

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of)	DOCKET UE-061626
)	
PUGET SOUND ENERGY, INC.,)	
)	ORDER 02
For a Declaratory Order on Schedule 74)	
and the Schedule 74 Design Agreement)	
between Puget Sound Energy, Inc. and)	INITIAL DECLARATORY ORDER
the City of Tumwater)	ON MOTIONS FOR SUMMARY
)	DETERMINATION
.....)	

SUMMARY

1 *Synopsis: This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This order proposes to deny PSE’s motion for summary determination and grant Tumwater’s motion for summary determination, interpreting Schedule 74 to require PSE to pay 60 percent of the cost of converting its overhead electrical facilities in the Tumwater Boulevard improvement project, and Tumwater to pay 40 percent of the conversion cost.*

2 **Nature of Proceeding.** This matter arises out of a Thurston County Superior Court order¹ allowing Puget Sound Energy (PSE) to petition the Washington Utilities and Transportation Commission (Commission) for a declaratory order determining the cost responsibility under PSE’s Tariff G, Schedule 74, for converting a portion of PSE's overhead electric lines to underground in the City of Tumwater (the City or Tumwater) Tumwater Boulevard improvement project.²

¹ *City of Tumwater v. Puget Sound Energy Inc., Thurston County Cause No. 06-2-00697-3*, filed April 13, 2006.

² *See* City of Tumwater’s Cross-Motion, ¶¶ 4-7.

3 **Appearances.** James F. Williams, attorney, Seattle, Washington, represents PSE.
William H. Patton, City Attorney, represented Tumwater. Robert D. Cedarbaum,
Assistant Attorney General, represents Commission Staff.

4 **Background and Procedural History.** In 1981, the Port of Olympia granted PSE the
right to a 10-foot wide perpetual easement for the construction, operation, maintenance,
repair, replacement and enlargement of PSE's electrical facilities.³ The easement
covered the entire area that is now involved in the Tumwater Boulevard improvement
project. According to its terms, only abandonment by PSE would cause termination of
the easement. The easement further provides that the rights and obligations of the parties
are binding upon respective successors and assigns.

5 In 1985, Tumwater granted PSE a franchise to construct, operate, repair, and maintain
electrical facilities within the rights of way and public places of the City as it then existed
and as it might be subsequently extended.⁴

6 In 1987, as a result of annexation by Tumwater, the Port of Olympia transferred to the
City, by deed, the property for which the 1981 easement was recorded.

7 Tumwater began planning the Tumwater Boulevard Widening Project (referred to in this
order as the Tumwater Boulevard street improvement project, or Project) in 2002.⁵ The
Project called for the conversion of PSE's electric distribution facilities from overhead to
underground on Tumwater Boulevard between Linderson Way S.W. and New Market
Street S.W. Tumwater and PSE began discussions about the Project in early 2003. PSE
reviewed its property rights in the areas covered by the Project and determined that it had
a private easement covering all the PSE electrical facilities located in the Project. PSE
advised the City that the existence of the easement required Tumwater to pay 100 percent
of the costs of the underground conversion of the affected PSE overhead electrical lines
under its tariff Schedule 74.

8 Tumwater initially went along with PSE's determination, even to the point that the Mayor
and City Attorney approved an underground conversion design agreement confirming

³ See Exhibit No. 1 to Shoopman Declaration, attached to Tumwater Motion for Summary
Determination.

⁴ See Exhibit No. 4 to Patton Declaration, attached to Tumwater Motion for Summary Determination.

⁵ PSE Motion for Summary Determination, ¶¶ 7-10.

that Tumwater would pay 100 percent of the costs.⁶ However, in October 2005, Tumwater changed its position and notified PSE that the City disagreed with PSE's position on cost responsibility. PSE and Tumwater entered into a Reservation of Rights Agreement on February 23, 2006, that allowed construction to move forward in spite of the cost dispute.⁷

9 On April 13, 2006, Tumwater filed a declaratory judgment action in Thurston County Superior Court, taking the position that the City's franchise for the construction area supersedes PSE's claimed easement and requires that PSE pay 60 percent of the cost of the conversion and Tumwater 40 percent. On PSE's motion, the court granted a stay of proceedings while PSE sought a declaratory ruling from the Commission on the issue of cost allocation.⁸

10 The parties chose to address the issues before the Commission by filing cross-motions for summary determination under WAC 480-07-380(2), the Commission's rule governing such motions. The parties supported their motions with affidavits and voluminous documentation of the history and facts related to their positions. Commission Staff also filed a response to the motions for summary determination.

MEMORANDUM

11 The Commission must decide whether PSE's tariff Schedule 74 requires Tumwater to pay 100 percent of the conversion costs involved in the construction project, or whether Schedule 74 requires cost allocation between PSE and Tumwater.

I. Standards for decision.

12 RCW 34.05.240 and WAC 480-07-305 establish the Commission's authority to enter declaratory orders. Under WAC 480-07-930, parties to an adjudication may file motions for summary determination. A moving party must show that the pleadings filed, together with any admissible evidentiary support, show that there is no genuine issue of material

⁶ *Id.*

⁷ *Id.* Apparently, the same PSE easement affected another Tumwater street project, but the City recognized PSE's alleged rights under the easement and paid 100 percent of the cost of undergrounding. See Tousley Declaration attached to PSE Motion for Summary Determination, ¶10.

⁸ *Id.*

fact and that the moving party is entitled to summary determination as a matter of law. The Commission considers motions for summary determination under CR 56.

- 13 In addition, the Commission resolves disputes over the meaning of tariffs by first looking to the plain meaning of the tariff.⁹ If the meaning of the tariff language is not plain on its face, or is ambiguous, the Commission may examine legislative history and other evidence to determine the meaning and proper application of the tariff.¹⁰

II. Tariff Schedule 74.

- 14 Schedule 74 is a tariff approved by the Commission.¹¹ The parties agree that Schedule 74 governs the conversion of overhead electrical lines to underground facilities and that the Thurston County Superior Court has directed the Commission to interpret the meaning of Schedule 74 as it applies to this case.

- 15 Section 1 of Schedule 74 sets forth three conditions for commencing a conversion project.¹² Significant to this case is the second condition:

b. The Company has the right to install, construct, operate, repair and maintain an electrical distribution system (including the Underground Distribution System) within the Public Thoroughfare in the Conversion Area pursuant to a franchise previously granted by the Government Entity requesting such installation and executed by the Company, or, if there is no such franchise, or if such franchise does not provide such right,

⁹ See *City of Seatac, et al., v. Puget Sound Energy, Inc.*, Third Supplemental Order, Dockets UE-010891 and UE-011027 ¶ 13 (January 28, 2002). See also, *City of Kent, et al., v. Puget Sound Energy Inc.*, Third Supplemental Order, Dockets. UE-010778 and UE-010911, ¶ 17 (January 28, 2002) [Hereinafter *City of Kent*].

¹⁰ *Id.*

¹¹ Exhibit D to PSE's Motion for Summary Determination. Schedule 74, issued effective July 1, 2002, replaced former Schedule 71 as the result of the complaint of several Washington cities addressed in connection with PSE's 2001 General Rate Case. The cities complained about the cost of underground conversion and that costs were being unevenly allocated. The Commission's tariffs have the force and effect of law. *Gen. Tel. Co. v. City of Bothell*, 105 Wn.2d 579, 585, 719 P.2d 879 (1986).

¹² The first condition requires that the parties enter into design and construction agreements; the second condition requires permission from the government entity to use the public thoroughfare; and the third agreement requires customer agreement to accept underground service connections.

pursuant to some other grant of rights mutually agreed upon by the Company and the Government Entity.

16 Sections 2(b)(1) and (2) of Schedule 74, which govern cost responsibility for conversions to underground, read in pertinent part, as follows:

2.b. The Design Agreement and the Construction Agreement shall:

(1) except as otherwise provided in Section 2.b(2), obligate the Government Entity to pay the Company 40% of the total Cost of Conversion and the Company to pay 60% of the total Cost of Conversion;

(2) obligate the Government Entity to pay (i) 100% of the total Cost of Conversion for conversion of that portion, if any, of the existing overhead distribution system located... (A) outside of the Public Thoroughfare or (B) pursuant to rights not derived from a franchise previously granted by the Government Entity or pursuant to rights not otherwise previously granted by the Government Entity...

17 Finally, Section 10(e) defines Public Thoroughfare:

Public Thoroughfare: Any municipal, county, state, federal or other public road, highway, or throughway, or other public right-of-way or other public real property rights allowing for electric utility use.

18 The Commission must interpret Schedule 74 by looking at it as a whole and determining whether its meaning is clear and unambiguous. If the meaning is not clear and unambiguous the Commission may rely on external evidence to determine its meaning.

19 Under Schedule 74, Section 1.b., conversions to underground facilities must be in a “public thoroughfare” and the utility’s facilities must be operated “pursuant to a franchise granted by the Government Entity.” Under Section 2.a., a government entity will pay 40 percent of the cost of a conversion, and the utility 60 percent unless the conversion is of facilities “outside of the Public Thoroughfare” or “pursuant to rights not derived from a franchise previously granted by the Government Entity or pursuant to rights not otherwise previously granted by the Government Entity.” If either exception applies, the government entity pays 100 percent of the cost of conversion.

III. Contested Issues.

20 This case turns on the interpretation of the exceptions in Section 2 of PSE’s tariff Schedule 74. In particular, the primary issues are whether the easement granted to PSE by the Port of Olympia and transferred to the City is a private easement or involves another type of right to operate. PSE asserts that the City must pay for the entire cost of conversion as the following exceptions apply in this case:

1. PSE is operating under rights not otherwise previously granted by the government entity.
2. PSE’s facilities are not in a public thoroughfare.
3. There is no franchise previously granted by the government entity.

The City and Staff dispute PSE’s interpretation of Schedule 74.

21 After analyzing PSE’s claims, the Commission concludes that none of the exceptions from the cost sharing provision of Section 2.a. apply and that Schedule 74 requires that Tumwater and PSE share the costs for the conversion project.

A. Does PSE operate in the project area pursuant to “rights not derived from a franchise previously granted by the Government Entity or pursuant to rights not otherwise granted by the Government Entity”?

22 PSE claims that the 1981 easement from the Port of Olympia constitutes a right “not derived from a franchise” and “not derived from a right otherwise” granted by the City, and therefore exempts PSE from any cost responsibility for the conversion under Schedule 74.

23 In support of its easement claim, PSE contends 1) that the Commission upheld a similar easement claim in the *City of Kent* case,¹³ decided in 2002; 2) that Tumwater initially agreed with PSE that the City was fully responsible for costs because of the easement; 3) that the 1981 easement is a dominant property right not extinguished by either Tumwater’s annexation of the property or by Tumwater’s 1987 franchise; and 4) that good public policy requires finding that PSE’s rights are in a private easement.

¹³ *City of Kent*, ¶ 17.

24 **1. *City of Kent.*** PSE claims that an easement to place and operate its electric facilities on a public road is a private property right of the type upheld by the Commission in *City of Kent*. In that case, the Commission interpreted then existing Schedule 71 of PSE’s tariff governing cost responsibility for conversion to underground of overhead electric lines. The Commission also addressed a request by the city of Federal Way that PSE pay for conversion of certain of its overhead facilities to underground facilities.¹⁴

25 PSE’s overhead lines in the city of Federal Way project were located on PSE easements outside of the city’s right-of-way.¹⁵ PSE refused to pay for any part of the conversion, arguing that Schedule 71 cost apportionment applied only to conversions located in public rights-of-way and not to facilities located on private property or PSE easements.¹⁶ Much of PSE’s argument hinged on its interpretation of the terms “public street” and “public thoroughfare” in Schedules 70 and 71, which governed relocation and conversion of PSE lines respectively. Neither term was defined in the tariffs. PSE argued that both references “reflect[s] the intention that the rate schedules should apply only to facilities located on public streets (or in public rights-of-way) and not on private property.”¹⁷ PSE contended that it should be fully compensated for any conversions of facilities located on private property or PSE easements. The Commission found that Schedule 71 cost apportionment was limited to projects on public streets at least two blocks in length and that the Schedule did not require the utility to pay for the conversion of facilities located in the private easements.¹⁸

26 On its face, the Commission’s finding that PSE should be reimbursed for the conversion requested by the city of Federal Way’s appears to address the facts in this case. However, a full analysis shows that the Commission’s earlier finding does not apply here. In *City of Kent*, the easement involved in the Federal Way street project was a traditional easement held on private property rather than in a public right-of-way as in this case. PSE did not obtain its operating rights under that easement from a governmental entity as it has in this case, but rather from private property owner. Moreover, in *City of Kent*, the

¹⁴ *Id.*, ¶ 24. In *City of Kent*, the chief issue was whether Schedule 71 gave PSE the discretion to require that underground facilities be placed on private property easements, primarily in order to avoid the cost of unnecessary requests for expensive relocation of underground lines.

¹⁵ *Id.*, ¶¶ 36-38.

¹⁶ *Id.*

¹⁷ *Id.*, ¶ 38.

¹⁸ *Id.*, ¶ 40.

Commission did not have before it Schedule 74, which contains a definition of “public thoroughfare” and, more importantly, refers to “public real property rights.” The Commission in this case must give meaning to those terms in Schedule 74 and apply them to the facts presented by the parties – an exercise for which the decision in *City of Kent* provides little guidance.

27 **2. Tumwater’s initial agreement with PSE’s interpretation.** PSE makes much of the fact that in the early days of planning the Tumwater Boulevard project, the city of Tumwater, through its employees, agreed with PSE’s position that the easement was private, requiring Tumwater to pay for the conversion. Moreover, PSE points out that even after contesting the interpretation of Schedule 74 in this case, the City paid 100 percent of the costs of conversion when the same type of easement was at issue in another project.

28 Tumwater contends that the Commission’s tariff has the force and effect of law and that no city or utility employee may agree to alter the tariff, either unilaterally or by mutual agreement.¹⁹ Therefore, Tumwater contends any past practice or appearance of agreement by either Tumwater or PSE with regard to Schedule 74 cannot control if the practice or agreement does not conform to the meaning of the tariff.

29 Tumwater is correct that even though City employees may have preliminarily agreed with PSE, or even have honored PSE’s interpretation in other similar projects, this does not require Commission acceptance of that interpretation in this case.

30 **3. The effect of the Port of Olympia easement.** PSE claims that the 1981 Port of Olympia easement allowing PSE to place and serve its distribution lines on public roads is a private property right and that this private right forms the basis for PSE’s right to operate on Tumwater Boulevard. PSE contends that this right was not granted by Tumwater and cannot be considered so even if the Commission regards the City as a successor to the Port of Olympia under the terms of the easement.

¹⁹ *Gen. Tel. Co. v. City of Bothell*, 105 Wn.2d 579, 585, 716 P.2d 8798 (1986); RCW 80.28.060 (filed utility rates or charges may not be changed by contract or agreement); RCW 80.28.020 (published rates must be applied); RCW 80.28.100 (application of different rates under same conditions may constitute unlawful rate discrimination).

31 PSE further argues that the easement has not been extinguished by any subsequent transaction, including Tumwater’s subsequent annexation of the geographic area or Tumwater’s 1985 grant of a franchise covering the area. PSE asserts that no reservation of rights in the Franchise Agreement was necessary to preserve the easement.

32 Tumwater and Staff respond that Tumwater is the only “Government Entity” identified in the Design Agreement prepared under Schedule 74 and that PSE acknowledged in that agreement that its franchise from Tumwater governs its presence in the City. Tumwater and Staff alternatively contend that any permission, whether termed an “easement” or otherwise, given by the Port of Olympia to operate electric facilities is a “public real property right” under Schedule 74. These arguments are addressed further in Section III. B. of this Order. In any event, Tumwater contends it is a successor-in-interest to the Port of Olympia under the easement.

33 Tumwater and Staff also argue that under RCW 35A.14.900, the City’s annexation of the area previously under the Port of Olympia’s jurisdiction automatically cancelled the Port easement. RCW 35A.14.900 reads in pertinent part:

The annexation by any code city of any territory pursuant to this chapter shall cancel...any franchise or permit theretofore granted to any person, firm or corporation...authorizing or otherwise permitting the operation of any public utility, including but not limited to, public electric, water, transportation, garbage disposal or other similar public service business or facility within the limits of the annexed territory, but the holder of any such franchise or permit canceled pursuant to this section shall be forthwith granted by the annexing code city a franchise to continue such business within the annexed territory for a term of not less than seven years from the date of issuance thereof...

34 Acknowledging that the term “easement” is not found in the statutory language quoted above, Tumwater and Staff contend that the Port of Olympia “easement” was, in fact, a permit granted to PSE by which the Port authorized and permitted PSE to operate as a public utility in the area subject to the easement. Tumwater asserts that the Washington Supreme Court confirmed that permission to operate as a public utility encompassed

terms such as “grant, franchise, easement or other right accorded to a utility company...”²⁰

35 Tumwater and Staff’s interpretation of this portion of Schedule 74 is correct.

36 The 1981 Port of Olympia easement was transferred to Tumwater in 1987 along with the transfer of the property. PSE is correct that the easement stayed with the property, but the successors-in-interest to the easement became Tumwater and PSE. Thus, PSE’s argument—that its right to operate in the conversion area is derived from a right not previously granted by the government entity—fails, because Tumwater, though it did not grant the original easement, has become the successor-in-interest to the Port of Olympia, a government entity, which did. Furthermore, whether or not the 1985 franchise granted by Tumwater reserved PSE’s rights under the easement is immaterial. Tumwater, as the government entity named in the Design Agreement, granted PSE a franchise. Thus, PSE is operating pursuant to rights derived “from a franchise previously granted by the government entity” and therefore, does not meet the exception set forth in Section 2.b(2) of Schedule 74.

37 Finally, it is reasonable to conclude that the Port of Olympia easement is the type of permission granted by a government entity that would be extinguished upon annexation under RCW 35A.14.900. The Port is a form of government authorized to grant permission to utilities to operate within its boundaries – whether that permission is termed a franchise, easement or other similar grant. We find below that PSE operates under a public real property right under Schedule 74. This term also is consistent with the similar types of “permissions” governments may grant utilities, according to the Washington Supreme Court, and which are extinguished upon annexation under RCW 35A.14.900.

38 **4. Public Policy Implications.** PSE’s most significant objection is its public policy argument that adopting Staff’s and Tumwater’s interpretation of Schedule 74 undermines thousands of private easements PSE holds across the state of Washington and that ensuing costs will be borne by PSE’s ratepayers. However, it is not clear from the facts submitted what the real magnitude of the problem would be. The underlying facts may

²⁰ *State v. Public Utility District No. 1 of Clark County*, 55 Wn. 2d 645, 649-650, 349 P.2d 426 (1960).

vary across the state: A different set of facts may result in a different cost allocation result under the schedule. The history of Schedule 74 demonstrates that it was designed to more fairly apportion costs as between the utility and government entities. Taking a larger public policy view, the same citizen who is a customer of PSE and a resident of Tumwater will ultimately bear the burden of the conversion, either through taxes or through utility costs or both. Under the facts in this case, interpreting Schedule 74 to require the City and the utility to share costs is ultimately a reasonable and fair way to apportion costs between the entities involved.

B. Is the Tumwater Boulevard project subject to the Public Thoroughfare exception?

39 The definition of public thoroughfare in Schedule 74 is not without ambiguity. The definition states that “a public thoroughfare is any municipal, county, state, federal or other public road...or other public right of way or other public real property rights.” On one hand, it is clear that the Tumwater Boulevard improvement project involves a city of Tumwater public road way. PSE’s own design contractor, Potelco, shows that PSE’s facilities are located in that public road way.²¹ Both the original easement and the subsequent franchise include the geographic area of the project. The purpose of both the easement and the franchise, each granted by government entities, was to grant PSE permission to construct, maintain, and repair its electric facilities.

40 However, the definition is silent as to the effect of an easement on determining whether the utility’s facilities are in the public thoroughfare. The definition refers to “other public real property rights,” without providing a further definition of such rights or indicating whether they include easements of any kind.

41 In contending that its rights in the project area are covered by a private easement, PSE relies on the Commission’s holding in *City of Kent* and a Texas appellate decision.²² Neither of these authorities addresses the language of Schedule 74 which contemplates a “public real property right.”

²¹ Declaration of Jim Shoopman, Exhibits 4 and 10.

²² *Boyle v. Burk*, 749 S.W. 2d 264, 266 (Tex. App. Fort Worth 1988).

42 In determining the meaning of Schedule 74, the Commission must consider the entire rate schedule and harmonize and give effect to all of its provisions.²³ It is necessary for the Commission to give effect to the term “public real property right” which is not defined in Schedule 74. Taking the plain meaning of the term, it is reasonable to conclude that it refers to a real property right which relates to some public purpose, in this case, the provision of electric service to customers who are also citizens of the municipality. It is significant that Schedule 74 was issued due to a series of complaints by various Washington cities about perceived inequities in PSE’s apportionment of costs for conversions under the old tariff, Schedule 71. In *City of Kent*, the Commission rejected the city of Federal Way’s claims for reimbursement because PSE’s facilities were located on a private easement granted by a private landowner. However, as a result of these complaints, PSE and the parties settled on a new cost allocation tariff, Schedule 74, which contains a definition of “public thoroughfare.” That definition includes a provision for utility operating rights gained pursuant to a “public real property right.”

43 Viewed in this light, the Commission concludes that the PSE facilities affected by the Tumwater project are in a public thoroughfare. PSE admits as much in its affidavits. Further, where the Port of Olympia, a public entity, granted the easement to PSE, and a second public entity, the City, acquired the easement, the Commission finds the easement to be a “public real property right,” under Schedule 74.

C. Did Tumwater previously grant PSE a franchise?

44 The parties do not dispute that in 1985 Tumwater granted PSE a franchise to operate in the project area by virtue of the fact that the franchise extended to future annexations of land by the City. PSE disputes that its rights derive from the franchise, and claims that its rights derive from the previously granted easement from the Port of Olympia, as discussed in the next section.

45 As discussed in Section III. A., the Commission concludes that the City granted PSE a franchise in 1985 and that the franchise controls for purposes of determining PSE’s operating rights under Schedule 74.

²³ *City of Kent*, ¶ 17.

FINDINGS OF FACT

46 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:

- 47 (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices and accounts of public service companies, including electric companies.
- 48 (2) PSE is a public service company providing electric service in the state of Washington, and the city of Tumwater, Washington, for compensation.
- 49 (3) The city of Tumwater is a municipality in the state of Washington and a government entity that plans and constructs street improvement projects and engages in agreements with electric utilities such as PSE for the construction of those projects.
- 50 (4) Schedule 74 of PSE's tariff governs the cost responsibility for converting overhead electric lines to underground facilities pursuant to street improvement projects.
- 51 (5) In 1981, the Port of Olympia granted PSE an easement for the construction, operation, maintenance and repair of its electric distribution system.
- 52 (6) In 1985, the city of Tumwater granted PSE a franchise for the construction, operation, maintenance and repair of its electric distribution system in the city boundaries and extending to any future annexations by the city.
- 53 (7) In 1987, the city of Tumwater annexed land from the Port of Olympia for which the 1981 easement was recorded.

CONCLUSIONS OF LAW

54 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:

- 55 (1) The Commission has jurisdiction over the subject matter of, and all parties to, these proceedings.
- 56 (2) The Commission may grant a motion for summary determination when the pleadings filed show that there is no genuine issue of material fact and that the moving party is entitled so summary determination as a matter of law.
- 57 (3) The pleadings filed in this proceeding, together with the evidentiary support provided by the parties' affidavits, and other documents, show that there is no genuine issue as to any material fact.
- 58 (4) The Commission resolves disputes over the meaning of tariffs by considering the language of the tariff as a whole and determining whether the meaning is clear or ambiguous.
- 59 (5) If the meaning of a tariff is ambiguous, the Commission may rely on external evidence to determine the meaning.
- 60 (6) PSE's facilities in the Tumwater Boulevard street improvement project are in a public thoroughfare as that term is defined in Schedule 74.
- 61 (7) PSE's facilities in the Tumwater Boulevard street improvement project are operated pursuant to the franchise granted it by the city of Tumwater in 1985 and pursuant to other public real property rights.
- 62 (8) The Commission finds the city of Tumwater entitled to judgment as a matter of law, and that Schedule 74 requires PSE to pay 60 percent of the cost of conversion of over head lines in the Tumwater Boulevard street improvement project.

ORDER

THE COMMISSION ORDERS:

- 1 (1) Puget Sound Energy, Inc.'s motion for summary determination is denied.
- 2 (2) The city of Tumwater's motion for summary determination is granted.
- 3 (3) Puget Sound Energy, Inc., must pay for 60 percent of the cost of conversion of overhead lines in the Tumwater Boulevard street improvement project pursuant to Schedule 74 of PSE's tariffs.
- 4 (4) The Commission retains jurisdiction to effectuate the terms of this order.

DATED at Olympia, Washington and effective May 25, 2007.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order, any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such an answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and (8) copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250