kind of thing. You are going to run into a lot of
9 different situations underground -- not a lot because I
10 don't think this is a common situation, but when you do
11 have a situation where you do have company facilities
12 on a private thoroughfare, as in this case, I think you
13 have to look at that particular situation to see
14 whether there would be any benefits on an overall
15 basis. I'm not sure that it's the case that there is a
16 benefit to the Company of undergrounding looked at
17 globally.

18 JUDGE MOSS: Let me ask a question to you
19 that I asked one of the other counsel earlier. Can PSE
20 be forced to underground when relocation is required?

21 MS. DODGE: No.

22 JUDGE MOSS: So what determines that
23 question? If the city comes to you and says, We want
24 you to underground. Your position is you can say no.
25 Under what circumstances?

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1 MS. DODGE: The tariff controls, so if tariff
2 provisions are met, then Puget will comply with its
3 tariff and perform the undergrounding.

4 JUDGE MOSS: Those tariff revisions include
5 in at least two places an element of discretion on the
6 part of the Company. In other words, the Company has
7 the right to review and find acceptable the form of
8 contract, and there is at least one other place in
9 there where I guess it's the operating rights have to
10 be to the satisfaction of the Company or language
11 similar to that. Is it your contention that PSE has
12 unfettered discretion in those regards or that there is
13 some standard that is applied?

14 MS. DODGE: The agreement has to be
15 consistent with the tariff, so the Company can't just
16 do something in the agreement that's inconsistent with
17 the tariff, and in terms of the question of operating
18 rights, it's left to the Company's judgment, and that's
19 what the tariff says, and I think that's right and it's
20 appropriate, because it's very complicated to design
21 these systems and to then install them in the ground,
22 and you are always going to run into a variety of
23 circumstances that require the engineers to decide how
24 to handle it, and that's not something that could be
25 described in detail in a tariff in a way that would

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1 make any sense.

2 JUDGE MOSS: We'll probably get into this
3 more this afternoon, but let me just ask the question
4 now whether you would accept that there is a commercial
5 reasonableness standard inherent in the discretion that
6 is conferred on the Company under this tariff?

7 MS. DODGE: I don't believe so.

8 JUDGE MOSS: We might return to that this
9 afternoon.

10 MS. DODGE: But overall, the Company, has
11 many standards that it has to apply with.

12 JUDGE MOSS: We are going to need to shift
13 gears here, but I just want to ask you one question
14 that's almost peripheral but has some matter of dispute
15 in the briefs. Why did PSE withdraw the tariff filing
16 that it made in the year 2000?

17 MS. DODGE: Fir of all, the tariff filing was
18 a clarification filing, and Puget's cover letter
19 spelled that out that obviously disputes have arisen
20 with regard to some of these questions, and at a
21 certain point, it's silly to keep fighting about it.
22 Everytime you have a conversion, file a clarification
23 tariff and make everything very clear. It was
24 withdrawn because a number of cities objected that they
25 didn't have notice that they felt like they needed.

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1 They wanted more time to look at it. The filing is
2 significantly longer than the existing tariffs in order
3 to kind of pack in all the detail that has come up over
4 the years in applying these tariffs. So it seemed
5 reasonable to give everybody more time to go ahead and
6 take a look at it, and in the interim before there was
7 a refiling, these petitions were filed, and it didn't
8 make much sense to get more matters on the Commission's
9 docket. So we put these issues in front of the
10 Commission, go ahead and look at them, and we will look
11 at exactly whether Puget's interpretation is consistent
12 with the tariff or not.

13 It's a little amazing to me arguing this case
14 that they would keep returning to these filings as
15 proving somehow the tariffs don't mean what we say they
16 mean, and that was the point of the clarification
17 filing, and that's why Puget supplied its tariffs, and
18 we believe it's fully consistent with the tariffs.

19 CHAIRWOMAN SHOWALTER: The question what it
20 means to be consistent with. Clearly, your contracts
21 can't directly conflict with the tariff, whatever the
22 tariff says, because that would not be consistent, but
23 I think there is an issue here as to whether adding on
24 additional requirements is consistent with or is not
25 consistent with, because once these minimums are met,

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1 that's it.

2 Over on the technical side, there must be
3 things that have to be added into a contract because
4 this tariff is not technical, but can you just address
5 the question of what you think "consistent with" means?

6 MS. DODGE: "Not contrary to," so there are
7 many details of conversions, not just from a generic
8 perspective but from a commercial perspective. You've
9 got construction crews out there. You have your union
10 labor in some circumstances. You have all kinds of
11 issues around what hours people are going to work, are
12 they going to do overtime, and if so, who is going to
13 pay for it? There are plenty of issues that ought to
14 be addressed in a sensible commercial contract to
15 undertake these kinds of construction projects.

16 Also, you have the Company dealing with its
17 customers. They've asked for a conversion. The
18 Company would like to accommodate special requests.
19 Look, we have this situation on the ground. Let's do
20 this, and that's why it makes sense to have an
21 agreement that may be much more detailed and delve into
22 issues that are not explicitly addressed in a tariff
23 because you are trying to get a job done on the ground
24 among entities that have -- there are going to be legal
25 consequences, cost consequences, and so forth.

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1 Temporary services is a great example. That
2 addition to the agreement is extremely beneficial to
3 the customers, because what it does is it let's them
4 get the benefit of Schedule 71, even if they are not
5 undergrounding everything all at once in one single
6 phase of construction. Perfect example, you've got a
7 hotel going in one year from now, and you are
8 completely changing the electric system to serve that
9 hotel. Well, the Company if it were really trying to
10 be terrible to its customers, as is sometimes claimed,
11 could say, Sorry, you don't qualify for the tariff
12 unless you underground that. It would be a complete
13 waste of everybody's resources to the take into account
14 that you are going to have a change on the ground a
15 year from now. Let's put in a temporary service.
16 Let's not waste everybody's money on undergrounding
17 that portion of one small piece or one end of a
18 conversion, but the Company also has to have some
19 guarantees that that temporary service isn't going to
20 be there ten years from now.

21 So all that is spelled out in a detailed
22 contract. It's not in the tariff, but it's not
23 contrary either.

24 JUDGE MOSS: I'm watching the time. I think
25 we need to allow Ms. Tennyson to have a few moments,

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1 and then we will return to the rebuttal portion and
2 have time for that.

3 (Recess.)

4 CHAIRWOMAN SHOWALTER: I have a question, and
5 that's on conversion area and what it means. I
6 understand that Puget would charge the Schedule 70 rate
7 or one-phase in the 71 or three-phase. Does that mean
8 there are different conversion areas, or does that mean
9 there is a single conversion area subject to two
10 different tariffs? I'm not sure it makes a difference.

11 MS. DODGE: It's means there are two
12 conversion areas. There is one for each tariff. Each
13 tariff is applied to the conversion area for which the
14 tariff applies.

15 CHAIRWOMAN SHOWALTER: Thanks.

16 JUDGE MOSS: Ms. Tennyson, before we turn to
17 you, I have one more question. If we have a situation
18 where we have single-phase in an area that is zoned
19 residential but that has commercial uses, which rate
20 schedule applies?

21 MS. DODGE: It's zoned residential, but it
22 has commercial uses, and it's single phase?

23 JUDGE MOSS: Yes.

24 MS. DODGE: Then Schedule 71 would apply,
25 because you do have the "zoned and used exclusively for

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1 residential purposes" language.

2 JUDGE MOSS: So that would cover, for
3 example, the frog pond, but it can be served by
4 single-phase power for purposes of the hypothetical, at
5 least, and your view would be in the middle of
6 Chairwoman Showalter's residential neighborhood, the
7 existence of that one commercial grandfathered-in
8 commercial entity would nevertheless mean that 71 would
9 apply.

10 MS. DODGE: Yes, because you do have to look
11 at the tariff language which does refer exclusively to
12 residential purposes.

13 CHAIRWOMAN SHOWALTER: What do you say about
14 churches that are sprinkled throughout residential
15 areas?

16 MS. DODGE: I'm looking at my tariff
17 consultants. He's saying he's likely to look at the
18 system there. I guess a church -- is a church
19 commercial? Probably not. They would certainly
20 dispute that. You could have an argument about whether
21 churches are residential purpose. They serve the
22 community.

23 JUDGE MOSS: I think we can move from that
24 and let Ms. Tennyson have a few words with us.

25 MS. TENNYSON: Commissioners, I have provided

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1 you a copy of RCW 35.96, the entire chapter, but the
2 point that I wanted to address on that is in 35.96.010,
3 and it is a declaration of public interest and purpose,
4 and the reason I thought that this was significant is
5 generally or in many cases, the Commission and Staff
6 look to cost causers in terms of where do we share the
7 costs, and because we often apply cost-causer
8 principles, here where we have a public declaration,
9 the public safety, public purpose applies to
10 underground utilities.

11 Staff believes that this would argue more in
12 favor of spreading the costs along all of the utility's
13 rate payers as opposed to the particular locale that
14 may be instigating the undergrounding in this case.
15 Others may have different interpretations of it, but it
16 was something we had discussed in just looking at
17 finding the statute and had a concern about should we
18 be looking to this city or cities have chosen to ask
19 the Company to underground, and therefore, should be
20 looked to to supply a larger portion of the costs.

21 CHAIRWOMAN SHOWALTER: But that is an intent
22 section, which as we all know, is usually very general
23 and vague. The operative sections call for -- I'm
24 looking at 35.96.040 -- contracts to cover these
25 various things, including payment to the electric and

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1 communications utilities for work performed or services
2 rendered. Isn't there a recognition in the statute
3 that there is dual benefit? That doesn't answer the
4 question of who pays for what or how that payment is
5 established. Doesn't that bring us right back to the
6 tariffs?

7 MS. TENNYSON: It does, but that brings me to
8 my next point. We do have --

9 COMMISSIONER HEMSTAD: Before you leave the
10 first point, I read that language, and I don't see
11 anything there that would imply anything with respect
12 to weather costs are paid by the cost causers or
13 socialized into the system. Simply the intent section
14 is neutral on that. It's only saying it's a matter of
15 public policy to encourage undergrounding. Isn't that
16 the point?

17 MS. TENNYSON: I see it a little bit
18 differently in that it's in declaring it to be a matter
19 of public policy in recognizing safety interests that
20 it goes contrary to an argument that it's purely for
21 esthetics to underground utilities. It's not just a
22 matter that, I want to be able to see my view better,
23 but there is a broader purpose to undergrounding.

24 COMMISSIONER HEMSTAD: I understand, but this
25 opens the question of how and who should pay.

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1 MS. TENNYSON: It does, and I believe the
2 later sections within that statute, as Chairwoman
3 Showalter mentioned, it allows cities to enter into
4 contracts. It provides a source of authority for that.
5 It does allow for creation of a local improvement
6 district in Section 030 as Clyde Hill has done, and it
7 also provides for the city to provide notice in 050 to
8 the owners of property that they are going to have to
9 address their service lines and get their service lines
10 underground as well when there is an undergrounding
11 project.

12 I'm not saying this answers all the
13 questions, but I believe it's something relevant to
14 consider when we are looking at the whole issue of how
15 does the tariff apply, who has got authority to do
16 what.

17 CHAIRWOMAN SHOWALTER: I don't know the
18 legislative history of this statute, but it seems
19 possible it could have been in reaction to a resistance
20 to doing underground at all. In other words, why not
21 just have overhead? Well, because there is public
22 benefit, but that's exactly what the city on its own is
23 deciding -- not on its own, but a city or locale or LID
24 can decide for our public benefit, we want to go
25 underground. Now, that public benefit may be esthetic

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1 only.

2 MS. TENNYSON: That's where I do see the
3 declaration of public interest does address the safety
4 welfare concerns. I also think that section, it was
5 also designed to address an argument that it's only to
6 benefit the utility.

7 CHAIRWOMAN SHOWALTER: To get to the point,
8 do you have an opinion on the question before us; that
9 is, in SeaTac and Clyde Hill, do you have an opinion as
10 to whether Schedule 70 or 71 applies?

11 MS. TENNYSON: I would separate out the two.
12 Staff has had a concern with the SeaTac conversion area
13 that I believe one of the commissioners raised on
14 questioning of splitting the area. Is it a one
15 four-block project or two two-block projects in that
16 the two blocks closest to International Boulevard were
17 previously converted to underground under Schedule 71,
18 and then the two blocks that are before you right now,
19 being residential in nature, SeaTac is seeking to have
20 converted under Schedule 70 originally was one project
21 with two phases, and I believe that actually is
22 referenced on one of the documents that SeaTac
23 submitted. It's phase two of this project. How do we
24 separate and how do we look at it in terms of timing
25 and location of those matters.

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1 CHAIRWOMAN SHOWALTER: Don't you want to get
2 to an answer that says it doesn't matter whether you do
3 it all at once or sequentially?

4 MS. TENNYSON: Yes.

5 CHAIRWOMAN SHOWALTER: And that may cut
6 different ways, but surely we should try to avoid an
7 interpretation, if there isn't any ambiguity that makes
8 a different payment rate depending on how you structure
9 it.

10 MS. TENNYSON: Precisely, which I guess I
11 find a bit disturbing that Puget is willing to break up
12 the projects like in Clyde Hill. It does benefit the
13 customers in the city in the area that they are at
14 least not saying Schedule 71 applies to the entire
15 project area in Clyde Hill because the three-phase
16 system runs down 92nd.

17 CHAIRWOMAN SHOWALTER: One way is Puget's way
18 to say each area is a different conversion area, but
19 why isn't it possible to say we have a huge, one huge
20 conversion area, but Schedule 70 applies to portions to
21 the areas, not a big capital "A" conversion area but to
22 areas that are exclusively residential, whatever that
23 means, and Schedule 71 applies to the areas in the
24 conversion area that are commercial? I don't know why
25 that should be a problem. It doesn't get to the basic

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1 issue here, but I'm not sure why we get hung up on
2 whether conversion area, what difference it makes
3 whether it's very large or bits and pieces.

4 MS. TENNYSON: That was a concern that Staff
5 had as well as who defines the conversion area. Is it
6 the city at the time it asks Puget to do a conversion?
7 Is it Puget at the time it's deciding which tariff
8 applies? I don't believe that the tariff really
9 addresses that. It is a geographic area, but who
10 defines that I think is the reason we are having such
11 difficulty in this case --

12 CHAIRWOMAN SHOWALTER: But it wouldn't matter
13 if -- you said the conversion area can be as big as you
14 want it to be, but what areas are within the capital
15 conversion area will be charged differently depending
16 on whether they fit Schedule 70 or Schedule 71. That
17 still doesn't address the question before us, which is
18 what is an arterial.

19 MS. TENNYSON: That's correct. I think when
20 we look at the tariff in general, the tariff defines
21 "terms" by reference to the city aspects of it. Is it
22 zoned and used for residential purposes. It doesn't
23 use the words "collector arterial" or other terms of
24 that nature. It doesn't refer to the designation of
25 streets in different ways. It determines which tariff

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1 applies.

2 Likewise, when we look at just general rules
3 of interpretation, Schedule 70, should we read the
4 entire tariff on its own, but I don't believe we would
5 expect a residential user to read every section of
6 every part of Puget's tariff to figure out, Am I under
7 the section that appears to apply to this particular
8 area. I wouldn't expect them to be reading Schedule 48
9 to determine what their rates are.

10 In that respect, the tariff itself does refer
11 specifically to other sections, like the general terms
12 and conditions. It does not refer to Schedule 71 in
13 the parenthetical in there. In that respect, Staff
14 does believe the tariff is flawed. There should
15 perhaps be a section within Schedule 70 itself if Puget
16 clearly intends there to be the exception for areas
17 with electrical load requirements comparable to
18 commercial areas. Commissioner Oshie suggested one
19 possible different writing of the tariff, and Puget
20 could have put in there, "areas zoned and used
21 exclusively for residential purposes except for those
22 areas which have a commercial load." It doesn't choose
23 to do that in 71, so Schedule 71 doesn't clearly put
24 the reader on notice there is an exception.

25 CHAIRWOMAN SHOWALTER: You mean Schedule 70.

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1 MS. TENNYSON: Correct, I'm sorry.

2 CHAIRWOMAN SHOWALTER: Puget's position is
3 that 70 and 71 are consistent with each other because
4 if there is such an area that by 71's terms falls
5 within 71, then it isn't used exclusively.

6 MS. TENNYSON: That is correct. One of the
7 other sections of the tariff that I provided you with a
8 copy of is -- I believe it's Schedule 85, and it's line
9 extensions, and it's Paragraph 8 of Schedule 85, so
10 it's several pages into the document, but that does
11 contain a definition of public thoroughfare.

12 As Ms. Dodge responded, there isn't a
13 definition of "public thoroughfare" in the tariff. If
14 we look at the broadest sense of the tariff, there is a
15 definition of public thoroughfare, which, as I read
16 this, it's essentially if the road isn't gated off or
17 access otherwise prohibited, it would be a public
18 thoroughfare. That does go contrary to the stipulated
19 facts that these are private drives or private roads
20 and there aren't public thoroughfares in this sense.

21 JUDGE MOSS: We do have a stipulated fact
22 that these private drives are not public thoroughfares
23 under the meaning of the tariff, don't we?

24 MS. TENNYSON: It says there are no public
25 thoroughfares in the area. It doesn't say there are

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1 not public thoroughfares as defined in the tariff. I
2 came across this definition long after we had reached
3 agreement on the facts, so I didn't bring it up in our
4 lengthy discussions of our stipulated facts.

5 COMMISSIONER HEMSTAD: Here's what it says:
6 "Municipal counties, state, or other road."

7 CHAIRWOMAN SHOWALTER: It goes on and talks
8 about a road on private property, etcetera.

9 MS. TENNYSON: It's deemed to be a public
10 thoroughfare.

11 CHAIRWOMAN SHOWALTER: If, and then there is
12 some if, and then it says, If in the judgement of the
13 company, the permanent -- or definition of any road is
14 questionable shall not be considered a public
15 thoroughfare."

16 MS. TENNYSON: This does address line
17 extension and service lines, and that particular
18 portion you just referenced relates to distribution
19 facilities. So there is a definition there should you
20 choose to look at it and use it in your considerations.
21 My reading of that would be these drives or roads would
22 likely be a public thoroughfare as defined in Puget's
23 tariff.

24 JUDGE MOSS: In a matter of law, how much
25 discretion do we have in not looking at that? A tariff

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1 is like a body of law, a body of statutes that must be
2 read together giving consistent meaning to the various
3 terms included. We've come across that in connection
4 with other types of cases in the solid waste area where
5 we look at one statute and find an undefined term and
6 look to another related statute where the term is
7 defined and find ourselves bound by that definition.
8 Is it your view, if you have a view, of whether we are
9 similarly constrained here?

10 MS. TENNYSON: Here, I think this definition
11 should be applied and does apply in terms of how we
12 look at --

13 JUDGE MOSS: Throughout Electric Tariff G;
14 correct, even though there is no specific reference in
15 Schedule 70 to it.

16 MS. TENNYSON: That's correct.

17 JUDGE MOSS: Ms. Tennyson, I'm sorry to rush
18 you a little bit, but it is approaching twelve, and if
19 you could try to move kind of quickly to your key
20 points.

21 MS. TENNYSON: Absolutely. I believe most of
22 the other points that I had really were addressed by
23 others raising the question of whose use is relevant;
24 that I believe the tariff does include a two-part test
25 of the zoning and actual use and actually had intended

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1 outside the use a similar analogy, as Chairwoman
2 Showalter brought up.

3 Suppose we have either UPS trucks or even a
4 regular use of a street by -- say there is a gravel
5 company that decides that it's quicker for its trucks
6 to cut through a neighborhood than to use a major
7 arterial for its trucks to get from one side of town to
8 the other. Would that consistent use by the company of
9 those trucks over that route change the nature of the
10 street from a residential use to a nonresidential use,
11 and I think we would answer in that case, no. I do
12 recognize that we are in an electric tariff and
13 electric use in that sense.

14 CHAIRWOMAN SHOWALTER: That's the question.
15 Let's just say that a neighborhood that is only used
16 for residential purposes, including UPS trucks --

17 MS. TENNYSON: My neighborhood would be a
18 perfect example. I'm three blocks from a Puget
19 substation. I'm assuming my very much rural street --
20 no sidewalks, not even gutters. We don't even have
21 water collection for runoff, and yet, under Puget's
22 definition, that would be, because I'm from the
23 substation, those lines have to get across my
24 neighborhood to go other places, then we would be
25 subject to a Schedule 71.

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1 CHAIRWOMAN SHOWALTER: Only for the
2 three-phase part.

3 MS. TENNYSON: Yes.

4 CHAIRWOMAN SHOWALTER: So you believe that's
5 an incorrect --

6 MS. TENNYSON: I believe that's an incorrect
7 interpretation. It's their tariff. It's to be
8 construed against them. They have the ability to use
9 those terms and address the specific aspects of that.

10 COMMISSIONER HEMSTAD: Is it clear the tariff
11 is to be construed against the Company?

12 MS. TENNYSON: There are case law that says
13 construe it like a law, statute; it is law. There are
14 others that say construe it like a contract, in which
15 case we construe contracts against the drafter.

16 COMMISSIONER HEMSTAD: But this is not a
17 contract.

18 MS. TENNYSON: It has elements of a contract.
19 In that respect, it's drafted by the company and not by
20 others who are subject to it.

21 CHAIRWOMAN SHOWALTER: I have always thought
22 that a tariff is something that this commission
23 approves. No, we can let it go through.

24 MS. TENNYSON: That's right.

25 CHAIRWOMAN SHOWALTER: Did we or didn't we in

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1 this case -- was it suspended originally and approved
2 by us? I have this feeling it was because I was
3 reading some kind of facts, but it could be a different
4 case.

5 MS. TENNYSON: I don't recall.

6 MS. DODGE: It was suspended.

7 JUDGE MOSS: You don't have to do it today,
8 Ms. Tennyson. You can do it by follow-up letter, but
9 you just made the comment that tariffs can be construed
10 on the principles of contract law, and I'm not familiar
11 with that line of authority.

12 MS. TENNYSON: I did intend to have it and I
13 don't have the citation with me.

14 The other aspect, I do think a question was
15 asked of Mr. Rubstello and Ms. Dodge about the ability
16 of a city to require undergrounding, and I do believe
17 that the Edmonds case, Edmonds versus GTE -- that's at
18 21 Washington Appellate 218 and specifically at pages
19 222 and 223. It's a 1978 Court of Appeals' case, and
20 they specifically address that question, and my reading
21 of it is they determined that yes, a city can require a
22 utility to place its facilities underground. It is an
23 exercise of the police power of the municipality that
24 has been sanctioned by the courts. I don't have
25 anything further. If you have questions, I will

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1 attempt to answer them.

2 JUDGE MOSS: I need to give PSE an
3 opportunity to respond to any of Staff's point, and
4 then we will have rebuttal from the Complainant.

5 MS. DODGE: First, I would say we are at a
6 significant disadvantage having not received Staff's
7 position in advance of the hearing. It would be
8 useful, particularly when cases and statutes are cited,
9 to have an opportunity to look with more depth at some
10 of those positions, but just speaking for now, I would
11 say first, working backwards, the Edmonds case doesn't
12 have the kind of expansive holding that's suggested.
13 It cites to cases that Puget has cited in other
14 jurisdictions where it has been held that
15 municipalities do not have authority to order
16 undergrounding. And it distinguished those in that
17 particular case by just saying -- we are talking about
18 a small piece of line on a public street, and that's a
19 different matter, so I don't think that Washington
20 courts have addressed the one question directly.

21 I'm also not familiar with authority that
22 says you construe a tariff against the company. It's a
23 question of statutory construction. I don't think it
24 matters if the Commission suspended the tariff or not.
25 If the Commission permits a tariff to come into effect,

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1 then it's an effective tariff. It's the law, and it's
2 subject to statutory construction. In this case, the
3 tariff was suspended. That's in the addendum material
4 that Puget submitted.

5 With respect to this 35.96.010, I think the
6 commissioners have already pointed out that if you go
7 on through that statute, there is clearly provision for
8 payment to the company for the undergrounding. If it
9 were really some kind of general public purpose to
10 underground, then why would you have payment at all?
11 And in addition, in 35.96.030, at the very end of that
12 paragraph, it states that the city may apportion --
13 well, first of all, may essentially tax or apportion
14 the cost to the citizens within the area who are
15 benefitted by the undergrounding and may apportion all
16 or a part of the special benefits accruing on a square
17 footage basis over a per lot basis. So there is some
18 concept that there is a special benefit that accrues
19 when you have an undergrounding to the people affected
20 by the undergrounding.

21 And finally on the Schedule 85 definition, I
22 think it would be a different matter if the public
23 thoroughfare definition were found in Schedule 80,
24 which has the general terms and conditions applicable
25 to all schedules. If you want to look at an entirely

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1 separate schedule and language used there, first of
2 all, I don't think you are bound by that other
3 schedule. And then you need to look at whether that
4 other schedule covers the same subject matter or not
5 and where there may be different considerations
6 involved, because if you are defining something for a
7 specific schedule as part of the general terms and
8 conditions, I think that the implication is that
9 applies for that schedule for those circumstances.

10 JUDGE MOSS: Granted that your tariff filing
11 in the year 2000 would have replaced 70 and 71 or
12 withdrawn, isn't this the same definition of public
13 thoroughfare that was included in that tariff filing?

14 MS. DODGE: The tariff filing also explicitly
15 excluded from eligibility facilities located on private
16 property or on easement.

17 JUDGE MOSS: In a separate section from the
18 public thoroughfare definition; is that what you are
19 saying?

20 MS. DODGE: I don't know.

21 COMMISSIONER HEMSTAD: But I don't see how it
22 was drawn, tariff filing provides any upon which to
23 proceed to use that as an interpretation.

24 CHAIRWOMAN SHOWALTER: Nor do I.

25 JUDGE MOSS: Ms. Dodge, anything else?

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1 MS. DODGE: The only other comment on that
2 was to say that line extensions under 1(a),
3 construction of new single-phase distribution. So you
4 don't have the same property rights issues when you are
5 installing brand-new facilities as when you are
6 converting existing facilities to underground that may
7 be located on private easement where you have a
8 property right with respect to those existing
9 facilities. That's all.

10 COMMISSIONER OSHIE: Just one question. I
11 guess, Ms. Dodge, would the extension of current
12 service to those individuals in question -- let's say
13 in the Clyde Hill case -- would they receive service
14 under Schedule 85, and if so, wouldn't the Company have
15 found there was a public thoroughfare in order to
16 provide the line extension we are taking about?

17 MS. DODGE: I'm sorry. Your hypothetical is
18 there is no service and then where to install it?

19 COMMISSIONER OSHIE: No. I understand it
20 isn't current service that's being extended now or
21 being provided now to those individuals in question in
22 Clyde Hill, those with private drives. They are being
23 served at this current time. Wouldn't that service
24 have been extended through Schedule 85, and if so,
25 wouldn't the Company have had to find that it was a

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1 public thoroughfare in order to provide that service?

2 MS. DODGE: I don't know when the service was
3 put in or what tariff applied at the time. I'm not
4 able to answer the question.

5 CHAIRWOMAN SHOWALTER: But there is plenty of
6 electric service provided to private parties that's not
7 a public thoroughfare. I have such a piece of
8 property.

9 MS. DODGE: I understand that 85 applies to
10 both private property and public thoroughfares. They
11 are separate sections. So perhaps if this had been in
12 effect when this was extended, it would have been
13 extended under the private property section and not
14 thoroughfare.

15 JUDGE MOSS: Let's return to SeaTac, and I
16 will give you your full five minutes of rebuttal.

17 MS. ARNOLD: I've got just three points to
18 make. First of all, Puget talked at some length about
19 what is meant by "used exclusively for residential
20 purposes" in terms of what Puget's distribution system
21 is used for. The term "used exclusively for
22 residential purposes," especially conjoined with the
23 word "zoned" were it construed in light of the
24 extensive body of land use law having to do with what's
25 a residential purpose and what isn't, might be

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1 instructive, because residential purposes gets into
2 issues like is frog's pond a nonconforming use and that
3 sort of thing, but utility facilities, to the best of
4 my knowledge, are never considered in that discussion
5 of what's residential purposes.

6 The City of Federal Way has Bonneville
7 transmission lines running through residential
8 neighborhoods. The City of Tukwila has the Northwest
9 pipeline right under it, and Tukwila has large
10 residential neighborhoods right there. So the use of
11 utility lines and facilities within a neighborhood
12 doesn't characterize it as residential versus
13 commercial.

14 CHAIRWOMAN SHOWALTER: Unless, perhaps, you
15 are talking about electric utility tariffs. Isn't that
16 really the issue that we are not talking about land use
17 zoning ordinances. When we are in the universe, which
18 we are, of electricity tariffs, possibly, arguably,
19 then you are in a different layer, an additional layer
20 of interpretation.

21 MS. ARNOLD: When the utility uses terms like
22 "zoned" and "residential purpose," they are pulling in
23 the wider meaning. Zoning, to the best of my
24 knowledge, and the city attorneys back here can correct
25 me, zoning doesn't have to do with where you can put a

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1 pipeline or where you can put a transmission line.
2 Those are outside of zoning, and residential versus
3 commercial purposes.

4 The second point I want to make is that
5 Puget's continued focus on the electrical system reads
6 out the word "area," and in interpreting a tariff, we
7 have to give every word its meaning, just like when the
8 Commission interprets a tariff, it interprets it like a
9 statute, and every word must be given meaning.
10 Schedule 70 is called "conversion to underground
11 service in residential areas." It doesn't say,
12 "conversion to underground service of some particular
13 type of electric facility." It talks about "area," and
14 the definition of conversion "areas" is defined as a
15 geographical "area."

16 The availability section says that the
17 company will remove overhead wires in "areas" that are
18 zoned and used exclusively, and to say this doesn't
19 really have to do with the "area" in which the
20 underground conversion takes place, it really has to do
21 with the type of electrical facilities, misreads out
22 that term "area," as does Puget's reading of Clyde
23 Hill, and I don't want to get involved in Clyde Hill,
24 but if the pink lines are going to be charged under
25 Schedule 70 but the yellow lines are going to be

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1 charged under Schedule 71, that also takes away the
2 meaning of the word "area."

3 JUDGE MOSS: What do you consider to be the
4 two types of "area" referred to in the tariff? There
5 is a defined term, "conversion area," which when it is
6 used in the tariff is put in initial capitals, but the
7 language you are focusing on in Section 2 there refers
8 to "areas" in lower case. Should we be looking at two
9 different types of "areas," or do you think that that's
10 just a scribner's error or something?

11 MS. ARNOLD: That's a good question, because
12 "conversion area" is not used very consistently.
13 "Conversion area" for practical purposes is the area
14 that encompasses the entire geographical area, and how
15 could the entire geographical area, the capital C
16 "conversion area," be different from that area which is
17 zoned and used exclusively for residential purposes.

18 JUDGE MOSS: I guess it could be different in
19 the sense that some of the facts of this case suggest,
20 which is you may have a residential area that's
21 bordered on each end by commercial area, and the
22 question then becomes when construing this tariff, do
23 we look at that broader area which includes the
24 commercial uses, or do we look at the narrower
25 conversion area where there is actually going to be

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1 trenching and conduit and so forth?

2 MS. ARNOLD: The Commission also interprets
3 the tariffs in a way that makes it internally
4 consistent, and that reading would lead to the very
5 chopped up idea of what's a conversion area and what
6 isn't. This area and the next street would be part of
7 a different area. You have to look at the entire area.

8 CHAIRWOMAN SHOWALTER: That gets back to my
9 question. I don't know why capital A "conversion area"
10 can't be as big as that map up there, and yet the lower
11 case "areas" within it are differentially subject to
12 Schedule 70 or 71. If we have a big shopping center
13 surrounded by houses and the whole thing was
14 undergrounded, why can't that be called a conversion
15 area, and the shopping center is subject to 71 and the
16 residential area is subject to 70, and then what we
17 haven't determined yet is where does an arterial
18 running through a residential area fall? What kind of
19 little area is it within the big conversion area?

20 MS. ARNOLD: That's a good question. That's
21 the fourth point I didn't think I would address, but
22 now I will. Several of the city's who are here today
23 have ordinances that say that all the utility
24 facilities in the city will be placed underground, and
25 there is phase-ins and conditions for it, but several

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1 of the cities have that as their ultimate goal. So if
2 one were to read Schedule 70 in that really expansive
3 way, the entire city would be the conversion area
4 because at some point, the entire city is to be placed
5 underground.

6 CHAIRWOMAN SHOWALTER: Is that a problem?

7 MS. ARNOLD: It means that the entire city
8 would be undergrounded under Schedule 71 because --

9 CHAIRWOMAN SHOWALTER: Depending on what
10 little kind of area you were addressing.

11 MS. ARNOLD: Even Clyde Hill has that gas
12 station, so it doesn't make sense -- as a practical
13 matter, a city puts out its six-year plan and its
14 ten-year plan, and they arrange the funding, and the
15 funding is usually partially funded by the state and
16 partially in some areas by the federal and some by the
17 cities, and then they divide up chunks where they are
18 going to do street improvements, and Phase 2 of South
19 170th Street is one of those chunks, and the funding
20 comes from the state according to a schedule, and if
21 the funds are scheduled to be there, they have to do
22 the street improvement within a certain number of
23 months or the funding is lost, so that's what
24 constitutes a project, and if that project is scheduled
25 to go underground, then you have to look at that

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1 particular project and see if that's an exclusively
2 residential area or not.

3 The last point I wanted to make was
4 Chairwoman Showalter has a couple times referred to
5 this part of Schedule 71, and I agree, it has to be
6 read consistent with Schedule 70, and Schedule 71 is
7 significant because it doesn't focus on the type of
8 electrical facilities in an area. It says that
9 Schedule 1 of 71 applies in areas of municipalities
10 which have electrical load requirements that are
11 comparable with developed commercial areas, and I think
12 this gets us back to Bill Gates' house, perhaps. If
13 that electrical load is comparable to commercial, that
14 might be a Schedule 71, but this portion of South 170th
15 Street by everybody's agreement, at least that's what
16 Mr. Bagnall says and I think Puget agrees, that the 40
17 houses in this conversion area, that is not a
18 commercial-type electrical load. That load is a
19 residential load. It's a single-phase load. So it's
20 important to look not at the type of facilities that
21 Puget put there, for whatever purpose of their system
22 plan, but what type of load that area includes.

23 CHAIRWOMAN SHOWALTER: Puget would grant your
24 point and say that's true, but the arterial is carrying
25 a load of three-phase.

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1 JUDGE MOSS: Let's see if Mr. Rubstello has
2 about five minutes of rebuttal.

3 MR. RUBSTELLO: Just a few points in
4 follow-up to one of the last questions. At least in my
5 looking and answering your question, the use of the
6 word "area," small letter "a", at least in Section 2 of
7 both tariffs, is simply a recognition that the
8 conversion area may be smaller than the specific zone.
9 The conversion area may cover several zones, and so
10 when it talks about "area," if you had a conversion
11 area that was split with commercial zoning and with
12 residential zoning, then I think the argument could
13 well be made that for the commercial area, 71 applies.
14 For the residential area, within the total conversion
15 area, then Schedule 70 would apply. It would seem to
16 me that is simply a recognition that the area zoned may
17 not be consistent with the boundary of your conversion
18 area. Probably going to be bigger, but in Clyde Hill's
19 case, the residential zoned area is much bigger than
20 simply the conversion area.

21 One other point that I thought in looking at
22 Schedule 85 that was addressed by the Staff in Section
23 1, which speaks to single-phase distribution facility
24 extensions, it's interesting to note that the cost per
25 foot for new extended underground distribution systems

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1 is the same for facilities along, quote, a public
2 thoroughfare, or along property other than along a
3 public thoroughfare. Same price per square foot, \$5.25
4 per square foot, and I only make that point because I
5 think it goes to if the Commission did determine that
6 Schedule 70 didn't address private property, what basis
7 is there for a distinction in rates or charges between
8 these properties?

9 This gets to my second point. PSE is able to
10 put up their map there. They say it's from the Thomas
11 map. The Thomas map shows these, quote, private
12 drives, and when we referred to that in our
13 stipulation, I'm thinking private versus public
14 ownership, that they are right there on the street map.
15 They are on the street map that goes out that realtors
16 and everybody else, the public goes out and buys at
17 stores to figure out how to find something and what
18 streets to drive on in Clyde Hill. The same with the
19 city zone map showing its zoning and its street
20 distribution system. It also shows, which I've marked
21 in orange on that map, those same private drives.

22 The last point I guess I wanted to make is
23 PSE introduced their subject matter trying to draw a
24 clear distinction that the line between commercial and
25 residential is clearly three-phase versus single-phase,

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1 and I think in the questioning and answers that came
2 back that that line is very hard to draw, and I think
3 it especially shows that it's really not a practical
4 distinction or not a distinction intended by the
5 question -- I think was from Chairwoman Showalter --
6 what if you have a three-phase backbone line going
7 through a residential area, and it's three-phase simply
8 because you've got a lot of residential use. You need
9 it for the load. You've got a very, say, dense
10 residential area with maybe a lot of multiple housing
11 units or small lots. There is a lot of power and usage
12 that's going to be required. That area is clearly
13 zoned residential. It's clearly used residential. And
14 just making a distinction between three-phase and
15 single-phase, it's not a distinction that's made -- at
16 least those terms are not used in Schedule 70 and 71,
17 and I think if we think about practical, it doesn't
18 work either. I think the declaration that was provided
19 by SeaTac by their expert noted that three-phase is
20 really a method of conveying more power at the same...

21 JUDGE MOSS: How would you reconcile that
22 with the parenthetical exception in Schedule 71?
23 Wouldn't the very area that you described just as you
24 described it be an area that fits the definition of
25 that parenthetical? Load characteristics similar to a

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1 commercial area, that seemed to me what you were
2 describing.

3 MR. RUBSTELLO: I wouldn't think so, because
4 none of those individual users have commercial load
5 requirements. They are all very residential, and it's
6 only because --

7 JUDGE MOSS: The parenthetical speaks to
8 different areas, not individual users in areas?

9 MR. RUBSTELLO: It says, In such other areas
10 which have electrical load requirements which are
11 comparable with developed commercial areas. That's
12 what it says.

13 JUDGE MOSS: Thank you. Did that complete
14 your three points?

15 MR. RUBSTELLO: Yes.

16 JUDGE MOSS: We will actually be bringing
17 this proceeding to a close. We will see most of you
18 this afternoon for the other two cases.

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20 (Oral argument concluded at 12:15 p.m.)

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