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July 5, 2001

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive
Olympia, Washington 98504-7250

Re: Docket No. UE-010778
City of Kent's Answer's to Commissions June 27 Questions
City of Kent's Amended Motion for Summary Determination

Dear Ms. Washburn:

The following are the City of Kent's answers to questions posed in the Commission's June 27 "Notice of Response Due." Copies are being sent to known representatives of parties under dockets UE-010778, UE-010891, and UE-010911.

Also enclosed are the original and 19 copies of Kent's "Amended Motion for Summary Determination." I will email to the Commission an electronic copy.

**Answers to Commissions June 27 Questions to Parties
Questions for PSE and the City of Kent to address:**

Question 1: Should the City of Kent petition be deemed to be a complaint?

Answer: The City believes its pleading is properly considered a petition for declaratory relief. There is no factual dispute to resolve, and no unique or case-specific dispute about application of law to fact. The City seeks a fundamental declaration of basic rights and obligations under Schedule 71 of Electric Tariff G.

Question 2: Does the Commission have jurisdiction to interpret the City of Kent's franchise agreement with PSE?

Answer: No.

Question 3: Is interpretation of the franchise agreement essential to the resolution of the issues that the City seeks?

Answer: No. The City has included in its papers several references to the Kent-PSE Franchise merely to lend context to the situation in which the tariff issues have arisen.

Questions for all parties to address:

Question 1: Is there dispute as to the underlying facts? May the Commission make the decisions on fully or partially agreed factual records? What facts must be found to support a decision (couched in terms of "whether")? Which of these facts, if any, are agreed?

Answer: The City of Kent does not believe there exist any disputed material facts. In general, when undergrounding is requested in a commercial area there would arise a simple question: "Whether the Project meets the criteria set forth in Section 2 of Schedule 71." That question does not exist in the instant case because PSE has already conceded that with respect to Kent's Pacific Highway Project, the criteria in Section 2 of Schedule 71 are all met. The issues raised in Kent's Petition and in its Amended Motion for Summary Determination can therefore be resolved without any fact finding.

Question 2: When are orders needed?

Answer: Absolutely as soon as possible. The design phase of Kent's Project has already been interrupted because the parties disagree about what rights and obligations exist under Schedule 71.

Kent suggests that PSE be given one week to respond in writing to Kent's July 6 Amended Motion for Summary Determination, and that Kent then be given one week to file a reply.

Question 3: Are these issues being considered in any other setting – for example, a rulemaking? If so, would decisions in that docket resolve the questions posed in the petition?

Answer: To Kent's knowledge, the issues are not being considered in any other setting.

Question 4: Is a petition for declaratory order in each of these dockets an appropriate procedural mechanism? If so, what process should be employed to make a determination; and how would a declaratory order differ in form and effect from an order resolving a complaint?

Answer: Kent believes a petition for declaratory order is the appropriate mechanism because the petition presents a pure question of interpretation of Schedule 71. There are no disputed material facts, and Kent therefore believes summary determination is appropriate. Kent has filed an amended Motion for Summary Determination. A declaratory order will resolve legal questions that stand in the way of the project moving forward. The effectiveness of *any* order will be dependent upon whether it resolves the issue whether Schedule 71 requires undergrounding, and whether it requires PSE to pay the costs related to PSE's acquisition of private easements. A declaratory order will accomplish those objectives and thus eliminate the possibility of the same dispute arising in the future. Assuming an order resolving a complaint would have the same effect, then such an order would also be sufficient.

Question 5: Are there common questions of law or fact such that consolidation of these dockets is appropriate under WAC 480-09-610? What factors should be considered in deciding whether to consolidate?

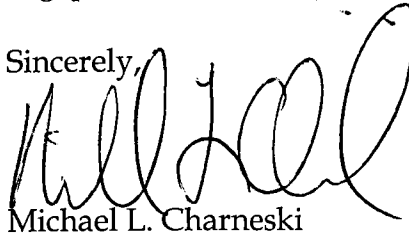
Answer: The City of Kent believes dockets UE-010778 and UE-010911 present common questions of law – i.e., interpretation of Schedule 71 of Electric Tariff G – such that consolidation would be appropriate.

Kent does not believe there exist any questions of material fact. Underlying this belief, however, are the following considerations: Kent does not believe it can force PSE to locate all of its equipment within right of way (PSE obviously believes the same). Accordingly, PSE can locate outside of right of way but in doing so it must pay for its own private easements pursuant to Schedule 71 (this is the legal issue in common between the two dockets – cost obligations under Schedule 71). PSE has never suggested to Kent that Kent has an obligation to specially acquire right of way to accommodate PSE's peculiar needs, and Kent would deny that any such obligation exists if PSE were ever to assert such an obligation. Whether all other cities are in agreement on these points, Kent does not know. If they are, there should be no material factual questions that would make consolidation inappropriate.

Ms. Carole J. Washburn
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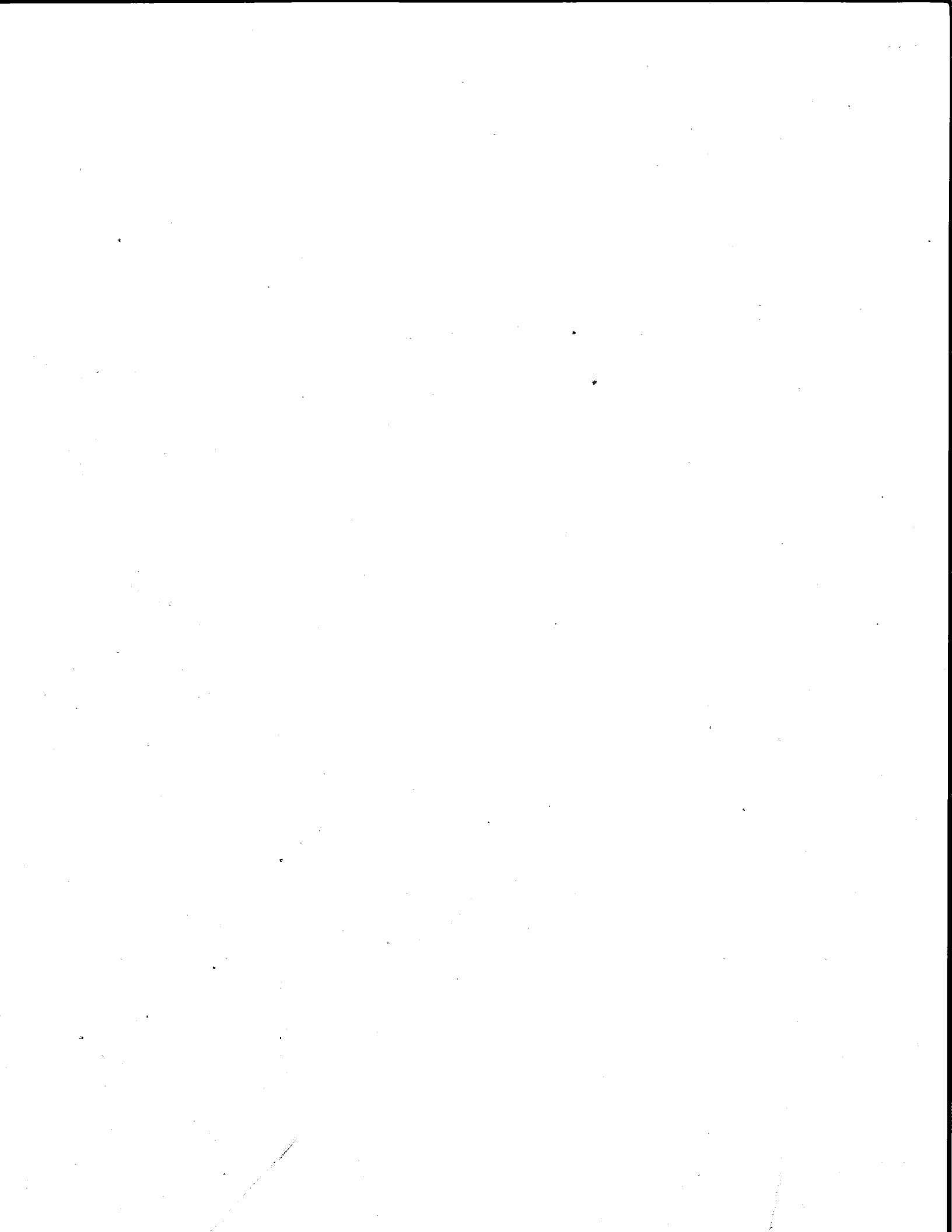
If you have any questions about the foregoing, please call.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Charneski". The signature is fluid and cursive, with the first name "Michael" and last name "Charneski" clearly distinguishable.

Michael L. Charneski

cc: Tom Brubaker, Deputy City Attorney
All parties' representatives



1 is not obligated to do: pay for PSE's private easements.¹ PSE June 21 Statement at para.
2 33, 55, 63b. This absurd proposition changes the issue at the core of this proceeding.

3 The primary issue is now the following:

4 When a property owner does not voluntarily supply PSE with
5 easement rights as contemplated by Section 4 of Schedule 71, does the
6 tariff obligate PSE to pay for such rights and proceed with
undergrounding, or does undergrounding on a public improvement
project somehow become optional at PSE's discretion?

7 The foregoing issue does not implicate any disputed material facts. The City is
8 therefore submitting this pleading as its Amended Motion for Summary Determination.
9 The City hopes this motion will help simplify proceedings and allow a speedy
10 resolution. Summary determination is appropriate as authorized by WAC 480-09-
11 426(2).²

12 The City's original motion also requested an additional ruling, and that request
13 is renewed here. The Commission should rule that the City is not obligated by tariff to
14 include within an underground conversion agreement a promise to pay the costs of
15 future, hypothetical electric facility relocations not related to the Project.

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20 ¹ It is unclear how many easements will ultimately be acquired by PSE in connection with the
21 City's Pacific Highway Project. The City recently completed two mile-long street improvement
22 projects that included underground conversion. In each case, PSE initially planned on acquiring
about six private easements, but ultimately reduced that to just one easement along each mile-
long project. Supplemental Declaration of Mark Howlett, attached. The City signed an
underground conversion agreement under protest in order to complete the project.

23 ² As set forth in WAC 480-09-426(2), the standards applicable to motions under CR 56 will be
24 considered in connection with motions for summary determination. CR 56 provides that
25 summary judgment shall be granted when there are no genuine issues as to any material fact and
the moving party is entitled to judgment as a matter of law. CR 56(c). In the instant matter, the
26 facts are simple and undisputed: the City's project requires underground conversion of electric
facilities, and the parties are at odds as to rights and obligations under Schedule 71 of Electric
Tariff G. A declaratory ruling is therefore necessary.

I. Factual Background

1 PSE maintains and operates electric distribution facilities (poles, wires, cables,
2 vaults, and so on) throughout the City of Kent pursuant to a 1993 franchise agreement
3 (the "PSE Franchise") with the City. The PSE Franchise expires in 2018.³
4

5 The PSE Franchise grants PSE permission to locate its electric facilities within the
6 "franchise area." As defined in section 1.1.3 of the Franchise, "franchise area"
7 essentially equates to existing City right of way, or future right of way that the City
8 may happen to acquire.

9 Section 5.2 of the PSE Franchise, titled "Undergrounding of Facilities," provides
10 that

11 [i]f, during the term of this Franchise, the City shall direct Puget to underground
12 Facilities within the Franchise Area, such undergrounding shall be arranged and
13 accomplished subject to and in accordance with applicable rates and tariffs on
14 file with the WUTC.

15 The City has directed PSE to underground its facilities along the portion of
16 Pacific Highway encompassed within the City's Pacific Highway Improvement Project
17 ("the Project"). LaPorte Declaration. Consequently, certain cost obligations are
18 governed by Section 3b(1) of Schedule 71 of Electric Tariff G on file with the WUTC. A
19 copy of Schedule 71, titled "Conversion to Underground Service in Commercial Areas,"
20 is attached as Appendix A.

21 Section 2 of Schedule 71 sets forth conditions to PSE's obligation to underground
22 its facilities. Section 2 provides that

23 [s]ubject to availability of equipment and materials, the Company [PSE] *will*
24 *provide and install* a Main Distribution System and will remove existing overhead

25 ³ Copies of the franchise were attached both to the City's Petition for Declaratory Relief and also
26 to the City's original Motion for Summary Determination. For economy and to avoid undue
repetition, the franchise is not attached to this Amended Motion. A few franchise provisions add
context to the present dispute, and those provisions are quoted within this pleading. To be clear,
however, the City is not asking the WUTC to consider franchise issues, nor does the City believe
the WUTC even has jurisdiction to do so.

1 electric distribution lines of 15,000 volts or less together with Company-owned
2 poles following the removal of all utility wires therefrom in those portions of
3 municipalities which are zoned and used for commercial purposes...provided
4 that at the time of such installation the Company shall have the right to render
5 service in such municipalities pursuant to a franchise in a form satisfactory to the
6 Company, and provided further, that the Conversion Area must be not less than
7 two (2) contiguous city blocks in length with all real property on both sides of
8 each public street to receive electric service from the Main Distribution System.
9 (Emphasis added.)

10 All of the criteria in Section 2 are met in connection with the Pacific Highway
11 Project. *See generally* LaPorte Declaration. PSE expressly *concedes* that all of the criteria
12 are met. PSE's June 21 Statement at para. 13.

13 Pursuant to Section 3.a of Schedule 71 of Electric Tariff G, the City and PSE have
14 exchanged drafts of an "underground conversion agreement" as contemplated by the
15 following portion of Section 3.a:

16 [t]he Company and the municipality having jurisdiction of the Conversion
17 Area...shall enter into a written contract...for the installation of such systems,
18 which Contract shall be consistent with this schedule and shall be in a form
19 satisfactory to the Company.

20 The parties have been unable to reach agreement, primarily because PSE insists the City
21 must agree to pay for so-called "operating rights" desired by PSE, as referenced in
22 Section 4 of Schedule 71. LaPorte Declaration. Section 4 provides as follows:

23 [t]he owners of real property within the Conversion Area shall, at *their* expense,
24 provide space for all underground electrical facilities which in the Company's
25 judgment shall be installed on the property of said owners. In addition, said
26 owners shall provide to the Company adequate legal rights for the construction,
operation, repair, and maintenance of all electrical facilities installed by the
Company pursuant to this schedule, all in a form or forms satisfactory to the
Company. (Emphasis added).

Despite Sections 2 and 4 of Schedule 71, PSE has refused to proceed with the
Project unless Kent agrees to pay for all costs related to private easements desired by

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1 PSE. LaPorte Declaration, Howlett Declaration. Specifically, PSE requests that the City
2 sign an underground conversion agreement that includes the following provision:

3 The cost to the Company [PSE] of obtaining any such space and rights on any
4 property other than public rights of way shall be reimbursed in full by the
5 Customer [the City]. The cost to the Company to obtain space and rights shall
6 include, but not be limited to, the actual amount paid for any space and rights,
7 staff costs (including overheads), the actual costs of any easement, fee, permit,
8 attorney fee, court cost, permit fee, and any survey fee.

9 The draft agreement given to Kent by PSE contains many additional, similar provisions,
10 all written to obligate the City of Kent to fund PSE's acquisitions of private easements.
11 A complete copy of the draft was attached as Exhibit C to the City's Petition for
12 Declaratory Relief. An excerpt containing the language quoted above is attached as
13 Exhibit B to the attached LaPorte Declaration.

14 The City of Kent has not agreed to pay for PSE's private easements. LaPorte
15 Declaration. As a result, PSE has stopped work on the underground distribution
16 portion of Kent's Project. Howlett Declaration.

17 PSE has also demanded that the City promise—in the underground conversion
18 agreement—to pay for 100% of any *future* relocation of facilities installed within right of
19 way on the Project. LaPorte Declaration and Exhibit B thereto. Section 3(a) of Schedule
20 71 states that the underground conversion agreement is to be "*consistent with this*
21 *Schedule...*" Schedule 71 pertains only to "conversions to underground service," not to
22 hypothetical future relocations. The agreement requested by PSE is therefore not
23 supported by Schedule 71.

24 The City does not presently anticipate any future facility relocations being
25 necessary within the Project area once the Project is completed. LaPorte Declaration.
26 The issue is important, however, because PSE's demand is not supported by Schedule
71 and it is inconsistent with PSE's franchise with the City.

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II. Issues

1) Does Schedule 71 of Electric Tariff G require PSE to absorb its staff, engineering, survey, legal, and other costs incurred in connection with its acquisition of private easements? Does it make any difference whether PSE pays the grantor for the easement or the grantor conveys it free of charge?

2) When Section 2 criteria are met and the City requests undergrounding, is undergrounding mandatory under Schedule 71 even if PSE has to pay fair easement value to obtain an easement it may desire?

3) Does Schedule 71 require the City to include in the underground conversion agreement for the Pacific Highway Project a promise to pay for future hypothetical relocations of electric facilities that are unrelated to the Project?

Argument

1. Schedule 71 undergrounding is mandatory on the Pacific Highway Project because all Section 2 criteria are satisfied, and PSE must therefore pay all costs related to easement acquisition, including compensation to any owner unwilling to convey an easement free of charge.

The City of Kent petitioned the UTC for a declaratory ruling that the tariff does not require the City to pay costs associated with private easements that PSE, in its sole discretion, decides to acquire. PSE conceded in its June 21 Statement that the tariff imposes no such obligation on the City of Kent. PSE June 21 Statement at para. 55, 63b. According to PSE, however, undergrounding is *not* triggered by the existence of Section 2 criteria. Instead, PSE contends that even if Section 2 criteria exist, PSE has no obligation to underground unless the City obligates itself to do what PSE expressly concedes the tariff does *not obligate* the City to do: pay for PSE's private easements and related acquisition costs. PSE June 21 Statement at para. 33, 55, 63b. Stated otherwise, PSE contends as follows:

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Schedule 71 of Electric Tariff G governs allocation of costs of undergrounding.

Schedule 71 requires that PSE and the City execute an underground conversion agreement consistent with Schedule 71.

PSE expressly concedes that Schedule 71 does not obligate the City to pay costs of PSE's private easement acquisitions.

but...

PSE refuses to underground unless the City obligates itself, in the underground conversion agreement, to pay for PSE's private easements and related acquisition costs.

In sum, PSE contends that it has no obligation to underground unless the City accepts an obligation that does not exist. When Schedule 71 took effect, did the UTC envision such an absurd result?

A. The Pacific Highway Project meets all Section 2 criteria.

Section 2 of Schedule 71 of Electric Tariff G provides as follows:

[s]ubject to availability of equipment and materials, the Company [PSE] *will provide and install* a Main Distribution System and will remove existing overhead electric distribution lines of 15,000 volts or less together with Company-owned poles following the removal of all utility wires therefrom *in those portions of municipalities which are zoned and used for commercial purposes...provided that* at the time of such installation *the Company shall have the right to render service in such municipalities pursuant to a franchise in a form satisfactory to the Company, and provided further, that the Conversion Area must be not less than two (2) contiguous city blocks in length with all real property on both sides of each public street to receive electric service from the Main Distribution System.* (Emphasis added).

PSE has agreed that all Section 2 criteria exist with respect to Kent's Pacific Highway Project. PSE June 21 Statement at para. 13.

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1 B. PSE must pay its own engineering, legal, survey, staff and other costs
2 related to its private easements under Section 4 of Schedule 71.

3 Section 4 of Schedule 71 pertains to so-called "operating rights" – the "private
4 easements" desired by PSE. Section 4 provides as follows:

5 [t]he owners of real property within the Conversion Area shall, at their expense,
6 provide space for all underground electrical facilities which in the Company's
7 judgment shall be installed on the property of said owners. In addition, said
8 owners shall provide to the Company adequate legal rights for the construction,
9 operation, repair, and maintenance of all electrical facilities installed by the
10 Company pursuant to this schedule, all in a form or forms satisfactory to the
11 Company.

12 It seems readily apparent from the language of Section 4, drafted by PSE and its
13 lawyers, that PSE anticipated the possibility of finding property owners willing to grant
14 easements to PSE at no charge in return for the noticeable benefits of undergrounding.
15 Still, PSE would incur many costs associated with easement acquisitions. Whether or
16 not a property owner requested payment for the *value* of an easement, PSE would
17 certainly have to absorb its *other* costs related to easement acquisition because, under
18 Section 4 of Schedule 71, it is PSE's *task* to determine if, when, and where PSE desires an
19 easement. Schedule 71 imposes upon the parties a *variety* of tasks.

20 Section 3(b)(2) of Schedule 71 assigns to the City the task of providing surveying
21 for alignment and grade of PSE's vaults and ducts. Obviously there are costs associated
22 with performing that task. The City would not suggest it is not responsible for paying
23 costs of that task. The City is also assigned the task of providing trenching for PSE's
24 duct and vault systems. That task carries associated costs as well. The City would not
25 suggest it is not obligated to pay such costs. It is also the City's task to provide
26 restoration of the trenches. Again, there are costs associated with the task. Would the
City dare suggest it is not obligated to pay such costs? Of course not.

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1 Whose task is it to determine when, "in the Company's judgment,"⁴ an easement
2 is desired for a particular piece of equipment? Is it the City's task? No. Whose task is it
3 to determine which particular property or properties might, from an electric
4 distribution system design standpoint, best fit PSE's specific needs for an easement?
5 Whose task is it to determine the size of the easement—i.e., how much "space" is
6 needed for the particular piece of PSE equipment? Whose task is it to determine what
7 specific "legal rights" are "adequate" for PSE's easement? Whose task is it to draft the
8 actual language deemed necessary by PSE and its lawyers for a particular easement?
9 Whose task is it to prepare and attach to that easement a legal description adequately
10 describing the precise easement area deemed by PSE to be necessary for its equipment?
11 Whose task is it to survey the easement area in conjunction with preparation of the legal
12 description? Whose task is it to plug into PSE's easement the name or names of the
13 property owner or owners? In connection with that specific task, whose task is it to
14 obtain a title report to determine ownership of the specific property selected by PSE?
15 Section 4 contemplates that the owner of the property will "provide to the Company"
16 the easement rights desired by the Company. Can there be any serious question as to
17 whose task it is to actually speak with the property owner about specifics of the
18 easement—about the type and function and size and appearance of the PSE equipment
19 to be placed on the PSE easement? If an owner grants an easement, whose task is it to
20 record the easement when it has been signed and returned to PSE?

21 There can be no question as to whose tasks are set forth in the preceding
22 paragraph. Section 4 contemplates investigation, design, legal work, staff work, and
23 survey work by PSE, as well as interactions between the property owner and PSE.
24 None of the tasks attendant to Section 4 involve the City.

25 _____
26 ⁴ PSE emphasizes in its June 21 Statement that its judgment in determining which facilities should
be placed on "private property" is unlimited. See PSE June 21 Statement at para. 45.

1 All of PSE's easement-related tasks involve costs—staff costs, engineering costs,
2 legal costs, and other related costs and overhead. These costs exist even when an
3 easement is ultimately conveyed to PSE free of charge (as PSE apparently contemplated
4 could happen when it drafted Section 4 of Schedule 71).

5 The City must pay the costs of performing tasks for which it is responsible under
6 Schedule 71. PSE must do the same. If PSE and its lawyers had been so inclined, they
7 could have written into the tariff the specific cost obligations PSE now asserts. They did
8 not do so, however—not until February 2001, that is. In February, PSE proposed a
9 sweeping tariff revision (copy attached as Appendix B) that included, among other
10 things, the very same language now included by PSE in its draft underground
11 conversion agreement.⁵ The February tariff revision, however, was withdrawn by PSE
12 and never took effect.

13 Because it cannot find support in the tariff, PSE cites its own draft underground
14 conversion agreement as though it constitutes authority of some sort. PSE refers to its
15 draft as an “educational tool” and suggests it be consulted for guidance in
16 understanding what the tariff really means. PSE June 21 Statement at para. 25-26.
17 Without belaboring the point, PSE's suggestion is preposterous. If the Commission ever
18 intended that the fox rule the hen house, why have a tariff at all?

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24 ⁵ Paragraph 5b of PSE's aborted February 2001 amendments to Schedule 71 provided as follows:
25 “The cost to the Company [PSE] of obtaining any such space and rights on any property other
26 than public rights of way shall be reimbursed in full by the Customer [the City]. The cost to the
Company to obtain space and rights shall include, but not be limited to, the actual amount paid
for any space and rights, staff costs (including overheads), the actual costs of any easement, fee,
permit, attorney fee, court cost, permit fee, and any survey fee.” See Appendix B.

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1 **C. In addition to paying other costs associated with easement acquisition, PSE**
2 **must pay for the easement itself if it cannot be acquired free of charge.**

3 While Section 4 contemplates a property owner possibly granting an easement
4 free of charge, should underground conversion be scuttled if a property owner requests
5 compensation?

6 The parties agree that a property owner cannot be forced to convey an easement
7 without being paid just compensation. PSE June 21 Statement at para. 50. It therefore
8 follows that in the event an owner requests compensation, either there will be no
9 easement, or someone must pay for an easement. If there is no easement and
10 equipment is instead undergrounded in a vault, then PSE and the City pay the cost
11 percentages set forth in Section 3 of Schedule 71. If PSE insists it needs an easement,
12 however, then according to PSE, the entire undergrounding project becomes optional:
13 Schedule 71 undergrounding will not take place, according to PSE, unless the City
14 agrees in advance of the Project (by signing PSE's underground conversion agreement)
15 to obligate itself to do what PSE *concedes* Schedule 71 does *not* obligate the City to do—
16 pay for PSE's private easements, whenever and where ever PSE might want them. This
17 is absurd.

18 If PSE and its lawyers had ever intended the existing tariff to impose the
19 obligations now urged by PSE, then they should have let the rest of the world—most
20 notably the Commission and all of the cities in PSE's service area—in on the secret by
21 actually *stating the purported obligations* in Schedule 71. Doing so would not have been
22 difficult: "In the event PSE is unable to obtain from a property owner at no charge a
23 private easement desired by PSE, then PSE shall have no obligation to underground its
24 facilities unless the municipality requesting undergrounding acquires the easement for
25 PSE, by condemnation if necessary." Of course, had the purported obligation been
26 stated, it would immediately have been challenged.

1 The City of Kent does not have legal authority to buy private property interests
2 for PSE even if it wanted to do so. Article 8, Section 7 of the Washington Constitution
3 provides that

4 [n]o county, city, town or other municipal corporation shall hereafter give
5 any money, or property, or loan its money, or credit to or in aid of any
6 individual, association, company or corporation, except for the necessary
7 support of the poor and infirm, or become directly or indirectly the owner
8 of any stock in or bonds of any association, company or corporation.

9 The court has held that a municipality's payment to a utility for certain costs of
10 underground conversion does not necessarily run afoul of Article 8 Section 7. *Gen. Tel.*
11 *Co. v. City of Bothell*, 105 Wn.2d 579, 716 P.2d 879 (1986). It would be a very different
12 matter, however, for a municipality to allocate public tax funds to the purchase of
13 private property interests—*not public easements*—for a private utility company. The
14 City cannot lawfully funnel taxpayer money to PSE—a profit-making corporation—to
15 fund PSE's acquisitions of private property.⁶ Likewise, a private property owner cannot
16 be forced to convey an easement without just compensation, as PSE concedes. PSE June
17 21 Statement at para. 50. Consequently, the only party that can, and quite reasonably
18 should, pay for PSE's private easements is PSE.

19 **D. The viability of undergrounding projects cannot be left to chance.**

20 The UTC has a clear choice. It can, on the one hand, rule that compensation must
21 be paid by PSE—the entity whose responsibility it is under Schedule 71 to identify the
22 easement, prepare easement language deemed adequate by PSE, survey for and
23 ultimately record the easement, and so on. Alternatively, the UTC can rule that even

24 ⁶ PSE's June 21 Statement references impact upon ratepayers, but ratepayers and taxpayers are
25 one and the same. The critical distinction is that PSE may lawfully use rate revenues received
26 from the ratepayer-taxpayer to pay for corporate purchases of real property interests. The City,
in contrast, is constitutionally prohibited from using tax revenues received from the ratepayer-
taxpayer to pay for PSE's corporate purchases of real property interests.

1 when all criteria in Section 2 exist, and undergrounding is therefore otherwise
2 mandatory, there will be no undergrounding of electric facilities if a property owner
3 from whom PSE has requested an easement asks for compensation.⁷ If that is the
4 ruling, there will be no undergrounding of electric facilities in connection with major
5 street improvement projects like Kent's \$16 million Pacific Highway Project. Cities
6 cannot subject project planning, design, budgeting, and funding to factors beyond
7 anyone's ability to control.

8 It is clear that PSE desires a new scheme of rights, responsibilities, and cost
9 allocation for undergrounding projects. PSE proposed a new scheme in February (*see*
10 App. B), but the February tariff proposal was withdrawn and never became effective. It
11 is irresponsible of PSE to pretend otherwise. Moreover, it strains reason to suggest that
12 the Washington Legislature, when it recognized the fundamental benefits of
13 undergrounding,⁸ could have envisioned an electric tariff that would make such an
14 important component of a major public improvement project totally dependent upon
15 PSE's ability to obtain easements free of charge. The viability of undergrounding on
16 any such project, let alone so visible and significant a project as the Pacific Highway
17 Improvement Project, should not be left to chance.

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21 _____
22 ⁷ PSE essentially concedes that such a request would scuttle an underground conversion project.
23 *See* PSE June 21 Statement at para. 30. The Commission could not have intended such a
24 possibility when it allowed Schedule 71 to take effect.

24 ⁸ In 1967, three years before Schedule 71 became effective, the Washington Legislature declared
25 the public interest and purpose in underground conversion of electric facilities:
26 "It is hereby found and declared that the conversion of overhead electric and communication
facilities to underground facilities is substantially beneficial to the public safety and welfare, is in
the public interest and is a public purpose, notwithstanding any incidental private benefit to any
electric or communication utility affected by such conversion." RCW 35.96.010.

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1 **2. Neither Schedule 71 of Electric Tariff G nor any other rate or tariff obligates the**
2 **City of Kent to waive its franchise rights in regard to hypothetical future utility**
3 **relocations.**

4 Schedule 71 requires the parties to execute an underground conversion
5 agreement "*consistent with*" Schedule 71. *See* Schedule 71, Section 3(a). PSE insists on
6 including in such an agreement a provision obligating Kent to pay for 100% of the costs
7 of any future relocation of electric facilities located within right of way. This request is
8 not only contrary to the franchise that PSE signed but, more importantly for resolution
9 of the issue at hand, it finds no support whatsoever in Schedule 71. Schedule 71
10 pertains only to the costs of *underground conversions*.

11 Oddly enough, this contract provision demanded by PSE is yet another that PSE
12 proposed, but then *withdrew*, earlier this year. The proposed tariff revision filed in
13 February 2001 included, in Section 5e (*see* App. B), the following precondition to PSE
14 installing equipment underground within right of way:

15 (3) The governmental authority owning or controlling the rights-of-
16 way has agreed to pay one hundred percent (100%) of the cost of any
17 future relocation of facilities located on rights-of-way under this
18 provision.

19 The foregoing proposed language is identical to that which PSE now insists Kent
20 accept before PSE will proceed with the Project, but this proposed tariff language was
21 withdrawn and never became effective. The existing Schedule 71 (App. A) does not
22 contain the same obligation related to costs of future facility relocations as that
23 contained in the *proposed-but-withdrawn version* of Schedule 71 (App. B). Moreover, PSE
24 expressly promised – when it signed its franchise with Kent in 1993 – that it would bear
25 the costs of electric facility relocations required by the City.⁹ It appears that PSE is
26 attempting to extort from the City a waiver of this promise by holding up the Pacific
27 Highway Project.

⁹ *See* Section 6 of the Franchise (Exhibit A to LaPorte Declaration).

MICHAEL L. CHARNESKI
Attorney at Law
19812 194th Ave. N.E.
Woodinville, Washington 98072
Telephone: 425-788-2630

1 Allocation of costs of a hypothetical future electric facility relocation should be
2 made in accordance with whatever franchise and tariff provisions are in effect and
3 applicable at the time, *if ever*, that such a relocation becomes necessary. The
4 Commission should rule accordingly.

5 IV. Conclusion

6 For the foregoing reasons, the Commission should grant the City of Kent's
7 Motion and rule that

8 1) Neither Schedule 71 of Electric Tariff G, nor any other rate or tariff on file
9 with the Commission, obligates the City of Kent to reimburse Puget Sound Energy, Inc.,
10 for PSE's acquisitions of private property or property rights in connection with the
11 City's Pacific Highway Improvement Project;

12 2) Schedule 71 of Electric Tariff G obligates PSE to pay staff costs (including
13 overhead), fees, permit costs, attorney fees, survey fees and other costs associated with
14 identification and acquisition of easements desired by PSE whether or not the property
15 owner charges for such easement;

16 3) In those instances in which a property owner asks for compensation for an
17 easement desired by PSE, PSE must also pay (through condemnation, if necessary) for
18 the actual easement rights or find an alternative location for its easement;

19 4) So long as the criteria set forth in Section 2 of Schedule 71 are satisfied,
20 undergrounding is mandatory if requested by the municipality, and costs of obtaining
21 easements deemed necessary by PSE shall be borne by PSE as set forth immediately
22 above;

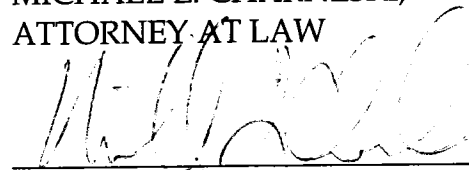
23 5) Neither Schedule 71 of Electric Tariff G, nor any other rate or tariff on file
24 with the Commission, requires the City of Kent, as part of an underground conversion
25

1 agreement for the Pacific Highway Project, to obligate itself as to allocation of costs of
2 hypothetical future electric facility relocations within the Project Area; and

3 6) PSE 's obligation to underground is not negated by the City's refusal to
4 pay for costs of hypothetical future electric facility relocations within the Project Area.

5 Respectfully submitted this 5th day of July 2001.

7 MICHAEL L. CHARNESKI,
8 ATTORNEY AT LAW

9 

10 Michael L. Charneski, WSBA #15735
11 Attorney for Petitioner, City of Kent

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**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

City of Kent,)	
)	Docket No. UE-010778
Petitioner,)	
)	DECLARATION OF SERVICE
v.)	
)	
Puget Sound Energy, Inc.,)	
)	
Respondent)	
<hr/>		

I declare as follows:

I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On this date, July 5, 2001, I messengerd, via Pacific Northwest Process, Inc., a true and correct copy of the City of Kent's **Amended Motion for Summary Determination and attachments**, together with a copy of this declaration, for delivery to the following at their respective addresses of record by 3:00 p.m. on Friday, July 6, 2001:

Michael Reynolds
City of Auburn
25 W. Main Street
Auburn, WA 98001-4998

W. Eugene Sampley, P.E.
City of Bremerton
Dept. of Public Works and Utilities
3027 Olympus Drive
Bremerton, WA 98310-4799

Gary McLean
City of Des Moines
21630 – 11th Avenue South, Suite C
Des Moines, WA 98198-6317

Bob C. Sterbank
City of Federal Way
3350 1st Way South
Federal Way, WA 98003

Daniel B. Heid
City of Lakewood
10510 Gravelly Lake Drive SW, Suite 206
Lakewood, WA 98499-5038

Lawrence J. Warren
City of Renton
1055 South Grady Way
Renton, WA 98055

Robert F. Noe
City of Tukwila
6200 Southcenter Blvd.
Tukwila, WA 98188-2599

Carol J. Washburn Secretary
Washington Utilities
and Transportation Commission
1300 S. Evergreen Park Drive
Olympia, WA 98504-7250

(1 orig. and 19 copies)

Mary E. Mirante
City of SeaTac
7900 International Blvd., Suite 401
SeaTac, WA 98188-4236

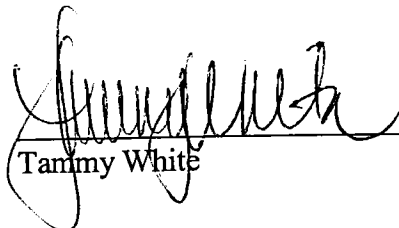
Carol S. Arnold
Laura K. Clinton
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Seattle, WA 98104-7028

Markham Quehrn, Esq.
Kirsten Dodge, Esq.
Perkins Coie, LLP
One Bellevue Center
411 – 108th Avenue NE, Suite 1800
Bellevue, WA 98004-5584

Steve Secrist
Puget Sound Energy
One Bellevue Center
411 – 108th Avenue NE, 3rd Floor
Bellevue, WA 98004-5584

Simon J. Ffitch
Office of the Attorney general
Public Counsel
900 Fourth Avenue, Suite 2000
Seattle, WA 98164

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Kent, King County, Washington on the 5th day of July, 2001.



Tammy White

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 71
CONVERSION TO UNDERGROUND SERVICE
IN COMMERCIAL AREAS

1. **DEFINITIONS** - The following terms when used in this schedule shall have the meanings given below:
 - a. **Main Distribution System:** An underground electric distribution system exclusive of "Underground Service Lines" as defined herein.
 - b. **Underground Service Lines:** Underground electric service lines provided, installed and maintained by the customer in nonresidential areas extending from service connections of the structure to the designated secondary service connection point of a Main Distribution System.
 - c. **Conversion Area:** That geographical area wherein the Company's overhead electric distribution system is replaced or is to be replaced by an underground electric distribution system.
 - d. **Trenching and Restoration:** Includes all breakup of sidewalks and pavement, excavation for vaults, trenching for ducts, select backfill, concrete around ducts (if required), compaction and restoration.
2. **AVAILABILITY** - Subject to availability of equipment and materials, the Company will provide and install a Main Distribution System and will remove existing overhead electric distribution lines of 15,000 volts or less together with Company-owned poles following the removal of all utility wires therefrom in those portions of municipalities which are zoned and used for commercial purposes (and in such other areas of such municipalities which have electrical load requirements which are comparable with developed commercial areas), provided that at the time of such installation the Company shall have the right to render service in such municipalities pursuant to a franchise in a form satisfactory to the Company, and provided further, that the Conversion Area must be not less than two (2) contiguous city blocks in length with all real property on both sides of each public street to receive electric service from the Main Distribution System.
3. **FINANCIAL ARRANGEMENTS** - The Company will provide and install within the Conversion Area a Main Distribution System upon the following terms:

Issued:

April 10, 1997

Effective:

April 11, 1997

Issued by Puget Sound Energy

By

Ronald E. Davis

Vice President, Regulation & Utility Planning

APP. A

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 71
CONVERSION TO UNDERGROUND SERVICE
IN COMMERCIAL AREAS
(Continued)

- a. The Company and the municipality having jurisdiction of the Conversion Area or the owners of all real property to be served from the Main Distribution System (or the duly appointed agent of all said property owners) shall enter into a written contract (the "Contract" herein) for the installation of such systems, which Contract shall be consistent with this schedule and shall be in a form satisfactory to the Company.
- b. The Contract shall obligate said municipality, or property owners, to do the following:
- (1) Pay the Company 70% of the total cost of the conversion project excluding trenching and restoration; or, when the Company's overhead system is required to be relocated due to addition of one full lane or more to an arterial street or road, pay the Company 30% of the cost of the conversion project, excluding trenching and restoration.
 - (2) Provide all trenching and restoration for duct and vault systems and provide surveying for alignment and grades of vaults and ducts.
- c. The Contract shall provide for payment to the Company on the following terms:
- (1) If the conversion is accomplished pursuant to a contract with a municipality, said amount shall be payable to the Company within thirty (30) days following the completion of construction of the conversion project.
 - (2) If the conversion is accomplished pursuant to a contract with any other person or entity, said amount shall be payable to the Company prior to the commencement of construction or, in lieu thereof, said amount shall, prior to the commencement of construction, be placed in escrow with an escrow agent satisfactory to the Company pursuant to written instruction obligating said escrow agent to pay said amount to the Company upon the completion of construction.
4. **OPERATING RIGHTS** - The owners of real property within the Conversion Area shall, at their expense, provide space for all underground electrical facilities which in the Company's judgment shall be installed on the property of said owners. In addition,

Issued: April 10, 1997 Effective: April 11, 1997

Issued by Puget Sound Energy

By _____ Vice President, Regulation & Utility Planning
Ronald E. Davis

APP. A

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 71
CONVERSION TO UNDERGROUND SERVICE
IN COMMERCIAL AREAS
(Continued)

said owners shall provide to the Company adequate legal rights for the construction, operation, repair, and maintenance of all electrical facilities installed by the Company pursuant to this schedule, all in a form or forms satisfactory to the Company.

5. GENERAL

a. Ownership of Facilities: The Company shall own, operate, and maintain all underground electrical facilities which it installs pursuant to this schedule.

b. Prior Contracts: Nothing herein contained shall affect the rights or obligations of the Company under any contract for the conversion of electrical facilities from overhead to underground which was entered into prior to the effective date hereof.

6. STREET LIGHTING INSTALLATIONS - Separate arrangements must be made for installation or replacement of street lighting units at the time of conversion.

7. UNDERGROUND SERVICE LINES - Underground Service Lines shall be installed, owned, and maintained by each Customer as provided in Schedule 86 of this tariff.

8. GENERAL RULES AND PROVISIONS - Service under this schedule is subject to the General Rules and Provisions contained in this tariff.

Issued: April 10, 1997 Effective: April 11, 1997

Issued by Puget Sound Energy

By Ronald E. Davis Vice President, Regulation & Utility Planning

APP. A

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 71
CONVERSION TO UNDERGROUND SERVICE
IN COMMERCIAL AREAS

1. DEFINITIONS - The following terms when used in this schedule shall have the meanings given below:

a. Main Distribution System: An underground electric distribution system exclusive of "Underground Service Lines" as defined herein. The Main Distribution System typically includes but is not limited to Primary voltage cables, secondary voltage cable located in the rights-of-way, connections, terminations, pad-mounted transformers, pad-mounted switches, conduit, vaults and other necessary associated components. The Main Distribution System shall be equivalent in all ways to the existing overhead distribution system, including the ability to expand such system.

(N)
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(N)

b. Underground Service Lines: The underground electric service lines extending from service connections of the structure to the designated secondary service connection point of a Main Distribution System. For non-residential and multi-family residential customers, Underground Service Lines are provided, installed, owned and maintained by the customer. For single-family residential customers, Underground Service Lines are provided, installed, owned and maintained by the Company in accordance with Schedule 86 of this tariff.

(T)
|
(T)(N)
|
|
(N)(K)

c. Conversion Area: That geographical area wherein the Company's overhead electric distribution system is replaced with an equivalent Main Distribution System.

(C)
(T)

d. Trenching and Restoration: Includes, but is not limited to, all breakup of sidewalks, driveways, pavement and restoration thereof on public right-of-ways and private property. Also includes, but is not limited to, excavating for vaults, trenching for ducts, shoring, flagging, barricades, select backfill, concrete around ducts (if required), compaction and restoration, all in accordance with Company specifications.

(C)
|
|
|
|
(C) (K)

(K)
(K)

(K) Transferred to Sheet No. 71-c
(K) Transferred to Sheet No. 71-d

Issued: February 7, 2001
Advice No. 2001-02

Effective: March 15, 2001

Issued By Puget Sound Energy

By: _____
Steve Secrist

Director, Rates & Regulation

APP. B

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 71
CONVERSION TO UNDERGROUND SERVICE
IN COMMERCIAL AREAS
(Continued)

- e. Customer: The person, partnership, firm, corporation, municipality, cooperative organization, governmental agency, owners of property in the Conversion Area or the duly appointed agent of said property owners, etc., requesting conversion of the Company's existing electrical system from overhead to underground. A person or entity requesting conversion to underground because of zoning or building or other requirements imposed by governmental authorities shall be deemed to be the Customer, not the governmental authority requiring the conversion. (N)(K)
- f. Temporary Service: Temporary Service shall have the meaning set forth in the General Rules and Provisions of the Company's electric Tariff G and in addition shall mean limited overhead facilities left in place within the Conversion Area at the request of the Customer with the Company's approval and/or limited overhead or underground facilities installed concurrently with the installation of the Main Distribution System with the Company's approval, which are utilized to provide short term overhead service within the Conversion Area. Temporary Service shall be for a maximum duration of one and one half years from the date the Main Distribution System is energized, except in unusual circumstances approved by the Company (for example, to accommodate other demolition or construction projects within the Conversion Area). (K)
- g. Cost of the Conversion: The Cost of the Conversion shall be the sum of the actual labor, materials and overheads and all other costs to install the Main Distribution System and cost of removal of the existing electrical facilities less the salvage value of the facilities removed. The cost of removal and salvage value of existing overhead facilities utilized to provide Temporary Service shall be included in the Cost of the Conversion. The Cost of Conversion shall not include any costs of Trenching and Restoration, obtaining Operating Rights pursuant to paragraph 5 of this schedule, Customer Requested Changes, the cost of delays or overtime labor costs unless such overtime labor costs are included in the Company's initial estimate. (K)

(K) Transferred to Sheet Nos. 71-d, 71-e, 71-f Respectively

Issued: February 7, 2001
Advice No. 2001-02

Effective: March 15, 2001

Issued By Puget Sound Energy

By: _____
Steve Secrist

Director, Rates & Regulation

APP. B

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 71
CONVERSION TO UNDERGROUND SERVICE
IN COMMERCIAL AREAS
(Continued)

- h. Customer Requested Changes: Changes requested or otherwise caused by the Customer that are within the control of the Customer and increase the Cost of the Conversion, plus labor costs to redesign the Main Distribution System to accommodate such changes. Examples of Customer Requested Changes include, but are not limited to, changes in the design, route or location of the Main Distribution System, the use of different, non-standard or total underground equipment, the installation of equipment in vault rooms inside buildings due to inadequate space for the Company's equipment that is usually pad-mounted or within buried vaults on private property, or the use of Customer provided contractors to perform work that would otherwise be performed by the Company under this schedule. Customer Requested Changes do not include a requested change in the length of the Conversion Area; the cost of such a change will be included in the Cost of the Conversion. (N)(K) (K) (K) (K) (K)
- i. One Full Lane: One Full Lane is eleven (11) feet of paving contiguous to an existing lane or lanes to accommodate vehicular traffic for a minimum of two (2) contiguous city blocks. The eleven (11) feet may be added to either or both sides of the existing street. The resulting street must be configured to add an additional lane or lanes to the existing street. The addition of medians, planting strips, non-contiguous bicycle lanes, curbs and/or sidewalks are not considered the addition of One Full Lane. (K) (K) (K)
- j. Required to be Relocated: Poles that are Required to be Relocated are existing poles located within municipal or government franchised rights-of-way that will be in the driven surface of the proposed road improvement or within six (6) inches of the street side of the curb. Where curbs are not installed, a pole is Required to be Relocated if it will be within the driven surface of the proposed street improvement or is within six (6) inches of the paved surface of the planned street improvement. (N)
- k. Operating Rights: Operating Rights are defined in paragraph 5 of this schedule.

(K) Transferred to Sheet Nos. 71-f, 71-f, 71-h, 71-i, 71-j

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Advice No. 2001-02

Effective: March 15, 2001

Issued By Puget Sound Energy

By: _____ Director, Rates & Regulation
Steve Secrist

APP. B

**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 71
CONVERSION TO UNDERGROUND SERVICE
IN COMMERCIAL AREAS
(Continued)**

- 2. AVAILABILITY – The Company will provide and install a Main Distribution System and remove the existing overhead electric distribution system (together with Company-owned poles following removal of all utility wires therefrom) under this Schedule only when all of the following conditions are met:
 - a. Sufficient equipment and materials are available.
 - b. The existing overhead electric distribution system is of 15,000 volts or less.
 - c. The Conversion Area is zoned or used for commercial or industrial purposes or contains a two or three phase electrical system.
 - d. The Company has the right to render service in the Conversion Area pursuant to a franchise in a form satisfactory to the Company.
 - e. The Conversion Area is a minimum of two (2) contiguous city blocks in length. In the absence of city blocks, a block shall be a minimum of 440 feet in length.
 - f. All real property including rights-of-way on both sides of each public street in the Conversion Area must receive underground Electric Service via Underground Service Lines or underground Primary voltage service from the Main Distribution System, unless a parcel receives or will receive electric service from a distribution system located on another street which is outside of the Conversion Area. In addition, a parcel may receive or continue to receive Temporary Service rather than converting immediately to underground.

(T)(M)

(T)(M)
(N)

Conversions that meet the above requirements are not eligible for service under Schedule 70 of this tariff.

- 3. NON-ELIGIBLE CONVERSIONS – Conversions of existing distribution facilities located on an easement or by prescriptive right and conversions from an overhead to an underground electrical distribution system which do not meet the availability requirements in paragraph 2 above or of Schedule 70 will be accomplished only within the sole discretion of the Company and after payment of one hundred percent (100%) of the estimated cost of such conversion. If the actual cost of such conversion is less than the estimate by more than ten percent (10%) of the estimate or exceeds the estimate by more than ten percent (10%) of the estimate, the Company shall refund any excess payment or bill the Customer for the difference between the actual and the estimated cost. Non-eligible conversions shall be subject to paragraphs 5 - 16 of this schedule.

(N)

(M) Transferred from Sheet No. 71

Issued: February 7, 2001
Advice No. 2001-02

Effective: March 15, 2001

Issued By Puget Sound Energy

By: _____ Director, Rates & Regulation
Steve Secrist

APP. B

**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 71
CONVERSION TO UNDERGROUND SERVICE
IN COMMERCIAL AREAS
(Continued)**

- b. The cost to the Company of obtaining any such space and rights on any property other than public rights-of-way shall be reimbursed in full by the Customer. The cost to the Company to obtain space and rights shall include, but not be limited to, the actual amount paid for any space and rights, staff costs (including overheads), the actual cost of any easement, fee, permit, attorney fee, court cost, permit fee, and any survey fee.
- c. The Company, in its sole discretion, will install cable and conduit within the rights-of-way under its franchise within the Conversion Area, but will require all other underground and pad-mounted electrical facilities, including, but not limited to, vaults for junctions, vaults for pulling cable, transformers and associated vaults, and switches and associated vaults, to be installed on private property.
- d. The Company's standard easement provides an adequate legal right for facilities that will be placed on private property. A franchise in a form satisfactory to the Company provides an adequate legal right for cable and conduit that will be placed within rights-of-way. Where zoning or other land use regulations allow for limited or zero set-back of structures from the property line, thereby leaving inadequate space for the Company's equipment that is usually installed on private property, the Company, in its sole discretion, may request that the space and rights be within the structure and meet the Company's specifications.
- e. Where the Company determines it is not physically or economically feasible to obtain space and/or adequate legal rights on private property for facilities that are required to be installed on private property, such facilities may, in the sole judgment of the Company, be installed on public rights-of-way under the following conditions: (1) there is, in the sole judgment of the Company, sufficient area within the public rights-of-way to allow for the safe maintenance and operation of the equipment; and (2) the governmental authority owning or controlling the rights-of-way has provided assurances deemed adequate by the Company that the location will continue to meet the Company's standards by not

(N)

(N)

(M) Transferred from Sheet No. 71-b

Issued: February 7, 2001
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Issued By Puget Sound Energy

By: _____
Steve Secrist

Director, Rates & Regulation

APP. B

**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 71
CONVERSION TO UNDERGROUND SERVICE
IN COMMERCIAL AREAS
(Continued)**

allowing any encroachments unless approved by the Company; and (3) the governmental authority owning or controlling the rights-of-way has agreed to pay one hundred percent (100%) of the cost of any future relocation of facilities located on rights-of-way under this provision.

(N)
|
(N)

6. GENERAL

(T)(M)

a. Ownership of Facilities: The Company shall own, operate, and maintain all facilities which it installs or provides pursuant to this schedule.

(C)

b. Prior Contracts: Nothing herein contained shall affect the rights or obligations of the Company under any contract or Agreement for the conversion of electrical facilities from overhead to underground which was entered into prior to the effective date hereof. In addition, nothing herein contained shall affect the rights or obligations of the Company under any previous agreements pertaining to existing or future facilities of greater than 15,000 Volts within any Conversion Area.

(T)

(N)(M)

7. USE OF CUSTOMER-PROVIDED TRENCHES BY OTHER UTILITIES: Other utilities may be permitted by the Customer to use the Customer-provided trenches for the installation of their facilities, so long as such facilities or the installation thereof do not interfere with the Company's Main Distribution System or the installation or maintenance thereof. Any change to the Company's design to accommodate such use will be considered a Customer Requested Change. All of the cost to the Company of any delay caused by any other use of the trench will be billed to the Customer allowing use of the trench.

(N)

(M) Transferred from Sheet No. 71-b

Issued: February 7, 2001
Advice No. 2001-02

Effective: March 15, 2001

Issued By Puget Sound Energy

By: _____
Steve Secrist

Director, Rates & Regulation

APP. B

**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 71
CONVERSION TO UNDERGROUND SERVICE
IN COMMERCIAL AREAS
(Continued)**

- 8. **POSTPONEMENT OF SERVICE:** Service under this schedule can be delayed or postponed for the following reasons: (i) Adequate Operating Rights, pursuant to paragraph 5 of this schedule, have not been provided to the Company, or (ii) equipment, materials or labor force are not available, or (iii) Trenching and Restoration is delayed or not to Company specifications, or (iv) any of the Customer's obligations reflected in paragraph 4 of this schedule are delayed or incomplete. The Company shall not be subject to any cost or liability for any such Postponement of Service. (N)
- 9. **CANCELLATION:** Should a Customer cancel a project undertaken under this Schedule, the Customer shall pay the Company all of its costs incurred to the date of such cancellation, plus any future costs that cannot be avoided. A project where construction has not commenced within one (1) year of providing an estimated cost shall be considered cancelled. All payments relating to cancellation shall be made to the Company within 30 days of such cancellation. (N)
- 10. **STREET LIGHTING INSTALLATIONS -** Separate arrangements must be made for removal of street lighting units not owned by the Company, and installation or replacement of all street lighting units at the time of conversion. (T)(M)
(N) |
(N) |
- 11. **UNDERGROUND SERVICE LINES -** Underground Service Lines shall be installed, owned, and maintained as provided in Schedule 86 of this tariff. (T) |
(D)(M)
- 12. **DESIGN AND COST -** The Company, in its sole judgment, shall determine the appropriate location, design, phase, voltage and capacity for the Main Distribution System and, where applicable, determine costs utilizing its cost estimating system in conjunction with sound engineering practices. Upon request, the Company shall provide monthly, or less frequently, reports of progress identifying work completed to date, work yet to be completed and an estimate regarding whether the conversion is on target with respect to budget and schedule. The Company will attempt to provide accurate estimates, however, estimates will be provided for planning purposes only, and may differ from the actual total Cost of the Conversion. (N)
|
|
|
(N)

(M) Transferred from Sheet No. 71-b

Issued: February 7, 2001
Advice No. 2001-02

Effective: March 15, 2001

Issued By Puget Sound Energy

By: _____ Director, Rates & Regulation
Steve Secrist

APP. B

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

City of Kent,

Petitioner,

v.

Puget Sound Energy, Inc.,

Respondent

Docket No. UE-010778

Declaration of Tim LaPorte
in Support of Kent's Motion
for Summary Determination

Timothy J. LaPorte declares as follows:

1. I am over the age of 18 and I am competent to be a witness in this proceeding.
2. I am a licensed Professional Engineer in the State of Washington. I am the Design Engineering Manager for the City of Kent, in which capacity I oversee most of the City of Kent's public works projects including the Pacific Highway Improvement Project ("the Project"). The City is now in the design phase of this project, which will cost an estimated \$16-million.
3. The Project will improve a three-mile stretch of Pacific Highway South along the westerly edge of Kent from the intersection with Kent-Des Moines Road on the north to the intersection with 272nd Street on the south. The Project will include the addition of one northbound and one southbound HOV (high occupancy vehicle) lane, plus new sidewalks, curbs, and gutters. The Project also includes the undergrounding of the existing overhead electric distribution system operated by Puget Sound Energy

("PSE"), as well as undergrounding of telephone and cable television lines and other utilities.

4. The Project has been in planning and design since 1997. Construction is scheduled to begin in June 2002. Several communities neighboring Kent—Sea-Tac, Des Moines, and Federal Way, plus King County—are undertaking projects that will similarly improve an additional seven miles of Pacific Highway.

5. PSE operates electric distribution facilities (poles, wires, cables, vaults, and so on) throughout Kent pursuant to a 1993 franchise agreement (the "PSE Franchise") with the City. A copy of the Franchise is attached as Exhibit A to my declaration.

6. The City has directed PSE to underground its electric facilities in the Project area. This work must precede construction of the road. Consequently, the Project cannot go forward without the active participation and cooperation of PSE.

7. The undergrounding requested of PSE is located entirely within a commercial area. The "Conversion Area" or project area exceeds two contiguous city blocks in length. All properties on both sides of the street will receive service from the new Main Distribution System (the underground electric distribution system).

8. The City and PSE have exchanged drafts of an "underground conversion agreement" as contemplated by Schedule 71 of Electric Tariff G. The City and PSE have been unable to reach agreement, however, and in my opinion will remain unable to reach agreement absent a declaratory order from the WUTC clearing up certain issues. PSE has informed the City that in regard to the Pacific Highway Project, it intends to install many of its electric facilities on private property rather than within public right of way. PSE insists that the City of Kent agree to reimburse PSE for PSE's acquisitions of the private property and/or property rights that PSE purchases outside of the Franchise Area. The City will not agree to pay. The City believes that Schedule 71 is clear in that this obligation is not placed on the City.

9. The specific contract language requested by PSE includes the following, which is quoted from the draft underground conversion agreement (the "Secrist draft") given to the City by PSE Rates and Regulations Director Steve Secrist:

The cost to the Company of obtaining any such space and rights on any property other than public rights of way shall be reimbursed in full by the Customer. The cost to the Company to obtain space and rights shall include, but not be limited to, the actual amount paid for any space and rights, staff costs (including overheads), the actual costs of any easement, fee, permit, attorney fee, court cost, permit fee, and any survey fee.

Exhibit B to my declaration is a true and correct copy of the portion of the Secrist draft quoted above. The complete draft was attached as Exhibit C to the City's Petition for Declaratory Relief filed in this case.

10. The City of Kent has not agreed to pay for PSE's property acquisitions. On March 27, 2001, the City sent a letter to Mr. Secrist explaining why the City would not sign the draft underground conversion agreement proposed by Secrist. A true and correct copy of the letter, authored by Kent Public Works Director Don Wickstrom, was attached as Exhibit D to the City's Petition for Declaratory Relief. PSE did not respond to the letter.

11. In early May, Kent's Project Engineer, Mark Howlett, received a letter from PSE Project manager Bill Thwing requesting that the City sign no later than May 18, 2001, an "engineering agreement" related to the Project. The letter is attached to Mr. Howlett's declaration. The City did not sign, because the "engineering agreement" included among other things the following provision: "[t]he cost for obtaining any easements deemed necessary by PSE will be the City's responsibility."

12. I understand from Mr. Howlett that he has been told by Mr. Thwing that PSE has now stopped working on the design of the distribution system underground conversion project, but that PSE is continuing work on the design of the relocation

project for the high-voltage overhead transmission lines that are not subject to underground conversion under Schedule 71.

13. The complete underground conversion agreement proposed by PSE ("Secrist draft") was attached as Exhibit C to the City's Petition for Declaratory Relief. The Secrist draft contains many provisions that the City cannot agree to because they are contrary to Schedule 71. Mr. Wickstrom's letter of March 27 (Exhibit D to the City's Petition) identifies these issues. The City chose not to burden the Commission with review of every such issue, because it does not seem appropriate to ask the Commission to take on the role of mediator in negotiating a contract. The City hopes that once the matters presented in its Petition have been ruled upon, PSE will no longer insist that the City sign an underground conversion agreement that is based not on Schedule 71 but on the proposed version of Schedule 71 that PSE filed, and then withdrew, in February of this year. The City has, however, requested a ruling on one more issue, because we feel PSE is basically holding our project hostage in an effort to get the City to relieve PSE from obligations PSE agreed to in its franchise with the City. Specifically, PSE insists that the City also promise—in the underground conversion agreement—to pay for 100% of any *future* relocation of facilities installed within right of way on the Project. Exhibit B to my Declaration is a true and correct copy of the portion of the Secrist draft that includes this provision.

14. The franchise that PSE signed to gain permission to operate in Kent provides in Section 6 that when relocation of electric facilities within the Franchise Area is necessary, PSE shall relocate such facilities at no charge to the City. A true and correct copy of the franchise is attached as Exhibit A.

15. The City does not presently anticipate any future facility relocations being necessary within the Project area once the Project is completed. However, the City should not be forced to relieve PSE of its franchise obligations in order to get PSE to

complete the Pacific Highway Project. Schedule 71 pertains only to underground conversion, not hypothetical future relocations within the franchise area.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 20th day of June 2001 at Kent, Washington.


Timothy J. LaPorte

ORDINANCE NO. 3096

AN ORDINANCE of the City of Kent, Washington, granting unto Puget Sound Power & Light Company, a Washington corporation, its successors and assigns, the right, privilege, authority and franchise for twenty-five years, to construct, operate, set, erect, support, attach, connect, maintain, repair, replace, enlarge and use Facilities for purposes of transmission, distribution and sale of energy for power, heat, and light, in upon, over, under, along, across and through the Franchise Area; and to charge and collect tolls, rates and compensation for such energy and such uses.

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Definitions

1.1 Where used in this franchise (the "Franchise") the following terms shall mean:

1.1.1 "Puget" means Puget Sound Power & Light Company, a Washington corporation, and its respective successors and assigns.

1.1.2 "City" means the City of Kent, a municipal corporation of the State of Washington, and its respective successors and assigns.

1.1.3 "Franchise Area" means: any, every and all of the roads, streets, avenues, alleys, highways, grounds and public

places of the City as now laid out, platte indicated or improved; and any, every and all roads, streets, avenues, alleys, highways, grounds and public places that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended.

1.1.4 "Facilities" means poles (with or without crossarms), wires, lines, conduits, cables, communication and signal lines, braces, guys, anchors, vaults and all necessary or convenient facilities and appurtenances thereto, whether the same be located over or under ground.

Section 2. Franchise Granted

2.1 All other franchises heretofore granted by the City to Puget for utilization of streets, avenues, rights-of-way, roads, alleys, lands or other public places within the City are hereby canceled.

2.2 Pursuant to the laws of the State of Washington (including, but not limited to, RCW 35A.47.040 and RCW 80.32.010), the City hereby grants to Puget, subject to the terms and conditions set forth hereinafter, a franchise for a period of twenty-five (25) years, commencing upon the effective date of this Ordinance.

2.3 Subject to the terms and conditions hereof, this Franchise grants Puget the right, privilege and authority to construct, operate, set, erect, support, attach, connect, maintain, repair, replace, enlarge and use Facilities for purposes of transmission, distribution and sale of energy for power, heat, light and any other purpose for which energy can be used, in, upon, over, under, along, across and through the Franchise Area. In addition, this

EX. A To
LAPORTE
DECLARATI

Franchise 9 . . .cs Puget the right, privilege and authority to charge and collect tolls, rates and compensation for such energy and such uses, subject to the limitations imposed by state and federal law.

2.4 The terms and conditions of this Franchise shall not be construed to apply to Facilities located outside of the Franchise Area.

Section 3. Compliance with Laws--Reservation of Powers and Authority.

3.1 Puget shall comply with all federal, state, and local laws or regulations applicable to the exercise of Franchise functions or Franchise obligations. Upon written inquiry, Puget shall provide a specific reference to the federal, state, or local law or the Washington Utilities and Transportation Commission ("WUTC") order or action establishing a basis for Puget's actions related to a specific Franchise issue.

3.2 This Franchise shall not limit and the City hereby reserves all lawful powers and franchise authority available to it under its general police authority.

3.3 As to matters subject to the terms and conditions of this Franchise, if the City shall determine during the term of this Franchise that the assertion of a legitimate municipal interest is prohibited by application of federal or state law, then as to such matter and such municipal interest and consistent with its legal obligations, Puget shall cooperate with the City in a good faith effort to otherwise address such municipal interest. In this context, neither party shall invoke this Franchise as a basis to assert that its consideration of a given issue is excused by operation of the doctrines of estoppel or waiver.

Section 4. Nonexclusive Franchise Grant

The City expressly reserves the right to grant other or further franchises which do not unreasonably interfere with Puget's rights under this Franchise in, along, over, through, under, below or across the Franchise Area. This Franchise shall in no way prevent or prohibit the City from using the Franchise Area in a manner consistent with this Franchise or affect its jurisdiction over the Franchise Area. The City shall at all times exercise its retained power in a manner consistent with the terms and conditions of this Franchise.

Section 5. Undergrounding of Facilities

5.1 Puget acknowledges that the City desires to adopt a policy to encourage the undergrounding of Facilities within the Franchise Area. The City acknowledges that Puget provides electrical service on a non-preferential basis subject to and in accordance with applicable rates and tariffs on file with the WUTC. Subject to and in accordance with such rates and tariffs, Puget will cooperate with the City in the formulation of policy and regulations concerning the undergrounding of Puget's Facilities within the Franchise Area.

5.2 If, during the term of this Franchise, the City shall direct Puget to underground Facilities within the Franchise Area, such undergrounding shall be arranged and accomplished subject to and in accordance with applicable rates and tariffs on file with the WUTC. This Section 5 shall govern all matters related to undergrounding of Puget's Facilities (i.e., conversion or otherwise) within the Franchise Area.

Section 6. - Relocation of Puget's Facilities

6.1 Whenever the City undertakes (or causes to be undertaken by City expense) the construction of any public works improvement within the Franchise Area and such public works improvement necessitates the relocation of Puget's then existing Facilities within the Franchise Area, the City shall:

6.1.1 provide Puget, within a reasonable time prior to the City's commencement of activities requiring such public works improvement, written notice requesting such relocation; and

6.1.2 provide Puget with copies of pertinent portions of the City's plans and specifications for such public works improvement.

After receipt of such notice and such plans and specifications, Puget shall relocate such Facilities within the Franchise Area at no charge to the City.

6.2 Whenever:

6.2.1 any person or entity, other than the City, requires the relocation of Puget's facilities to accommodate the work of such person or entity within the Franchise Area;

or,

6.2.2 the City requires any person or entity to undertake work (other than work undertaken at the City's cost and expense) within the Franchise Area and such work requires the relocation of Puget's Facilities within the Franchise Area,

When Puget shall have the right as a condition any such relocation to require such person or entity to make payment to Puget, at a time and upon terms acceptable to Puget, for any and all costs and expenses incurred by Puget in the relocation of Puget's Facilities.

6.3 Any condition or requirement imposed by the City upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in connection with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which necessitates the relocation of Puget's Facilities within the Franchise Area shall be a condition or requirement causing relocation of Puget's Facilities to occur subject to the provisions of subsection 6.2 above; provided, however, (i) in the event the City reasonably determines and notifies Puget that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a public works improvement project within a segment of the Franchise Area on the City's behalf, and (ii) such public works improvement is otherwise reflected in an existing City-prepared capital improvement plan, then only those costs and expenses incurred by Puget in connecting such relocated Facilities with Puget's other Facilities shall be paid to Puget by such person or entity, and Puget shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Section 6.1.

6.4 As to any relocation of Puget's Facilities whereby the cost and expense thereof is to be borne by Puget in accordance with subsection 6.1, Puget may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from Puget of such written alternatives, the City shall evaluate such alternatives and shall advise Puget in writing if one or more of such alternatives is suitable to accommodate the work which would otherwise necessitate relocation of Puget's Facilities.

In evaluating such alternatives, the City shall give each alternative proposed by Puget full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. No alternative proposed by Puget shall be evaluated by the City in an arbitrary or capricious manner. In the event the City determines that such alternatives are not appropriate, Puget shall relocate its Facilities as otherwise provided in subsection 6.1.

6.5 Nothing in this Section 6 shall require Puget to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other rights not arising under this Franchise.

Section 7. Records of Installation

Puget shall (at its expense) provide to the City, upon the City's request, copies of available drawings and specifications in use by Puget showing the location of its Facilities within the Franchise Area. As to any such drawings and specifications so provided, Puget does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location. With respect to any excavations by Puget or the City within the Franchise Area, nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

Section 8. Placement of Facilities, Permits, Coordination of Activities, Excavations

8.1 Puget shall at all times maintain its Facilities within the Franchise Area so as not to unreasonably interfere with the

free passage of traffic or the use and enjoyment of adjoining property. Puget shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington.

8.2 Puget shall, in carrying out any authorized activities within the Franchise Area, comply with all applicable City ordinances, codes, regulations, standards and procedures as now or hereafter amended, and shall obtain all necessary permits or approvals; provided, however, that if any term or condition of this Franchise and any term or condition of such ordinances, codes, regulations, standards, procedures, permits or approvals are in conflict, the term or condition of this Franchise shall govern and control. In interpreting this subsection 8.2, and unless a circumstance is otherwise explicitly addressed by this Franchise, the parties intend that the specific location of Facilities within the Franchise Area (and similar facility-related matters of a specific nature requiring detailed case-by-case analysis) are matters to be determined in accordance with applicable City ordinances, codes, regulations, standards and procedures and are therefore matters beyond the scope of this Franchise.

8.3 Puget and the City shall each exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party informed of its intent to undertake such construction work. Puget and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work either may undertake within the Franchise Area.

8.4 If, at any time or from time to time, either Puget or the City shall cause excavations to be made within the Franchise Area,

the party ing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (a) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and (b) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.

8.5 The City may, from time to time during the term of this Franchise, adopt policies with respect to the Franchise Area which encourage joint use of utility facilities within the Franchise Area. Puget shall cooperate with the City and explore opportunities for joint use of utility facilities within the Franchise Area that are consistent with applicable law and prudent utility practices.

Section 9. Restoration after Construction

Whenever it shall be necessary for Puget, in the exercise of its rights under this Franchise, to disturb the surface of the Franchise Area, Puget shall restore the surface of the Franchise Area to at least a condition the same as it was in immediately prior to any such disturbance. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. Puget agrees to promptly complete all such restoration work at its sole cost and expense.

Section 10. Emergency Work--Permit Waiver

10.1 In the event of any emergency in which Puget's Facilities located in or under the Franchise Area break, are damaged, or if Puget's Facilities within the Franchise Area are otherwise in a condition as to immediately endanger the property, life, health or

safety of any individual, Puget shall, upon receipt of notification from the City of the existence of such condition, immediately take those actions as are necessary to correct the dangerous condition.

10.2 If and to the extent reasonable actions on Puget's part are necessary to respond to an emergency situation involving Puget's Facilities within the Franchise Area, and such action would otherwise require the issuance by the City of an authorizing permit or approval, the City hereby waives the requirement that Puget obtain any such permit or approval as a prerequisite to undertaking such activity; provided, however, Puget shall subsequently apply for any such required permit or approval within ten (10) business days from and after the date of the commencement of such actions otherwise requiring such permit or approval.

10.3 Nothing in this Section 10 is intended, nor shall it be construed, as a hindrance to Puget's ability to take such actions as it deems necessary to discharge its public service obligations in accordance with the laws of the State of Washington. Nothing in this Section 10 is intended, nor shall it be construed, as preventing the City from recovering from Puget, if otherwise so entitled in accordance with applicable law, any extraordinary costs in responding to an emergency situation involving Puget's Facilities.

Section 11. Lateral Support

Whenever construction, installation or excavation of Facilities within the Franchise Area have caused or contribute to a condition that appears to substantially impair the lateral support of the Franchise Area, the Public Works Director may direct Puget, at Puget's own expense, to take such actions as are reasonably necessary within the Franchise Area so as not to impair the lateral support thereof.

Section 12. Recovery of Costs

12.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon Puget, except that, as provided in RCW 35.21.860, Puget shall reimburse the City for all actual administrative expenses incurred by the City that are directly related to receiving and approving a permit, license and this franchise, to inspect plans and construction, or to prepare a detailed statement pursuant to Chapter 43.21C RCW. Where the City incurs actual administrative expenses for review or inspection of activities undertaken through the authority granted in this franchise (and which such expenses are not duplicative of expenses which are reflected in some other City-imposed charge or fee), Puget shall pay such expenses directly to the City.

12.2 This Franchise shall not authorize a principal use of the Franchise Area for purposes other than the transmission, distribution and sale of energy for power, heat, or light. The City acknowledges that Puget may, from time to time, make or allow incidental use of excess capacity of facilities within the Franchise Area for other purposes.

Section 13. Indemnification

13.1 Puget shall defend, indemnify and save the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of Puget or its agents, servants or employees in exercising the rights granted Puget in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the City, the City shall promptly notify Puget thereof, and Puget shall have the right, at its election and at its sole cost and expense,

to settle and compromise such claim or demand; provided further, that in the event any suit or action be begun against the City based upon any such claim or demand, the City shall likewise promptly notify Puget thereof, and Puget shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own decision.

13.2 In the event that (i) the City is required to defend a "suit or action" as referenced in subsection 13.1 and (ii) the City is determined to be without fault for the claim or demand giving rise to such "suit or action," then Puget shall reimburse the City for a percentage of the City's total defense costs. The percentage of the City's total defense costs to be so reimbursed shall be a percentage equal to the percentage (if any) of fault attributable to Puget for the claim or demand giving rise to such "suit or action."

13.3 The provisions of this section shall survive the expiration or termination of this Agreement if the basis for any such claim, demand, suit or action as referenced in subsection 13.1 occurred during the Franchise term.

Section 14. Insurance

14.1 Puget shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Puget, its agents, representatives, employees, subconsultants or subcontractors.

14.2 Before beginning work on the project described in this Agreement, Puget shall provide a Certificate of Insurance or proof of self-insurance evidencing:

14.2.1 Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and

14.2.2 Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

14.3 Any payment of deductible or self insured retention shall be the sole responsibility of Puget.

14.4 The City, its officers, officials, employees, agents and volunteers shall be named as an additional insured on the insurance policy, as respects work performed by or on behalf of Puget and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance or proof of self-insurance.

14.5 Puget's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

14.6 Puget's insurance shall be primary insurance as respects the City, and the City shall be given thirty (30) calendar days prior written notice by certified mail, return receipt requested, of any cancellation, suspension or material change in coverage.

14.7 In lieu of the foregoing insurance requirements, Puget may self-insure against such risks in such amounts as are

consistent with prudent utility practices. Puget shall, upon request, provide the City with sufficient evidence that such self-insurance is being so maintained.

Section 15. Moving Buildings within the Franchise Area

15.1 If any person or entity obtains permission from the City to use the Franchise Area for moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Puget for the temporary adjustment of Puget's wires to accommodate the moving or removal of such building or other object. Such necessary arrangements with Puget shall be made, to Puget's satisfaction, not less than fourteen (14) days prior to the moving or removal of said building or other object. In such event, Puget shall at the expense of the person or entity desiring to move or remove such building or other object, adjust any of its wires which may obstruct the moving or removal of such building or other object, provided that:

15.1.1 the moving or removal of such building or other object which necessitates the adjustment of wires shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with Puget's business;

15.1.2 to the extent practical, where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with Puget's business; and

15.1.3 the person or entity obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and save Puget harmless from

any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person or entity moving or removing such building or other object or the negligence of the agents, servants or employees of the person or entity moving or removing such building or other object.

Section 16. Abandonment of Puget's Facilities

None of Puget's Facilities within the Franchise Area may be abandoned by Puget without the express written consent of the City. Any plan for abandonment or removal of Puget's Facilities within the Franchise Area must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work.

Section 17. Modification

17.1 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 13 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by Puget of any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

17.1.1 references this Franchise; and

17.1.2 states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

17.2 The City and Puget hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise in accordance with the provisions of this subsection 17.2:

17.2.1 At any time during the term of this Franchise, the City or Puget may request, by written notice, that the other promptly join in negotiations to alter, amend or modify the terms and conditions of this Franchise.

17.2.2 Within a reasonable time after receipt of the notice required by subsection 17.2.1, the City and Puget shall, at a mutually agreeable time and place, commence negotiations to alter, amend or modify the terms and conditions of this Franchise. The City and Puget shall conduct such negotiations in good faith and with due regard to all pertinent facts and circumstances; provided, however, that neither the City nor Puget shall have any obligation to agree to any proposed alteration, amendment, or modification; provided further, however, that no rights or privileges granted by this Franchise shall be prejudiced, impaired or otherwise affected by the failure of the City or Puget to agree to any proposed alteration, amendment or modification.

17.2.3 Neither the City nor Puget shall be obliged to continue negotiations after the expiration of ninety (90) days from the date such negotiations are commenced; provided, however, the City and Puget may agree to continue such negotiations for an additional time period.

17.2.4 Any alteration, amendment or modification agreed to by the City and Puget shall be submitted to the Council of the City as a proposed ordinance. The ordinance so proposed shall expressly provide that unless Puget files a written notice of acceptance with the Clerk of the City within sixty (60) days of its effective date, the ordinance shall have no force or effect and this Franchise shall not be altered, amended or modified. To the extent permitted by law, each party shall bear its own costs in connection with the alteration, amendment or modification of this Franchise.

17.3 This Franchise is subject to the provisions of any applicable tariff now or hereafter on file with the Washington Utilities and Transportation Commission or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

Section 18. Forfeiture and Other Remedies

18.1 If Puget willfully violates or fails to comply with any of the provisions of this Franchise, or through willful or unreasonable negligence fails to heed or comply with any notice given Puget by the City under the provisions of this Franchise, then Puget shall, at the election of the Kent City Council, forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Council after a hearing held upon reasonable notice to Puget.

18.2 The right of the City to declare a forfeiture pursuant to subsection 18.1 is a remedy in addition to, and is not a limitation of, the rights, remedies or actions available to either party by reason of the other party's noncompliance with the terms and conditions of this Franchise.

Section 19. Cost of Publication

The cost of the publication of this Ordinance shall be borne by Puget.

Section 20. Acceptance

After the passage and approval of this ordinance and within sixty (60) days after such approval, this Franchise shall, if accepted by Puget, be accepted by Puget by its filing with the City Clerk an unconditional written acceptance thereof. Failure of Puget to so accept this Franchise within said period of time shall be deemed a rejection thereof by Puget, and the rights and privileges herein granted shall, after the expiration of the sixty-day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 21. Survival

21.1 With respect only to matters arising during the period of time this Franchise shall be in full force and effect, the parties intend that any term or condition applicable to such matters shall survive the expiration or termination of this Franchise to the extent such survival can be reasonably inferred under the circumstances presented and to the extent such an

inference is necessary to prevent substantial injustice to an injured party.

21.2 The terms and conditions of this Franchise shall be binding upon the parties' respective successors and assigns.

Section 22. Severability

If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise.

Section 23. Assignment

Puget may not assign or transfer this Franchise without the written consent of the City Council of the City, which consent shall not be unreasonably withheld. Any assignee or transferee shall, at least thirty (30) days prior to the date of any assignment or transfer, file written notice of the assignment or transfer with the City, together with its written acceptance of all of the terms and conditions of this Franchise. Notwithstanding the foregoing, Puget shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits and privileges in and under this Franchise to the trustee for its bondholders.

Section 24. Notice

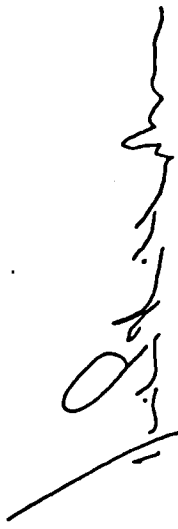
Any notice or information required or permitted to be given to the parties under this Franchise agreement may be sent to the following addresses unless otherwise specified:

City of Kent
Director of Public Works
300 West Gowe
Kent, WA 98032

Puget Sound Power and Light Company
Attn: Manager, Kent Business Office
620 South Grady Way
P.O. Box 329
Renton, WA 98057-0329

Section 25. Effective Date

This Ordinance shall take effect thirty (30) days after its execution; having first been submitted to the Kent City Attorney for approval; after one introduction by the City Council at a regular meeting; after having been published at least once in a newspaper of general circulation in the City of Kent; and finally, having been granted an approving vote of at least a majority of the City Council at a regular meeting.



DAN KELLEHER, MAYOR

ATTEST:

Brenda Swaw
BRENDA JACOBBER, CITY CLERK
DOLINA SWAW, DEPUTY CITY CLERK

APPROVED AS TO FORM:

[Signature]
ROGER A. LUBOVICH, CITY ATTORNEY

FIRST READING the 2 day of March, 1993.
PASSED the 16th day of March, 1993.
APPROVED the 17th day of March, 1993.
PUBLISHED the 5 day of March, 1993.

I hereby certify that this is a true copy of Ordinance No. 3076, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

Brenda Swaw (SEAL)
BRENDA JACOBBER, CITY CLERK
DOLINA SWAW, DEPUTY CITY CLERK

D. The parties wish to execute this written contract in accordance with Schedule 71 of the Company's Electric Tariff G to govern the installation of such a system.

AGREEMENT

The Company and the City therefore agree as follows:

1. "Main Distribution System," "Underground Service Lines," and "Trenching and Restoration" shall have the meaning set forth in Schedule 71. "Temporary Service" shall have the meaning set forth in Schedule 80 of the Company's Electric Tariff G and in addition shall mean (a) limited overhead facilities left in place within the Conversion Area at the request of the City with the Company's approval, and/or (b) limited overhead or underground facilities installed concurrently with the installation of the Main Distribution System with the Company's approval, which are utilized to provide short term overhead service within the Conversion Area. Temporary Service shall be for a maximum duration of one and one half years, except in unusual circumstances approved by the Company (for example, to accommodate other demolition or construction projects within the Conversion Area). "Operating Rights" shall mean:
 - a. adequate legal rights are rights for the construction, operation, repair, and maintenance of the Main Distribution System installed under this schedule over, under, across, or through all property, including property within the Conversion Area owned or not owned by the Customer. All rights shall be in a form acceptable to the Company and shall be at no cost to the Company.
 - b. The cost to the Company of obtaining any such space and rights on any property other than public rights-of-way shall be reimbursed in full by the Customer. The cost to the Company to obtain space and rights shall include, but not be limited to, the actual amount paid for any space and rights, staff costs (including overheads), the actual cost of any easement, fee, permit, attorney fee, court cost, permit fee, and any survey fee.

EXHIBIT B TO LA PORTE D&E
P. 1 OF 3

union. Any overtime labor not included in the original estimate but provided by the Company at the request of the City may increase the Company's project cost which will result in an increased cost to the City.

11. (a) The City releases and shall defend, indemnify and hold the Company harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by, arising out of or in connection with the performance of the City's duties under this Agreement. During the performance of such activities the City's employees shall at all times remain employees of the City.
 - (b) The Company releases and shall defend, indemnify and hold the City harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by, arising out of or in connection with the performance of the Company's duties under this Agreement. During the performance of such activities the Company's employees shall at all times remain employees of the Company.
12. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electrical Tariff G and to Schedule 71 of such Tariff, as such Schedules may be revised from time to time upon approval of the Washington Utilities and Transportation Commission. Provided, however, if either of the foregoing schedules are revised, any price quoted will be honored for 60 days following such revision. Any conflict in terms between this Agreement and the Company's Schedules 71 and 80 of its tariffs shall be resolved in favor of such tariff provisions.
13. Notwithstanding any provision to the contrary in any franchise agreement now in place or subsequently entered into by the Company and the City, in the event the City requires (or takes any action which has the effect of requiring) the relocation of any of the facilities installed on public rights-of-way under this Agreement prior to the expiration of twenty (20) years after completion of the conversion hereunder, the City shall reimburse the Company for costs incurred by the Company

EX. B TO LAPORTE DEC.
P. 2 OF 3

in connection with relocation. Facilities installed on private property or facilities installed in public rights-of-way under the provisions of a separate agreement between the City and the Company whereby the City agrees to pay for relocation in perpetuity will be relocated at the City's expense in perpetuity.

14. In the event that the City cancels the project proposed hereunder, the City shall reimburse the Company for all costs reasonably incurred by the Company in connection with the work to be performed under this Agreement prior to the date canceled.

15. Nothing in this Agreement shall in any way affect the rights or obligations of the Company under any previous agreements pertaining to the existing or future facilities of greater than 15,000 Volts within the Conversion Area.

CITY OF [_____]

PUGET SOUND ENERGY, INC.

BY _____

BY _____

ITS _____

ITS _____

Date Signed _____

Date Signed _____

Approved as to form:

EX. B TO LAPORTE DEC.
P. 3 OF 3

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

City of Kent,

Petitioner,

v.

Puget Sound Energy, Inc.,

Respondent

Docket No. UE-010778

Declaration of Mark Howlett
Supporting Kent's Motion for
Summary Determination

Mark Howlett declares as follows:

1. I am over the age of 18 and I am competent to be a witness in this proceeding.
2. I am a licensed Professional Engineer in the State of Washington. I am employed by the City of Kent. I am Project Engineer for the City's Pacific Highway Improvement Project.
3. The City of Kent has directed Puget Sound Energy, Inc. ("PSE"), to underground its electric facilities along the portion of Pacific Highway encompassed within the City's Pacific Highway Improvement Project. The City's Project cannot go forward without the active participation and cooperation of PSE in designing and ultimately undergrounding its electric facilities within the Project Area (with the exception of high voltage lines, which are not subject to undergrounding under Schedule 71 of Electric Tariff G).

4. PSE has informed the City that it intends to install many of its facilities on private property rather than within public right of way.

5. PSE has insisted that the City agree to reimburse PSE for PSE's acquisitions of private property and/or property rights outside of the Franchise Area on which property PSE intends to install its facilities. The City has not agreed to this.

6. On about May 4, 2001, I received a letter from William Thwing, who is PSE's Project Manager for the Pacific Highway Project undergrounding. Mr. Thwing included with his letter a proposed "engineering agreement" that he wanted me to sign on behalf of the City. Among other things, the proposed engineering agreement stated that "[t]he cost for obtaining any easements deemed necessary by PSE will be the City's responsibility." A true and correct copy of Mr. Thwing's letter, and the "engineering agreement," is attached as Exhibit A to my Declaration. Mr. Thwing's letter also stated that I needed to sign the "engineering agreement" by May 18, 2001. According to Mr. Thwing, this was "important so we can be sure to maintain the City's project schedule."

7. I did not sign the "engineering agreement."

8. Mr. Thwing has informed me that PSE is continuing to work on design for the relocation of the overhead transmission lines—these are the high voltage transmission lines that are not subject to undergrounding under Schedule 71. He has told me, however, that PSE has *stopped* working on the design of the distribution-system underground conversion project.

9. The City does not presently anticipate any future facility relocations being necessary within the Project area once the Project is completed.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 20th day of June 2001 at Kent, Washington.



Mark Howlett



PUGET
SOUND
ENERGY

3130 S 38th St. TAC-ANX, Tacoma, WA 98409

May 4, 2001

CITY OF KENT

MAY 07 2001

ENGINEERING DEPT

Mr. Mark Howlett, P.E.
City of Kent
220 Fourth Ave. S.
Kent, WA 98032-5895

RE: SR 99 Street Improvement, Kent-Des Moines Rd to SE 252 St.

Dear Mr. Howlett:

The City has requested that PSE relocate its gas and electric facilities to accommodate the SR 99 Street Improvement Project from Kent-Des Moines Rd to SE 252nd ST. PSE's Project Manager, Dan Swan is on medical leave and I will be filling in for him. I would like to take time to relay to you my understanding of our current status.

In addition to relocating the overhead electrical transmission and distribution system, the City has requested that PSE convert its overhead electric distribution system to an underground distribution system. The project is to commence late in 2001 or the first part of 2002. The estimated cost will be calculated based upon schedule 71 of the Washington State Rates and Tariffs. With that in mind, PSE personnel have been working with the City of Kent staff to provide a conceptual design for the PSE work. The following is a review of the current status.

Electric Distribution System

At this point, PSE is developing a conceptual distribution design. Cable and conduit will be placed in the City provided trench. Approximate vault locations for switches, transformers, junction boxes and pulling vaults are being determined and will be supplied to the city. Final placement will be determined when the city's final plans are developed and appropriate property rights obtained.

There appear to be a number of overhead services that need to be converted to the underground system. PSE will supply the connection point to our underground distribution system for commercial services. Please be aware that the connection point is not the same as the meter location. The connection point for a commercial underground service is typically at or adjoining the property line. From the connection point to the meter is normally the service. Ownership of a commercial underground electrical service belongs to the business property owner not PSE. Therefore, the property owner is responsible to get his underground service to the connection point. The City will need to coordinate with them for that purpose. Qualified electricians are available in the area to complete this work.

Note: PSE can not remove the existing overhead electric distribution system, including the poles and wire, until property owners have converted their overhead services to the new underground system.

HOWLETT DEC.
EXHIBIT A
1 OF 4

Transmission System

The current plan is to maintain the transmission line on the same side of the street where it currently exists. PSE will pay for and arrange for the normal relocation of these facilities. Keep in mind that the location of the poles needs to be determined early enough in the process so that the line can be designed and materials ordered with enough lead-time to meet the City's schedule.

Engineering Agreement

I didn't see an engineering agreement in the project file. Please sign the enclosed PSE Engineering Agreement for the conversion of the overhead distribution system to an underground distribution system and return it to me by May 18, 2001 so I can update the file. This is important so we can be sure to maintain the City's project schedule. The agreement serves as an official notice and agreement between the City of Kent and PSE to proceed with the design of the conversion from overhead to underground as opposed to just relocating the existing system. It does not commit the City to the actual construction of the conversion. A conversion agreement will be required before actual conversion. (A sample form is enclosed.)

PSE Schedule

Transmission and distribution conceptual designs are progressing well. Materials for distribution can normally be acquired in less than 6 months; much of it is in stock but large quantities may require additional orders. Transmission materials have longer lead times and large quantities are not always readily available so ordering may take 6 months to a year. Another part of the critical path is the acquisition of property rights which may take 4 to 9 months or even a year depending on the property owners and the circumstances. After a conversion agreement has been signed by PSE and the City of Kent, arrangements will be made to begin construction of the underground system. If all the other facets of the design are complete, construction arrangements can normally be made in 4-8 weeks depending on the availability of crew personnel.

To proceed further

When the following items are provided to PSE, engineering will be completed and long lead materials can be ordered.

- Engineering Agreement for Underground Electric Distribution Conversion signed by the City.
- Finalized plans for the project. 85% plans are sufficient provided the curb, planter and sidewalk locations are final.
- Final right-of-way plans.

Estimated cost of the conversion will be provided once the conceptual design has been completed. This will not include trenching or excavating, which will be provided by the City; easements, which will be paid for by the City; or commercial service conversions, for which business property owners are responsible. A more refined engineering level estimate will be provided when engineering is complete, at which time PSE will notify the City. Further change and option requests by the City may increase costs and delay the schedule of the project.

HOWLETT
EX. A
2 of 4

To schedule for construction PSE will need:

- Signed Conversion Agreement
- Signed easements for vaults by the property owners in a form acceptable to PSE. PSE will acquire these unless the City would like to acquire them, but they must be on PSE Forms.
- Staked R/W edges, sidewalk boundaries, planters, curbs, and other project parameters needed to locate the position of the new PSE facilities.
- City Contractor Schedules including the trench schedule.
- Materials required for the job. PSE will acquire these but they must be available.
- City of Kent right-of-way permit

To install the new facilities PSE will need:

- Open trench and coordination with the street contractor and other utilities.

To complete the conversion and remove the existing facilities PSE will need:

- All existing overhead electrical service owners to have converted to underground.

Final billing of project costs to be paid by the City will be calculated as follows:

- 30% cost of electric distribution conversion from overhead to underground for that portion where poles are required to be relocated by the addition of one full lane.
- 70% of the cost of electric distribution conversion from overhead to underground for that portion where poles are not required to be relocated by the addition of on full lane.
- 100% cost of conversion where current electric facilities are on private or PSE property.
- 100% costs of trenching, restoration and easements

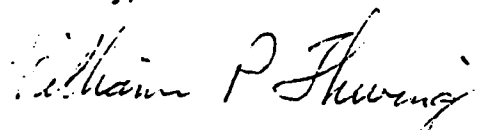
Please keep in mind that changes to the design, further review of options, other requests required by the City or delays in fulfilling its responsibilities, may result in increased costs and delays to the project.

Gas

PSE will work with the City staff to resolve gas conflicts as soon as the City design is far enough along to recognize the conflicts.

I hope this information is helpful. Please call if you have further questions.

Sincerely,



William P Thwing (Bill)
Project Manager
Puget Sound Energy
(253) 476-6006

Enclosures (2)

HOWLETT
EX. A
3 OF 4



PUGET
SOUND
ENERGY

May 4, 2001

Mr. Mark Howlett, P.E.

City of Kent
220 Fourth Ave. S.
Kent, WA 98032-5895

RE: City of Kent Underground Electrical Conversion - SR 99, Kent-Des Moines Rd - SE 252nd St

Dear Mr. Howlett:

We understand that the City anticipates entering into an agreement to underground Puget Sound Energy's (PSE's) electric facilities within the project area and is requesting that PSE initiate development of a design and cost estimate to assist in the formal establishment of the project. Following the estimate and formal establishment of the project, the City and PSE may enter into an agreement to underground the electrical facilities within the project boundaries. We have determined, based upon the scope of work provided with your request, this project will qualify as a conversion under the terms of PSE's Schedule 71.

In order for PSE to proceed with engineering for this conversion, the City agrees that they will pay for any costs incurred by PSE in the development of the project which do not result in the final product within 5 years. If the project is completed within 5 years from the date of this agreement, the costs will be included with the actual project cost.

The project scope, along with drawings of existing facilities within the street right-of-way and the planned improvements, need to be provided to PSE in the form of 2 hard copies along with a copy of the electronic file. Either AutoCAD or Micro-Station format is acceptable for the drawings. We will begin developing the engineering design and cost estimate upon receipt of this information. Please note that the estimate will be based on the vaults, transformers and handholes required for the new underground system, being placed on private property. The cost for obtaining any easements deemed necessary by PSE will be the City's responsibility.

Please confirm your understanding and approval of the above by counter-signing in the space provided below and forwarding a copy of this letter to me to initiate the engineering design and cost estimate process.

We look forward to working with you on this project. Please feel free to contact me at (253) 476-6006 should you have any questions regarding the PSE portion of this project, or identify potential issues associated with PSE's facilities. For options on lighting services provided by PSE's Intolight, please contact Del Haydon, PSE's Street Lighting Manager, at (425) 456-2413.

Sincerely,

William P Thwing (Bill)
Project Manager
Puget Sound Energy

For the City of Kent

On this _____ day of _____, 2000.

HOWLETT
EX. A
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cc: Mary Ausburn, Municipal Land Planner, Puget Sound Energy
Del Haydon, Street Lighting Account Manager, Puget Sound Energy

owner. The easement is located upon city-owned property abutting the street. The easement measures roughly 75 feet by 30 feet.

4. The City's 256th Street Project was also about a mile long. Again, PSE told the City initially that it needed about six private easements. As finally constructed, PSE needed only one easement from a private property owner. According to information supplied to the City by PSE, that easement measures roughly 50 feet by 20 feet. The City did not sign an underground conversion agreement for the 256th Street Project.

5. Before it stopped work on the underground conversion portion of the Pacific Highway Project, PSE's initial design submitted to the City showed approximately 50 private easements that PSE desired along the north half of the three-mile project length. Whether the number of easements initially anticipated would eventually be reduced as dramatically as on the 196th and 256th Street projects, I do not know.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 5th day of July 2001 at Kent, Washington.



Mark Howlett