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October 12, 2001

Ms. Carole Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P O Box 47250
Olympia, WA 98504-2750

Re: Docket No. UE-010891 and UE-0110247

Dear Ms. Washburn:

During the October 11, 2001 oral argument in this case, the undersigned made an argument to the effect that a tariff should be construed against the drafter. The authority for that argument is not found in a Washington case, but is contained in a recent ruling of the Minnesota Court of Appeals, as well as numerous other decision in other states. The Minnesota case was the specific one I had in mind at the time of the argument. A summary of the case is as follows:

In the case of *InfoTel v. U. S. WEST v. Minnesota PUC*, 592 NW 2d 880, *883 (1999), the court applied what it termed “well-established rules of construction” in interpreting a tariff.

“These rules of construction dictate that (1) the terms of a tariff must be taken in the sense in which they are used and accepted; (2) where there is ambiguity, the tariff language should be construed strictly against its author; (3) such ambiguity or doubt must be reasonable, not the result of straining the language; (4) rules relating to tariffs should be interpreted in such a way as to avoid unfair, unusual, absurd or improbable results; and (5) a strict construction against the tariff’s author [i.e., the utility] is not justified where the construction would ignore a permissible and reasonable construction which conforms to the intentions of the framers of the tariff.”

Several other cases that I reviewed contain similar language, but this is the case that I had specifically in mind when making the argument. Of course, this rule would only be applied if the

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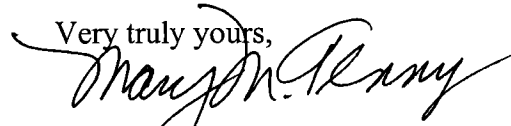


Ms. Carole Washburn
Docket Nos. UE-010891, UE-011027

October 12, 2001
Page 2

Commission finds the tariff language to be ambiguous. If you have any questions, or would like me to provide a complete copy of the case, please contact me.

Very truly yours,



MARY M. TENNYSON
Sr. Assistant Attorney General

Cc: ALJ Dennis Moss
All Parties

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