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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF AUBURN, CITY OF
BREMERTON, CITY OF DES MOINES,
CITY OF FEDERAL WAY, CITY OF
LAKEWOOD, CITY OF RENTON, CITY OF
SEATAC, CITY OF TUKWILA,

NO. UE-010911

Complainants,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

In the Matter of the Petition of

NO. UE-010778

CITY OF KENT,

PUGET SOUND ENERGY, INC.'S
RESPONSE TO MOTION TO STRIKE

For Declaratory Relief Interpreting
Schedule 71 of Electric Tariff G.

PUGET SOUND ENERGY, INC.'S RESPONSE
TO MOTION TO STRIKE - 1

[/010778, PSE, Response to Motion to Strike, 9-24-01.doc]

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1. Puget Sound Energy, Inc. ("PSE") hereby responds to the Motion to Strike Portions of Brief for Non-Compliance With Commission Rules ("Motion to Strike") filed by the Cities of Auburn, Bremerton, Des Moines, Federal Way, Lakewood, Renton, Redmond, SeaTac and Tukwila (the "Cities").

2. The Commission's procedural rules provide for their liberal construction.

The commission will construe pleadings liberally with a view to effect justice among the parties. The commission will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceeding that do not affect the substantial rights of the parties.

WAC 480-09-425(4).

3. As an initial matter, it is not clear that WAC 480-09-770 even applies to briefing on motions for summary determination. WAC 480-09-770 on its face describes only briefs presented "at the close of the hearing" in a proceeding. It is also found in the section of the Commission's procedural rules governing hearings, not those governing pleadings and motions. WAC 480-09-426, the Commission's rule on motions for summary determination, does not reference WAC 480-09-770.

4. Even if WAC 480-09-770 applies to briefing on summary determination, PSE has not violated that rule. PSE's Response to Motions for Summary Determination and Cross Motion for Summary Determination combined three briefs into a single filing: PSE's responses to two motions for summary determination, filed by the Cities and by the City of Kent, and PSE's own cross motion for summary determination. Rather than file three separate briefs, which could each have been 60 pages long, PSE consolidated its arguments into one filing. The resulting consolidated brief does not violate WAC 480-09-770 because it could have been up to 180 pages long.

5. The Cities argue that PSE's "excessively long brief imposes undue burdens upon the Cities in preparing their reply."

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However, the Cities fail to provide any detail to support that statement. PSE does not see how the length of its brief imposes any such burden. PSE submits that its decision to file a single brief was actually of great benefit to the Cities, the other parties to these proceedings, and the Commission. Although the brief is not short, it efficiently sets forth PSE' arguments on all of the issues that are before the Commission for decision. It would likely have been far more burdensome for the Cities to have to review and reply to a brief opposing their motion for summary determination, to review and respond to a separate PSE motion for summary determination, and to review a separate PSE brief responding to the City of Kent's motion for summary determination. By combining the three briefs, PSE enabled the Cities to review a single brief and to see all of PSE's arguments in the context of each other and the factual evidence that PSE submitted.

6. The Cities also argue that the page length rule provides a "level playing field" for all parties. However, the Cities' interpretation of the rule would not provide a level playing field in cases where multiple parties represented by separate counsel are aligned against a single defendant. In the present case, the Cities' interpretation of the rule would significantly disadvantage PSE. PSE would then be limited to 60 pages to respond to two separate motions for summary determination. PSE would also then be disadvantaged by having agreeing to a briefing schedule calling for briefing on cross motions for summary determination, even though in the end such briefing is far more efficient and less burdensome for the parties and the Commission.

7. Finally, even if the Commission were inclined to interpret WAC 480-09-770 in the manner urged by the Cities, the Cities' proposed relief is inappropriate. The Cities move "that pages 61 to 80 of PSE's brief be stricken from the record." Pages 61 to 80 set forth PSE's response to the constitutional arguments of the Cities and the City of Kent, PSE's briefing on the percentage of conversion costs that SeaTac must pay if Schedule 71 applies to

Phase II of South 170th Street, PSE's briefing on the applicability of

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Schedule 71 to Federal Way's South 320th Street conversion, and a summary of the declaratory order that PSE is requesting from the Commission.

8. If the Cities truly felt burdened by the length of PSE's brief, they should have moved to strike immediately upon receiving the brief and either asked for more time to reply or that the brief be rejected and that PSE be required to submit a shortened brief. The Cities did not do so. Instead, they filed their reply on the date set forth in the existing schedule and filed their motion to strike as a matter of procedural gamesmanship. Striking the last twenty pages of PSE's brief would remove from the record PSE's arguments on the constitutional question the cities have raised, and on two entire issues before the Commission, an unduly harsh result under the circumstances. At most, the Commission should require PSE to file a revised brief that condenses all of its argument into 60 pages. However, PSE believes that requiring PSE to do so is not consistent with WAC 480-09-770, and ultimately would not assist the parties or the Commission in these proceedings.

9. For the reasons set forth above, PSE respectfully requests that the Commission deny the Cities' Motion to Strike.

DATED: September ____, 2001.

PERKINS COIE LLP

By _____
Kirstin S. Dodge
Attorneys for Puget Sound Energy, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by facsimile and by mailing with postage prepaid to:

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And by hand delivery to:

Dennis J. Moss
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Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
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Dated at _____, Washington, this _____ day of _____, 2001.

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