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KING COUNTY SUPERIOR COURT

**KING COUNTY SUPERIOR COURT  
CASE ASSIGNMENT DESIGNATION  
and  
CASE INFORMATION COVER SHEET  
(cics)  
(In accordance with LR82(e))**

**CASE NUMBER:** 02-2-03746-1 KNT

**CASE CAPTION:** CITY OF SEATAC v. WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

I certify that this case meets the case assignment criteria, described in King County LR 82(e), for the:

           **Seattle Area**, defined as:

All of King County north of Interstate 90 and including all of the Interstate 90 right-of-way; all the cities of Seattle, Mercer Island, Bellevue, Issaquah and North Bend; and all of Vashon and Maury Islands.

  X   **Kent Area**, defined as:

All of King County south of Interstate 90 except those areas included in the Seattle Case Assignment Area.

\_\_\_\_\_  
Signature of Petitioner/Plaintiff

Date Feb. 26, 2002

or  
Carol S. A.P.  
Signature of Attorney for  
Petitioner/Plaintiff

February \_\_, 2002  
Date

18474

\_\_\_\_\_  
WSBA Number

**COPY**

**KING COUNTY SUPERIOR COURT  
CASE ASSIGNMENT DESIGNATION  
and  
CASE INFORMATION COVER SHEET**

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**APPEAL/REVIEW**

- Administrative Law Review (ALR 2)\*
- Civil, Non-Traffic (LCA 2)\*
- Civil, DOL (DOL 2)\*

**CONTRACT/COMMERCIAL**

- Breach of Contract (COM 2)\*
- Commercial Contract (COM 2)\*
- Commercial Non-Contract (COL 2)\*
- Meretricious Relationship (MER2)\*
- Third Party Collection (COL2)\*

**DOMESTIC RELATIONS**

- Annulment/Invalidity (with dependent children? Y N )(INV 3)\*
- Child Custody (CUS 3)\*
- Dissolution With Children (DIC 3)\*
- Dissolution With No Children (DIN 3)\*
- Legal Separation (with dependent children? Y N )(SEP 3)\*
- Mandatory Wage Assignment (MWA 3)
- Modification (MOD 3)\*
- Modification - Support Only (MDS 3)\*
- Out-of-State Custody Order Registration (OSC 3)
- Reciprocal, Respondent in County (RIC 3)
- Reciprocal, Respondent Out of County (ROC 3)
- Registration of Out of State Support Court Order (FJU 3)

**DOMESTIC VIOLENCE/ANTIHARASSMENT**

- Civil Harassment (HAR 2)
- Confidential Name Change (CHN 5)
- Domestic Violence (DVP 2)
- Foreign Protection Order (FPO 2)
- Vulnerable Adult Protection (VAP 2)

**JUDGMENT**

- Confession of Judgment (MSC 2)\*
- Judgment, Another County, Abstract (ABJ 2)
- Judgment, Another State or County (FJU 2)
- Tax Warrant (TAX 2)
- Transcript of Judgment (TRJ 2)

**ADOPTION/PATERNITY**

- Adoption (ADP 5)
- Confidential Intermediary (MSC 5)
- Establish Parenting Plan (MSC 5)\*
- Initial Pre-Placement Report (PPR 5)
- Modification (MOD 5)\*
- Paternity (PAT 5)\*
- Paternity/UIFSA (PUR 5)\*
- Registration of Out of State Support Court Order (FJU 5)
- Relinquishment (REL 5)
- Termination of Parent-Child Relationship (TER 5)

**PROBATE/GUARDIANSHIP**

- Absentee (ABS 4)
- Disclaimer (DSC4)
- Estate (EST 4)
- Foreign Will (FNW 4)
- Guardianship (GDN 4)
- Guardianship/Estate (G/E 4)
- Limited Guardianship (LGD 4)
- Minor Settlement (MST 4)
- Non-Probate Notice to Creditors (NNC 4)
- Trust (MSC 4)
- Will Only (WLL 4)
- Trust Estate Dispute Resolution Act (MSC 4)

**PROPERTY RIGHTS**

- Condemnation/Eminent Domain (CON 2)\*\*
- Foreclosure (FOR 2)\*
- Land Use, Petition (LUP 2)\*
- Property Fairness (PFA 2)\*
- Quiet Title (QTI 2)\*
- Unlawful Detainer (UND 2)

**TORT, MEDICAL MALPRACTICE**

- Hospital (MED 2)\*
- Medical Doctor (MED 2)\*
- Other Health Care Professional (MED 2)\*

**TORT, MOTOR VEHICLE**

- Death (TMV 2)\*
- Non-Death Injuries (TMV 2)\*
- Property Damage Only (TMV 2)\*

**KING COUNTY SUPERIOR COURT  
CASE ASSIGNMENT DESIGNATION  
and  
CASE INFORMATION COVER SHEET**

**OTHER COMPLAINT/PETITION**

- Action to Compel/Confirm Private Binding Arbitration (MSC 2)
- Change of Name (CHN 2)
- Change of Birth Date (MSC 2)
- Deposit of Surplus Funds (MSC 2)
- Emancipation of Minor (EOM 2)
- Injunction (INJ 2)\*
- Interpleader (MSC 2)
- Malicious Harassment (MHA 2)\*
- Seizure of Property from the Commission of a Crime (SPC 2)\*
- Seizure of Property Resulting from a Crime (SPR 2)\*
- Subpoenas (MSC 2)

**TORT, NON-MOTOR VEHICLE**

- Asbestos (PIN 2)\*\*
- Implants (PIN 2)
- Other Malpractice (MAL 2)\*
- Personal Injury (PIN 2)\*
- Products Liability (TTO 2)\*
- Property Damage (PRP 2)\*
- Wrongful Death (WDE 2)\*

**WRIT**

- Habeas Corpus (WHC 2)
- Mandamus (WRM 2)\*\*
- Review (WRV 2)\*\*

\* The filing party will be given an appropriate case schedule.

\*\* Case schedule will be issued after hearing and findings.

**IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE  
DESCRIBE THE CAUSE OF ACTION BELOW.**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

CITY OF SEATAC,  
  
Complainant,  
  
v.  
  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,  
  
Respondent.

No. 02-2-03746-1 KNT  
PETITION FOR REVIEW

The City of SeaTac ("City"), for its Petition for Review of a final order of the  
Washington Utilities and Transportation Commission ("WUTC") pursuant to Ch. 34.05  
RCW states as follows:

**I. Name And Mailing Address Of Petitioners:**

CITY OF SEATAC  
c/o Mary E. Mirante  
17900 International Boulevard, Suite 401  
SeaTac, WA 98188-4236

COPY

1  
2 **II. Name And Address Of Petitioners' Attorneys:**

3 Carol S. Arnold  
4 Preston Gates & Ellis LLP  
5 701 Fifth Avenue, Suite 5000  
6 Seattle, WA 98104-7078

7 **III. Name And Address Of Agency:**

8 Washington Utilities and Transportation Commission  
9 1300 S. Evergreen Park Drive S.W.  
10 Olympia, WA 98504-7250

11 **IV. Agency Action At Issue**

12 Third Supplemental Order: Declaratory Order on Motions for Summary  
13 Determination ("Order") entered by the WUTC and served on January 28, 2002 in *City of*  
14 *City of SeaTac et al. v. Puget Sound Energy, Inc.* (Consolidated Docket Nos. UE-010891  
15 and UE-011027). A copy of the Order is attached hereto as Exhibit A.

16 **V. Parties To The Adjudicative Proceeding**

17 The Cities of SeaTac and Clyde Hill; Puget Sound Energy, Inc.; WUTC's  
18 regulatory staff represented by Senior Assistant Attorney General Mary Tennyson.

19 **VI. Factual Basis For Review:**

20 On June 18, 2001, the City filed a Complaint and Petition for Declaratory Relief at  
21 the WUTC requesting a declaratory order to resolve a dispute with Puget Sound Energy,  
22 Inc. ("PSE") over the interpretation of PSE's Electric Tariff G, Schedule 70 ("Schedule  
23 70"). PSE, a private corporation, is an investor-owned utility regulated by the WUTC.

24 Schedule 70, entitled "Conversion to Underground Service In Residential Areas,"  
25 provides that upon request, PSE will remove its overhead electric distribution lines and

1 poles and install an underground system in areas “which are zoned and used exclusively  
2 for residential purposes.” Schedule 70 requires that the City pay PSE for the underground  
3 conversion at the rate of \$20.33 per centerline foot of all public thoroughfares utilizing  
4 surface-mounted transformers plus the costs of trenching and restoration for the  
5 installation of the underground system.  
6

7 The City is engaged in a street improvement project on South 170<sup>th</sup> Street from  
8 37<sup>th</sup> Avenue South to Military Road South (“South 170<sup>th</sup> Street Project”). The City  
9 requested PSE to convert its overhead facilities to underground in the area of the South  
10 170<sup>th</sup> Street Project, and PSE agreed to do so. In July 2001, the City directed the  
11 contractor to proceed with the South 170<sup>th</sup> Street Project, and construction is nearly  
12 complete.  
13

14 The conversion area consists exclusively of residential dwellings. A photograph  
15 of the conversion area shows a residential area containing only houses with no  
16 commercial buildings. The conversion area is zoned “Urban Low Density – Residential,”  
17 the SeaTac Comprehensive Plan classifies the conversion area as “Residential Low  
18 Density,” and no business permits have been issued in the conversion area.  
19

20 Even though Schedule 70 requires that the City pay PSE for the underground  
21 conversion at the rate of \$20.33 per centerline foot, PSE refused to perform the conversion  
22 to underground unless the City agreed to pay according to Schedule 71, the tariff for  
23 underground conversion in commercial areas. PSE claimed that the Schedule 70 payment  
24 was not applicable because its electrical system running along South 170<sup>th</sup> Street is not a  
25 single phase system, but a three phase system.

1 The City filed its Complaint and requested that the WUTC resolve the dispute  
2 expeditiously. On July 30, 2001, the WUTC consolidated the City's Complaint with a  
3 similar complaint filed by the City of Clyde Hill pertaining PSE's refusal to perform  
4 underground conversion in a residential area under Schedule 70. On August 31, 2002, the  
5 parties submitted the controversy to the WUTC on stipulated facts and cross-motions for  
6 summary determination. Following briefing by the parties, the WUTC heard oral  
7 argument on October 11, 2001.  
8

9 On January 28, 2002, the WUTC issued and served the Order attached hereto as  
10 Exhibit A. In the Order, the WUTC granted PSE summary determination in its favor,  
11 holding that Schedule 70 does not apply to underground conversion of PSE's electric  
12 facilities along South 170<sup>th</sup> Street. On February 14, 2002, Clyde Hill filed a Petition for  
13 Review with this Court seeking reversal of the WUTC Order.  
14

15 **VII. Reasons Why Relief Should Be Granted.**

16 **A. The WUTC Order Is Not Supported By Substantial Evidence.**

17 The Order is contrary to the plain language of Schedule 70 – which the WUTC  
18 approved – and the stipulated facts. The City should be granted relief because the WUTC  
19 Order “is not supported by evidence that is substantial when viewed in light of the whole  
20 record before the court.” RCW 34.05.570(3)(e).  
21

22 Schedule 70 provides in relevant part:

23 AVAILABILITY. Subject to availability of equipment and  
24 materials, the Company will provide and install a Main Distribution  
25 System and will remove existing overhead electric distribution  
lines of 15,000 bolts or less together with Company-owned poles  
following the removal of all utility wires therefrom *in areas which*

1                    *are zoned and used exclusively for residential purposes*, provided  
2                    that at the time of such installation the company shall had adequate  
3                    operating rights, and provided further that the Conversion Area  
4                    must be not less than one (1) city block in length, or in the absence  
5                    of city blocks, not less than an six (6) contiguous building lots  
                     abutting each side of the public thoroughfare with all real property  
                     on both sides of each public thoroughfare to receive electric service  
                     from the Main Distribution System.

6                    Schedule 70, First Revised Sheet No. 70 (emphasis added).

7                    There is no dispute that the SeaTac conversion area is zoned and used exclusively  
8                    for residential purposes. Flying in the face of the stipulated facts, however, the WUTC  
9                    determined the conversion area can somehow be characterized as “commercial” because  
10                    PSE’s distribution facilities utilize a three-phase configuration. Even though PSE’s three-  
11                    phase equipment serves commercial areas *outside* the conversion area, the parties  
12                    stipulated that all of the buildings in the conversion area along South 170<sup>th</sup> Street are  
13                    residential dwellings, the stipulated aerial photograph shows the conversion area is  
14                    exclusively residential, and the conversion area is all zoned residential. Under these  
15                    circumstances, there is simply no evidencé – substantial or otherwise – to support the  
16                    WUTC’s determination that the conversion area is anything other than a residential area.  
17                    Accordingly, Schedule 70 should apply to the underground conversion, and the WUTC’s  
18                    Order should be reversed.

19                    **B.        The WUTC Has Erroneously Applied The Law.**

20                    This City should be granted relief because the WUTC “has erroneously interpreted  
21                    or applied the law.” RCW 34.05.570(3)(d). The Washington Legislature has charged the  
22                     
23                     
24                     
25



1 WUTC with regulation of PSE's rates and services. RCW 80.01.040. Accordingly, the  
2 WUTC has the duty to correctly apply the law.

3 Washington law requires public utilities to charge their published tariff rates. The  
4 statute provides in relevant part:

5 No gas company, electrical company or water company shall charge, demand,  
6 collect or receive a greater or less or different compensation for any service  
7 rendered or to be rendered that the rates and charges applicable to such service as  
8 specified in its schedule filed and in effect at the time.

9 RCW 80.28.080. PSE thus must charge *only* those rates that the Commission has  
10 approved in the applicable tariff. *Tenore v. AT&T Wireless Services*, 136 Wn.2d 322; 962  
11 P.2d 104 (1998); *AT&T v. Central Office Telephone, Inc.*, 524 US 214, 118 S. Ct. 1956  
12 (1998).

13 The WUTC cannot permit PSE to charge SeaTac more for underground  
14 conversion than the rate set forth in Schedule 70, which by its plain terms applies to the  
15 undergrounding of PSE's facilities in residential areas. By finding that PSE may charge  
16 the City something other than the rate clearly set forth in Schedule 70 for underground  
17 conversion in a residential area, the WUTC erroneously applied the law.

18  
19 **C. The Order Is Inconsistent With The WUTC's Rules And The WUTC**  
20 **Has Failed To State Facts And Reasons To Demonstrate A Ration**  
21 **Basis For The Inconsistency.**

22 The City should be granted relief because the order is inconsistent with the  
23 WUTC's own rules, and the WUTC has failed to state facts and reasons to demonstrate a  
24 ration basis for the inconsistency. RCW 34.05.570(3)(h). The WUTC's rule on the filed  
25 tariffs of regulated utilities states:

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Each utility shall file with the [WUTC] in accordance with the public service laws of the state of Washington and these rules and regulations, its tariff or tariffs containing schedules showing all rates, charges, tolls, rentals, rules and regulations, privileges and facilities established by that utility for service rendered or commodity furnished.

WAC 480-80-040.

In disregard of the rule that requires PSE to charge for underground conversion services pursuant to the terms of its tariff, the WUTC's Order permits PSE to charge SeaTac more for underground conversion than the rate set forth in Schedule 70. By finding that PSE may charge the City something other than the rate clearly set forth in Schedule 70 for underground conversion in a residential area, the WUTC's Order is inconsistent with its own rule.

**D. The Order Is Arbitrary And Capricious.**

The City should be granted relief because the Order is arbitrary and capricious. RCW 34.05.570(3)(i). Agency action is arbitrary and capricious if it is "willful and unreasoning action, without consideration and in disregard of facts and circumstances." *Brown v. State Dept. of Health*, 94 Wash. App. 7 (1999). The WUTC ignored the stipulated factual record in applying the law, resulting in arbitrary and capricious action.

**VIII. Request For Relief.**

WHEREFORE, the City of SeaTac requests the following relief:

- 1. An Order reversing the WUTC Order and determining that:
  - A. The WUTC Order is not supported by substantial evidence.
  - B. The WUTC has erroneously applied the law.

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C. The Order is inconsistent with the WUTC's rules, and the WUTC has failed to state facts and reasons to demonstrate a ration basis for the inconsistency.

D. The Order is arbitrary and capricious.

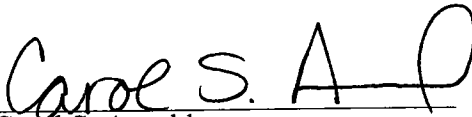
E. The Cities are substantially prejudiced by the WUTC's action.

2. An award of costs and attorneys fees to the extent allowed by law; and

3. All other just and equitable relief.

DATED this 25th day of February, 2002.

PRESTON GATES & ELLIS LLP

By   
Carol S. Arnold, WSBA # 18474

Attorneys for Appellant City of SeaTac

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CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing Petition for Review on Tuesday, February 26, 2002, as follows:

Greg A. Rubstello (via United States mail)  
John D. Wallace  
Ogden Murphy Wallace P.L.L.C.  
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Mary M. Tennyson (via United States mail)  
Senior Assistant Attorney General  
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Dennis J. Moss (via United States mail)  
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Carole J. Washburn (via legal messenger)  
Executive Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250



Carol S. Arnold, WSBA #18474  
Attorney for Complainant, City of SeaTac

**EXHIBIT A**

SERVICE DATE  
JAN 28 2002

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

CITY OF SEATAC,	)	
	)	
Petitioner,	)	
	)	
v.	)	DOCKET NO. UE-010891
	)	
PUGET SOUND ENERGY, INC.	)	
	)	
Respondent.	)	
.....	)	
CITY OF CLYDE HILL,	)	
	)	DOCKET NO. UE-011027
Petitioner,	)	
	)	
v.	)	THIRD SUPPLEMENTAL ORDER:
	)	DECLARATORY ORDER ON
PUGET SOUND ENERGY, INC.	)	MOTIONS FOR SUMMARY
	)	DETERMINATION
Respondent.	)	
.....	)	

*SYNOPSIS: The Commission interprets Puget Sound Energy, Inc.'s tariff Schedules 70 and 71, and determines the applicability of the two schedules to portions of underground relocation projects in the cities of SeaTac and Clyde Hill.*

**PROCEEDINGS:** Docket No. UE-010891 concerns a Complaint and Petition for Declaratory Relief filed by the City of SeaTac on June 19, 2001. Docket No. UE-011027 concerns a Complaint and Petition for Declaratory Relief filed by the City of Clyde Hill on July 18, 2001. The complaints request that the Commission enter a declaratory order, or orders, establishing the respective rights and obligations of the cities and Puget Sound Energy, Inc. (PSE) in connection with PSE's administration of its tariffs that provide for the conversion of overhead electric distribution systems to underground systems under Electric Tariff G, Schedules 70 and 71. The Commission consolidated Docket Nos. UE-010891 and UE-011027 by order entered on July 30, 2001.

2 The Parties requested that the Commission resolve these matters on a paper record including certain stipulated facts. SeaTac and Clyde Hill filed their respective Motions for Summary Determination by August 13, 2001, as required under the procedural schedule. PSE filed its Response and Cross-Motion for Summary Determination on August 24, 2001. SeaTac and Clyde Hill filed their respective Replies on August 31, 2001.

3 **PARTIES:** Carol S. Arnold and Laura K. Clinton, Preston Gates Ellis, LLP, Seattle, Washington, represent the City of SeaTac. John D. Wallace, City Attorney, Clyde Hill, Washington, and Greg A. Rubstello, Ogden Murphy Wallace, P.L.L.C. represent the City of Clyde Hill. Kirsten Dodge and Bill Bue, Perkins Coic, LLP, Bellevue, Washington, represent Puget Sound Energy. Mary Tennyson, Senior Assistant Attorney General, Olympia, Washington, represents Commission Staff.

4 **COMMISSION:** The Commission denies the City of SeaTac's Motion for Summary Determination on its Complaint and Petition for Declaratory Judgment. The Commission denies Clyde Hill's Motion for Summary Determination on its Complaint and Petition for Declaratory Judgment. The Commission grants PSE's Cross-Motion for Summary Determination.

### MEMORANDUM

#### **I. Background and Procedural History**

5 The City of SeaTac filed a Complaint and Petition for Declaratory Relief on June 19, 2001, initiating Docket No. UE-010891. SeaTac's pleading raised issues concerning the interpretation and application of PSE's tariff Schedules 70 and 71, which concern the conversion of overhead distribution facilities to underground facilities in residential and commercial areas in municipalities. PSE filed its Answer to SeaTac's Complaint and Petition on June 29, 2001. Later, on July 18, 2001, following certain process described below, the City of Clyde Hill filed a Complaint and Petition for Declaratory relief that raised issues factually and legally similar to those raised by SeaTac. The Clyde Hill matter was docketed under No. UE-011027. Generally, the Parties dispute the scope of PSE's and the cities' respective rights and obligations in connection with the conversion of certain overhead electric distribution facilities to underground facilities.



6 The Commission convened a joint prehearing conference in the SeaTac docket (*i.e.*, No. UE-010891), and in somewhat related proceedings in Docket Nos. UE-010778 and UE-010911, on April 23, 2001, in Olympia, Washington, before Administrative Law Judge Dennis J. Moss. Based on discussions at the prehearing conference, the Commission found that the pleadings in Docket Nos. UE-010778 and UE-010911 presented common issues of fact and law, and consolidated the two dockets. The Commission's resolution of the issues in Docket Nos. UE-010778 and UE-010911 (consolidated) is the subject of a separate order entered today.

7 The City of Clyde Hill initially sought to press its case via intervention in Docket No. UE-010891. It became apparent at the prehearing conference, however, that Clyde Hill should file its own pleading for separate docketing, even though it was also apparent that any such docket likely would be consolidated with Docket No. UE-010891. As noted above, Clyde Hill did file its own Complaint and Petition for Declaratory Relief in Docket No. UE-011027, and the matter was consolidated with Docket No. UE-010891.

8 Discussion at the prehearing conference also suggested that Docket Nos. UE-010891 and UE-011027 (consolidated) might be amenable to resolution on stipulated facts and cross-motions for summary determination pursuant to WAC 480-09-426. Accordingly, a schedule was set for such process. On August 2, 2001, the Parties filed their Joint Statement of Issues, Stipulations of Fact, and Stipulated Exhibit List. On August 13, 2001, SeaTac and Clyde Hill filed their respective Motions for Summary Determination. PSE filed its Response to Motions for Summary Determination and Cross Motion for Summary Determination on August 24, 2001. SeaTac filed its Reply on August 31, 2002, and Clyde Hill filed its Reply on September 4, 2001. The Commission heard oral argument on October 11, 2001.

## II. Discussion and Decision

### A. Governing Statutes, Rules, and Tariffs

9 Schedules 70 and 71 of PSE's Electric Tariff G are attached as Appendices A and B to this Order.

10 The following statutes and rules are most central to our consideration of the matters raised by the Parties' pleadings and motions:

**RCW 80.01.040 General Powers and Duties of Commission.**

The utilities and transportation commission shall:

\* \* \*

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies . . . .

**80.28.010 Duties as to rates, services, and facilities . . . .**

(1) All charges made, demanded or received by any . . . electrical company . . . for . . . electricity . . . , or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every . . . electrical company . . . shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any . . . electrical company . . . affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

**80.28.020 Commission to fix just, reasonable, and compensatory rates.**

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any . . . electrical company . . . for . . . electricity . . . , or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall

determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.

**80.28.080 Published rates to be charged—Exceptions.**

No . . . electrical company . . ., shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time . . .

No . . . electrical company . . . shall extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

**80.28.90 Unreasonable preference prohibited.**

No . . . electrical company . . . shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

**80.28.100 Rate discrimination prohibited—Exception.**

No . . . electrical company . . . shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for . . . any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

- 11 RCW 34.05.413 establishes our authority to conduct adjudicatory proceedings. RCW 34.05.240 and WAC 480-09-230 establish our authority to enter declaratory orders and establish certain process related to our consideration of petitions for such relief.
- 12 WAC 480-09-426 provides that parties to an adjudication may file motions for summary determination. Pursuant to WAC 480-09-426(2), a party requesting summary determination must show that "the pleadings filed in the proceeding, together with any properly admissible evidentiary support, show that there is no genuine issue as to any material fact and the moving party is entitled to summary determination in its favor." The Commission considers motions for summary determination under "the standards applicable to a motion made under CR 56 of the civil rules for superior court." *Id.* The civil rules provide:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

*CR 56(c)*. A material fact is one of such nature that it affects the outcome of the litigation. *Greater Harbor 2000 v. Seattle*, 132 Wn.2d 267, 279, 937 P.2d 1082 (1997).

#### B. Legal Standards and Analytical Framework.

- 13 Filed and approved tariffs such as Schedules 70 and 71 have the force and effect of state law. *General Tel. Co. v. City of Bothell*, 105 Wn.2d 579, 585 (1986). When, as here, parties dispute what particular provisions require, we must look first to the plain meaning of the tariff. *Nat'l Union Ins. Co. v. Puget Power*, 94 Wn. App. 163, 171, 972 P.2d 481 (1999). If the tariff language is plain and unambiguous, there is no need to resort to rules of construction. *Whatcom County v. Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996); *Food Servs. Of Am. v. Royal Heights, Inc.*, 123 Wn.2d 779, 784-85, 871 P.2d 590 (1994); *Waste Management of Seattle v. Utilities & Transp. Comm'n*, 123 Wn. 2d 621, 629, 869 P.2d 1034 (1994); *Vita Food Prods., Inc. v. State*, 91 Wn.2d 132, 134, 587 P.2d 535 (1978). If the tariff language is not plain, or is ambiguous, the Commission may examine the legislative history and other evidence to determine the meaning

of the tariff and how it should be applied to the facts at hand. In interpreting an ambiguous tariff the Commission is like a court interpreting an ambiguous statute. As the Court says in *Whatcom County*:

If the statute is ambiguous, the courts must construe the statute so as to effectuate the legislative intent. In so doing, we avoid a literal reading if it would result in unlikely, absurd or strained consequences. The purpose of an enactment should prevail over express but inept wording. The court must give effect to legislative intent determined 'within the context of the entire statute.' Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. The meaning of a particular word in a statute 'is not gleaned from that word alone, because our purpose is to ascertain legislative intent of the statute as a whole.'

128 Wn.2d at 546 (citations omitted); see *City of Seattle v. Dept of L&I*, 136 Wn.2d 693, 701, 965 P.2d 619 (1998).

### C. Substantive Issues

- 14 The central issue in this consolidated proceeding is whether PSE's schedule 70 (governing the conversion of overhead facilities to underground facilities in residential areas) or Schedule 71 (governing conversion of overhead facilities to underground facilities in commercial and certain other areas) applies to all or portions of certain projects planned or underway in the respective cities. The material facts are undisputed.

#### I. Stipulated Facts Related to SeaTac.

- 15 SeaTac and PSE stipulated to the following facts in their Joint Statement of Issues, Stipulations of Fact, and Stipulated Exhibit List filed on August 2, 2001:
- a. The City of SeaTac ("SeaTac") has requested and PSE has agreed to convert its overhead facilities along South 170<sup>th</sup> Street between 37<sup>th</sup> Avenue South and Military Road South (the "SeaTac Conversion Area") to underground.

- b. SeaTac claims that PSE should undertake the conversion under the terms of Schedule 70, while PSE claims that Schedule 71 applies to the conversion.
- c. South 170th Street is a collector arterial that provides access between Military Road South and International Boulevard (Highway 99), as well as SeaTac Airport. International Boulevard and SeaTac Airport are commercial areas. The buildings currently located within the SeaTac Conversion Area are residential dwellings.
- d. Stipulated Exhibit A is a true and correct copy of the aerial photograph identified as "South 170<sup>th</sup> Street Phase 2 Improvements Project Area."
- e. Stipulated Exhibit B is a true and correct copy of the map identified as "City of SeaTac Zoning."
- f. Stipulated Exhibit C is a true and correct copy of the map identified as "City of SeaTac Comprehensive Plan."
- g. PSE's existing overhead distribution system in the SeaTac Conversion Area is a three-phase feeder system, not a single-phase system. The service lines from the distribution system are single-phase.

## 2. Stipulated Facts Relating to Clyde Hill:

16

Clyde Hill and PSE stipulated to the following facts in their Joint Statement of Issues, Stipulations of Fact, and Stipulated Exhibit List filed on August 2, 2001:

- a. The City of Clyde Hill ("Clyde Hill") has requested that PSE convert its overhead facilities to underground along 92nd Avenue N.E. between approximately N.E. 13th Street and N.E. 20th Street, along N.E. 13th Street from 92nd Avenue N.E. eastward to the end of N.E. 13th Street, along N.E. 19th Street from 92nd Avenue N.E. to 94th Avenue N.E., along N.E. 20th Street from just west of 92nd Avenue N.E. to 96th Avenue N.E., along 94th Avenue N.E. from N.E. 19th Street to approximately N.E. 21st Street, and along private drives and through private property running east of and perpendicular to 92nd Avenue N.E. and west of and perpendicular to 94th Avenue N.E. ("Clyde Hill Project"). Stipulated Exhibit D shows the details of the locations of facilities that Clyde Hill wishes to convert to underground.

- b. PSE has agreed that facilities in the following conversion areas within the Clyde Hill Project should be performed under Schedule 70: N.E. 13th Street from 92nd Avenue N.E. eastward to the end of N.E. 13th Street, N.E. 20th Street from just west of 92nd Avenue N.E. to 96th Avenue N.E., and along 94th Avenue N.E. from N.E. 19th Street to approximately N.E. 21st Street. See Exhibit D, pink highlighting. PSE's existing overhead facilities in these areas are a single-phase system.
- c. PSE claims that facilities in the following conversion area should be performed under Schedule 71: along 92nd Avenue N.E. between approximately N.E. 13th Street and N.E. 20th Street. See Exhibit D, yellow highlighting. PSE's existing overhead facilities along 92nd Avenue N.E. are a three-phase feeder system, not a single-phase system.
- d. PSE claims that facilities in the following conversion areas are not subject to either Schedule 70 or Schedule 71, and should be converted only if Clyde Hill pays 100% of the actual costs of the conversion: along private drives and through private property running east of and perpendicular to 92nd Avenue N.E. and west of and perpendicular to 94th Avenue N.E. See Exhibit D, green highlighting. PSE's existing overhead facilities in these areas are located on PSE easements, or by invitation of the property owner, and there is no public thoroughfare in these areas. Clyde Hill claims that Schedule 70 is applicable to these facilities.
- e. Clyde Hill consists of approximately 2,900 residents and 1,100 households. There are two commercially developed lots within the corporate limits of the City and certain public and private schools and churches and city buildings, all of which are located outside the conversion area and LID boundary and receive electrical service from service lines outside of the conversion area and LID boundary. The commercially developed lots contain a gas station/convenience store and a Tully's Coffee shop.
- f. The Clyde Hill Project arose after a neighborhood of about 100 homes in a contiguous location petitioned the City Council to form a local improvement district (LID) for the purpose of burying the utility lines and installing street lighting in the neighborhood.
- g. The City paid PSE \$4,000.00 for developing a set of preliminary design plans.

- h. On June 22, 2000, PSE provided to Clyde Hill PSE's estimate of the costs of the conversion for the Clyde Hill Project based on PSE's assertion of the application of Schedules 70 and 71, as described above. Stipulated Exhibit F is a true and correct copy of PSE's Project Estimate for Clyde Hill dated June 22, 2000. Clyde Hill advised PSE that it disagreed with PSE's position, and that it felt that Schedule 70 applied to the entire Project.
- i. Approximately one year later, on June 12, 2001, after a public hearing, the City Council passed Ordinance No. 836 (Stipulated Exhibit F) creating the Local Improvement District No. 2001-01 for the conversion of overhead to underground facilities and ordering "the making of certain improvements consisting of the undergrounding of overhead lines as described in the property owners' petition therefore, to include such proper appurtenances, if any, as may be determined by the Council."
- j. The total area within the boundary of the LID is zoned R1 Residential and is developed with single family residential structures. Stipulated Exhibit G is a true and correct copy of the City map depicting the zoning of the LID and boundary.
- k. The buildings currently located within the Clyde Hill Project are all residential dwellings.
- l. The electrical distribution lines proposed to be converted to underground in the LID are 15,000 volts or less.

### 3. Commission Analysis and Decision.



*a. Which rate schedule applies to three-phase lines running through residential areas?*

- 17 The cities argue that Schedule 70 is unambiguous and applies to the facts by its plain terms. They focus on the residential character of the land-use on property adjacent to the roadways as the sole criterion by which the Commission should define the clause "in areas which are zoned and used exclusively for residential purposes." Since there is no dispute that the land-use within the area where undergrounding is to occur is residential, the cities argue it follows that Schedule 70 applies.
- 18 In a similar vein, the cities argue that Schedule 71 does not apply because the residential character of the land-use adjacent to the undergrounding project means the project does not meet the Schedule 71 criterion: "areas of such municipalities which have electrical load requirements which are comparable with developed commercial areas."
- 19 PSE argues that the tariff contemplates looking beyond the land-use in the Conversion Area to determine whether there is "exclusive" residential use. PSE argues that the character of the infrastructure (both the roadway and the electric system) also is a key criterion. Thus, PSE argues that because the roads are arterial collectors, which connect commercial areas that require three-phase power, and because the facilities are a three-phase distribution backbone system that runs along those roadways, the areas in question are not "used exclusively for residential purposes."
- 20 PSE also argues that the tariff language is ambiguous, and that it is appropriate to look beyond the words to the legislative history. The "legislative history" PSE focuses on is the evidence and analysis that were used to determine the current rates and charges, which were based on the cost of undergrounding single-phase facilities, and which expressly excluded the significantly higher cost of undergrounding three-phase facilities. PSE urges us to infer from this history that Schedule 70 does not and was never meant to apply to the undergrounding of three-phase distribution systems.
- 21 PSE argues that Schedule 71 applies because the engineering characteristics of the distribution system along these roadways are dictated by the existence of

commercial electric load requirements (*i.e.*, three-phase power) at one or both ends of the arterial collector roadways. Thus, PSE argues, the project falls within the scope of Schedule 71's "areas of such municipalities which have electrical load requirements which are comparable with developed commercial areas." PSE contends that it does not matter whether the commercial areas served by the three-phase system are adjacent to the project area, as in the SeaTac case, or in some other part of the community, as in the Clyde Hill case.

22 We find that PSE's tariff Schedule 70 suffers from ambiguity. Viewed from different perspectives, as the parties have here, the schedule-applicability language at issue could reasonably be interpreted to mean quite different things, leading to entirely different results when applied to the facts at hand. The language in Section 2 of Schedule 70 that defines the availability of the rate schedule in terms of "areas which are zoned and used exclusively for residential purposes," if viewed strictly from a land-use perspective in the context of the stipulated facts, supports the interpretation argued by the cities. When we consider, however, that the rate schedule does not concern the governance of land-use, but rather the governance of services provided by an electric utility, the interpretation argued by PSE is at least equally plausible.

23 Guided by the principles stated in *Whatcom County, supra*, and reiterated in numerous Washington Supreme Court cases, we conclude that PSE's interpretation is the more reasonable of the two. Specifically, we find that the criterion "used exclusively for residential purposes" in Section 2 of Schedule 70 refers to electrical characteristics as well as land-use characteristics. In this case, the three-phase feeder lines that run along 170<sup>th</sup> Street in SeaTac, and along 92<sup>nd</sup> Avenue in Clyde Hill, are stipulated to be present in those locations to support PSE's distribution of electricity necessary to meet commercial load requirements. The areas in question, thus, are not used exclusively by PSE for residential purposes but, rather, are used by PSE for commercial purposes. It follows that Schedule 70 does not apply to the undergrounding projects along 170<sup>th</sup> Street in SeaTac, and along 92<sup>nd</sup> Avenue in Clyde Hill.

24 Alternatively, the undergrounding projects along 170<sup>th</sup> Street in SeaTac, and along 92<sup>nd</sup> Avenue in Clyde Hill are in areas of the respective municipalities that have electrical load requirements that are "comparable with developed commercial areas." Our focus, again, is on PSE's use of the right-of-way, or area along the right-of-way, for purposes of electric power distribution. The presence

of commercial load requirements in various geographic locations in and around the specific project locations requires that PSE install three-phase feeders along specific routes. The routes at issue were selected as suitable for that purpose and PSE uses those routes to provide power to meet commercial load requirements. Thus, Schedule 71 applies by its terms to undergrounding projects in the locations at issue whether one interprets the route as "commercial" or as an area that has "electrical load requirements which are comparable with developed commercial areas."

25 Compelling support for our interpretation is found in the legislative history provided by Mr. Lynn Logen in his affidavit and in Addendum 9 to his affidavit. In support of the tariff when its rate was last revised in 1984, PSE submitted a cost study. PSE initially compiled the costs of undergrounding projects in six geographical areas. Two of these areas, however, were excluded from the cost-study because they contained three-phase facilities. The costs to underground the remaining four areas, which contained only single-phase facilities, formed the basis for the rates in Schedule 70 of \$20.33 per centerline foot. The clear (and only) inference to be drawn is that Schedule 70 was not intended to cover three-phase facilities regardless of their location. Indeed, if Schedule 70 were read to include three-phase facilities, it could not be said to reflect fair, just, reasonable, and compensatory rates, because the cost-study does not support application of the \$20.33 rate to three-phase facilities.

26 In light of the relative costs associated with the two types of conversion work (*i.e.*, single-phase and three-phase), it is logical and reasonable to apply Schedule 70 to single-phase conversion work and Schedule 71 to three-phase conversion work. Mr. Logen testified that:

PSE has estimated that the total cost for the SeaTac Conversion will be \$454,870.00. If the existing overhead system were a single-phase rather than a three-phase system, PSE estimates that the cost of the conversion would be \$222,632.39. Similarly, PSE has estimated that the total cost for converting the existing overhead facilities along 92<sup>nd</sup> Ave. N.E. in Clyde Hill will be \$382,521. If the existing overhead system along 92<sup>nd</sup> Avenue N.E. were a single phase system, PSE estimates that the cost of that conversion would be \$194,107.37.

*Id.* at ¶ 11. Thus, in the case of the SeaTac project, the cost for converting the three-phase system to underground is more than twice the cost that would be incurred were this a single-phase system. The difference for the Clyde Hill project is slightly less, but of a similar magnitude.

27

Our interpretation is rooted in the subject matter of the tariff (*i.e.*, the appropriate rate for an electric company's service) and its legislative history. This interpretation is also consistent with the way the tariff has been administered since its inception. Mr. Logen testified that, as the person responsible for the administration of Schedules 70 and 71 for the past eleven years, he has consistently interpreted Schedule 70 to apply only to conversions of single-phase distribution systems to underground, and he has consistently interpreted Schedule 71 to apply to conversions of three-phase systems to underground, regardless of whether the three-phase system has been located in an area that is residential in terms of its zoning and land-use. *Logen Affidavit* at ¶13. Mr. Logen testified that he is "not aware of any cases in which three-phase systems have been converted to underground under Schedule 70." *Id.* Thus, our interpretation of the tariff language in a way that is consistent with the history concerning the administration of these rate schedules, which has been continuously subject to our oversight, incidentally precludes assertions of discrimination and undue preference.

*b. Does Schedule 70 apply by its terms or by inference to the private drives in Clyde Hill?*

28

Turning to the additional dispute that is limited to the Clyde Hill matter, the City contends that PSE is required to treat the entire "conversion area," including public roads and private drives, under a single rate schedule, Schedule 70. Clyde Hill's initial argument is sufficiently brief to quote in full (underlining in original):

Schedule 70 applies to the work to be performed in private easements and along 92<sup>nd</sup> Avenue NE that is part of the conversion area because it is part of the "conversion area." The "conversion area" meets all of the criteria of Section 2. Even that portion of the conversion area described in Stipulated Fact No. 12, where the existing overhead lines are within easements along private drives, are within the clear language and criteria of Section 2 of Schedule 70. The conversion area is clearly greater than one city block in

length. There is no language in Section 2 that provides for segmenting, or breaking down, a contiguous conversion area into smaller segments for purposes of applications of the tariff. Therefore, there is no basis in Section 2 to reasonably argue that the private drives are to be evaluated separately from other segments of the conversion area.

In sum, all of the conversion area comes within the clear scope of coverage of Schedule 70. There is no ambiguity in the language of Schedule 70. There is no legal basis for the Commission to go beyond the clear language of Schedule 70 to ascertain the WUTC's intent when it approved the tariff.

29 PSE responds that it is entirely appropriate to treat different portions of the project under different schedules, depending on the character of the roadway and the electric system. PSE argues that it historically has interpreted Schedule 70 to not apply to private drives because neither a private landowner nor a municipality can require PSE to underground facilities where PSE has an easement or prescriptive right. PSE argues that Schedule 70 sets the terms and conditions only for undergrounding of facilities that could potentially be subject to mandatory undergrounding; that is, facilities located in public rights-of-way. PSE argues that it has the sole discretion when its facilities are on private property to decide whether, and on what terms, to underground, if requested. PSE argues that no tariff is required to permit it to charge private property owners, or municipalities requesting undergrounding on private property, 100 percent of the costs.

30 PSE also argues that to interpret Schedule 70 to apply to PSE's facilities located on private property would be contrary to the tariff language in Section 2 that refers to "public thoroughfares." PSE argues that if Schedule 70 is deemed to apply to private drives, it will not be able to charge any rate because the rate language in Section 3.b. of the tariff refers to "\$20.33 per centerline foot of all public thoroughfares."

31 Clyde Hill's logic suffers from a bootstrapping circularity (private drives must be converted at the Schedule 70 rate if the private drives are in a conversion area subject to Schedule 70) and does not reach the question at issue: whether private drives fall within the scope of Schedule 70. Clyde Hill's argument can only hold if we find that a "conversion area" comprises all work within a given geographic

area over a given period of time, and that once a "conversion area" is defined, all work within it must be charged at the same (presumably lowest) rate, regardless of whether the nature of the land and electrical use is commercial or residential, or on public thoroughfares or on private drives.

32 As our discussion in the previous section makes clear, it is not only rational but necessary that undergrounding work be segmented into different functional and rate categories--necessary in order to accord both Schedule 70 and 71 their full and complementary scopes, and necessary in order to align the rates with the underlying cost-studies that were used to support the schedules when they were first established. Whether one calls this segmentation separate conversion areas with separate rates, or one conversion area with separate rates, is a difference in semantics only. It is the character of the land and electrical function that determines whether the rate charged is covered by Schedule 70, Schedule 71—or, as Puget argues, no schedule at all.

33 The clear language of Schedule 70 limits its scope to areas that are a) at least one city block in length, or b) absent city blocks, at least six building lots abutting either side of a "public thoroughfare." The parties have stipulated that "there is no public thoroughfare in these areas," so they have stipulated to facts that by their explicit terms cannot qualify under (b). These same stipulated facts, we find, preclude application of (a), because city blocks are along public streets and rights-of-way, which must also be "public thoroughfares." We do not believe "city block" can be read to mean an abstract length along something other than a public street or right-of-way, because the language in (a) directs that in the "absence of city blocks" (which to us implies the physical presence, in general, of city streets or rights-of-way that form "blocks," not an abstract length), the language in (b) controls. That is, there are not three alternatives: a real city block, a private drive at least the length of a city block, and a public thoroughfare with at least six building lots on either side. There are only two alternatives, and private drives must fit within the definition of "public thoroughfare" to qualify. Also, only by reading the language as we have, does the rate--\$20.33 per centerline foot *along the public thoroughfare*—make sense, and cover all situations under Schedule 70.

34 There is no definition in Schedule 70 of "public thoroughfare." In other contexts, (e.g., Schedule 85, which governs line extensions), the term encompasses private land that has certain aspects functionally similar to public roads. In a future case, or in a new tariff filing, we may have the opportunity to review the appropriate

definition of "public thoroughfare," for purposes of Schedule 70. In either event, we could contemplate one or more factual situations, which might inform such a review. Here, the stipulated facts preclude any discussion of what constitutes a "public thoroughfare" because the parties stipulate that there *is* no public thoroughfare.

35 Not being a "city block" or a "public thoroughfare," the private drives in question do not fall under Schedule 70, so we deny Clyde Hill's petition for declaratory judgment that Schedule 70 applies, and we grant Puget's motion for a determination that Schedule 70 does not apply.

36 The remaining question is whether, since Schedule 70 does not apply, we must grant Puget's cross-motion asking us for a summary determination that the customers on the private drives in Clyde Hill (or the City, on their behalf) must pay 100% of the costs. There was very little briefing on this question (none by Clyde Hill), as the parties were more focused on whether Schedule 70 applies. We find that Puget should be able to recover its costs under the facts of this case for discretionary undergrounding activities that fall outside the scope and prescriptions of any existing tariff. We caution, however, that our ruling is limited to the bare-bones facts of this case. The great variety of easements and other arrangements respecting private lands may admit of other treatment, in other situations, depending on the facts and applicable tariffs.

#### FINDINGS OF FACT

37 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include stipulated facts and other findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

38 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies.

- 39 (2) The pleadings filed in this proceeding, together with the evidentiary support provided by the parties' fact stipulations, affidavits, and other documents, show that there is no genuine issue as to any material fact.

### CONCLUSIONS OF LAW

40 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 41 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and all parties to, these proceedings. *Title 80 RCW.*
- 42 (2) PSE is a "public service company" and an "electrical company" as those terms are defined in RCW 80.04.010, and as those terms otherwise may be used in Title 80 RCW. PSE is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.
- 43 (3) PSE is entitled to judgment in its favor, as a matter of law, that Schedule 71 applies to the underground relocation of existing overhead electric distribution facilities that are located in the SeaTac and Clyde Hill Conversion Areas and are part of PSE's three-phase power distribution system.
- 44 (4) PSE is entitled to judgment in its favor, as a matter of law, that Schedule 70 does not apply to the underground relocation of existing overhead electric distribution facilities that are part of PSE's single-phase power distribution system located in the Clyde Hill Conversion Area on private property alongside private roadways.
- 45 (5) PSE is entitled to recover fully the costs it incurs in connection with the underground relocation of existing overhead electric distribution facilities that are part of PSE's single-phase power distribution system located in



the Clyde Hill Conversion Area on private property alongside private roadways.

**ORDER**

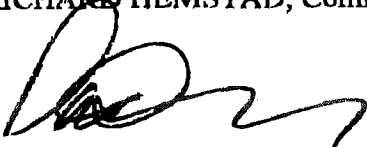
- 46 THE COMMISSION ORDERS That PSE's tariff Schedule 71 applies to the conversion of PSE's overhead facilities along South 170<sup>th</sup> Street between 37<sup>th</sup> Avenue South and Military Road South in SeaTac (the "SeaTac Conversion Area") to underground.
- 47 THE COMMISSION ORDERS FURTHER That PSE's tariff Schedule 71 applies to the conversion of PSE's overhead facilities along 92<sup>nd</sup> Avenue NE between NE 13<sup>th</sup> Street and NE 20<sup>th</sup> Street in Clyde Hill to underground.
- 48 THE COMMISSION ORDERS FURTHER That PSE's tariff Schedule 70 does not apply to the conversion of PSE's overhead facilities on private property along private drives that are within the Clyde Hill Conversion Area, and PSE is entitled to recover fully the costs it incurs in completing such conversion.

DATED at Olympia, Washington, and effective this 28<sup>th</sup> day of January 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
MARILYN SHOWALTER, Chairwoman

  
RICHARD HEMSTAD, Commissioner

  
PATRICK J. OSHIE, Commissioner

DOCKET NOS. UE-010891 and UE-011027

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**NOTICE TO PARTIES:** This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

# Appendix A

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WNU-60

First Revised Sheet No. 70  
Canceling Original  
Sheet No. 70

**PUGET SOUND ENERGY  
Electric Tariff G**

**SCHEDULE 70  
CONVERSION TO UNDERGROUND SERVICE  
IN RESIDENTIAL 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 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, driveways, pavement, and restoration thereof. Includes excavating, trenching, select backfill, compaction to Company specifications, 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 areas which are zoned and used exclusively for residential purposes, provided that at the time of such installation the Company shall have adequate operating rights, and provided further that the Conversion Area must be not less than one (1) city block in length, or in the absence of city blocks, not less than six (6) contiguous building lots abutting each side of the public thoroughfare with all real property on both sides of each public thoroughfare 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:
  - a. The Company and the governmental authority having jurisdiction in 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

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

Issued by Puget Sound Energy

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

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Second Revised Sheet No. 70-a  
Cancelling First Revised  
Sheet No. 70-a

WNU-60

**PUGET SOUND ENERGY**  
**Electric Tariff G**

**SCHEDULE 70**  
**CONVERSION TO UNDERGROUND SERVICE**  
**IN RESIDENTIAL AREAS**  
(Continued)

written contract (the "Contract" herein) for the installation of such system, which contract shall be consistent with this schedule and shall be in a form satisfactory to the Company.

b. The Contract shall obligate said governmental authority, or property owners, to do the following:

- (1) Pay the Company at the rate of \$20.33 per centerline foot of all public thoroughfares within the Conversion Area utilizing surface-mounted transformers; or pay the Company at the rate of \$25.54 per centerline foot of all public thoroughfares within the Conversion Area utilizing subsurface-mounted transformers.
- (2) Provide all Trenching and Restoration required for the installation of the Main Distribution System.

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 government authority, said amounts shall be payable to the Company within thirty (30) days following the date the Main Distribution System is energized.
- (2) If the conversion is accomplished pursuant to a contract with any other person(s) 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 within thirty (30) days following the date the Main Distribution System is energized. In addition, the person(s) or entity shall furnish the Company adequate assurance of its ability to fulfill the provisions of 3.b.(2) above.

4. OWNERSHIP FOR FACILITIES - The Company shall own, operate, and maintain all electrical facilities which it installs pursuant to this schedule.

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WASH. UT. & TRANS. COMM.

First Revised Sheet No. 70-b  
Canceling Original  
Sheet No. 70-b

WNU-60

ORIGINAL

**PUGET SOUND ENERGY  
Electric Tariff G**

**SCHEDULE 70  
CONVERSION TO UNDERGROUND SERVICE  
IN RESIDENTIAL AREAS  
(Continued)**

- 5. OPERATING RIGHTS - Adequate legal rights for the construction, operation, repair, and maintenance of the Main Distribution System in a form or forms satisfactory to the Company shall be provided by governmental authority or by the owners of real property within the Conversion Area at no cost to the Company.
- 6. 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.
- 7. STREET LIGHTING INSTALLATIONS - Separate arrangements must be made for installation or replacement of street lighting units at the time of conversion.
- 8. UNDERGROUND SERVICE LINES - Underground Service Lines shall be installed as provided in Schedule 86 of this tariff.
- 9. 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

*R. E. Davis*

Ronald E. Davis

Vice President, Regulation & Utility Planning

# Appendix B

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APR 10 1997

WASH. UT. & TRANS. COMM.

ORIGINAL

021006

First Revised Sheet No. 71  
Canceling Original  
Sheet No. 71

WNU-60

**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:

(K) Transferred to Sheet No. 71-a

Issued:

April 10, 1997

Effective:

April 11, 1997

Issued by Puget Sound Energy

By

*Ronald E. Davis*

Ronald E. Davis

Vice President, Regulation & Utility Planning

(K)  
|  
(K)



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APR 10 1997

WASH. UT. & TRANS. COMM

ORIGINAL

WNU-60

Second Revised Sheet No. 71-a  
Canceling First Revised  
Sheet No. 71-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. (M)
- 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, (M) Transferred from Sheet No. 71 (K) Transferred to Sheet No. 71-b (K)

Issued: April 10, 1997

Effective: April 11, 1997

Issued by Puget Sound Energy

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

RECEIVED  
APR 10 1997  
WASH. UT. & TRANS. COMM.

First Revised Sheet No. 71-b  
Canceling Original  
Sheet No. 71-b

WN U-60

ORIGINAL

**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. (M)

**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.

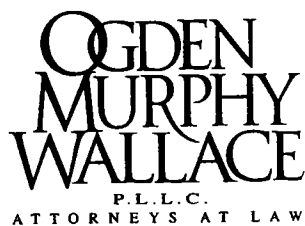
**7. UNDERGROUND SERVICE LINES** - Underground Service Lines shall be installed, owned, and maintained by each Customer as provided in Schedule 86 of this tariff.

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

(M) Transferred from Sheet No. 71-a

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

By *R. E. Davis* Issued by Puget Sound Energy  
Ronald E. Davis Vice President, Regulation & Utility Planning



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FEB 25 2002

ATTY GEN DIV  
WUTC

MEMORANDUM OF TRANSMITTAL

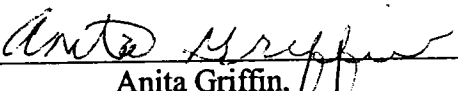
**Date:** February 21, 2002

**To:** Kirstin S. Dodge, Perkins Coie, via Certified Mail  
Simon Fitch, Office of the Attorney General, via Certified Mail  
Mary M. Tennyson, Office of the Attorney General, via Certified Mail  
Carol S. Arnold, Preston Gates Ellis, via Certified Mail  
Dennis J. Moss, Administrative Law Judge, via Certified Mail  
Marilyn Showalter, Chairwoman, WUTC, via ABC Legal Messenger

**Re:** City of Clyde Hill v. WUTC and PSE  
King County Superior Court Cause No. 02-2-07014-1 SEA

**Enclosed:** 1) Order Setting Case Schedule  
2) Conformed Petition for Review of the Decision Made by the Utilities and Transportation Commission

OGDEN MURPHY WALLACE, P.L.L.C.

By   
Anita Griffin,  
Legal Assistant to Greg A. Rubstello

Established 1902

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

NO. **02-2-07014-1SEA**

vs. Petitioner(s)  
Respondent(s)

ORDER SETTING CASE SCHEDULE  
(Administrative Appeal)

ASSIGNED JUDGE: **BRUCE HILYER**

TRIAL DATE: **Mon 9/16/02**  
SCOMIS CODE: \*ORSCS

On Fri 2/15/02, a notice of appeal has been filed. The King County Superior Court issues an *Order Setting Case Schedule (Administrative Appeal)* when a decision of an administrative agency or appeal board is appealed to the King County Superior Court.

I. NOTICES

THE PERSON APPEALING A DECISION OF AN ADMINISTRATIVE AGENCY/APPEAL BOARD MUST:

1. File a *Notice of Appeal* with the administrative agency/appeal board within the time frames as instructed by applicable statutes.
2. Serve a copy of the *Notice of Appeal* and this *Order Setting Case Schedule (Administrative Appeal) (Schedule)* (including these Notices) on all other parties to this action. You, as the person who started this appeal, must make sure the other person and/or agency is notified of your action and gets a copy of the Schedule. You may choose certified mail, personal delivery by someone other than you, or a "process serving service" (see telephone directory). Your signature must appear on this form showing that you understand that you must make sure the other person and/or agency gets a copy of this form.
3. Pay the statutory filing fee to the Clerk of the Superior Court in which the *Notice of Appeal* is filed, unless the party filing the *Notice* first secures an "Order of *In Forma Pauperis*" from the Presiding Judge of the Superior Court, or is exempt from paying fees by statute.

"I understand that I am required to give a copy of these documents to all parties in this case."

Greg A. Rubstella ; [Signature]  
Print Name Sign Name

ORDER SETTING ADMINISTRATIVE APPEAL CASE SCHEDULE

RECEIVED  
King County Superior Court Clerk's Office  
FEB 15 2002  
Cashier Section  
Superior Court Clerk

Revised August 2000

## I. NOTICES (continued)

### NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the rules of the court – especially those referred to in this Schedule. In order to comply with the Schedule, it will be necessary for attorneys and parties to pursue their appeals vigorously from the day they are filed. All events must occur promptly. If they are late, the Superior Court Clerk is authorized by the *King County Superior Court Local Rules* to schedule the appeal for a dismissal hearing.

### PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLR 41(b)(2)(A) to present an *Order of Dismissal*, without further notice, for failure to appear at the scheduled Trial Date.

### NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

All parties to this action must keep the court informed of their addresses. When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

### NOTICE OF NON-COMPLIANCE FEES:

All parties will be assessed a fee authorized by King County Code 4.71.050 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Rule 41.

## II. CASE SCHEDULE

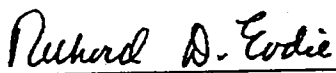
CASE EVENT	DEADLINE or EVENT DATE
Notice of Appeal/Petition for Review Filed and Schedule Issued	Fri 2/15/02
✓ Affidavit of Service or Confirmation of Service	Fri 3/15/02
✓ Filing of Notice of Appearance (if applicable)	Fri 3/15/02
✓ Filing of Administrative Agency Record	Fri 4/19/02
✓ Filing of Jury Demand (if applicable)	Fri 5/10/02
✓ Filing of Petitioner's Trial Brief	Mon 7/29/02
<b>DEADLINE</b> to Comply with Settlement Conference Requirement [See attached Order]	
✓ Filing of Respondent's Trial Brief	Mon 8/19/02
✓ Filing of Petitioner's Reply Brief	Tue 9/03/02
Review Hearing or Trial Date [See KCLR 40]	Mon 9/16/02

✓ Indicates a document that must be filed with the Superior Court Clerk's Office by the date shown.

## III. ORDER

Pursuant to King County Local Rule 4 (KCLR 4), It is ORDERED that all parties involved in this action shall comply with the schedule listed above and that failure to meet these event dates will result in the dismissal of the appeal. It is FURTHER ORDERED that the party filing this action **must** serve this *Order Setting Case Schedule (Administrative Appeal)* and attachment on all other parties.

DATED: 2/15/2002

  
 \_\_\_\_\_  
 Richard D. Eddie

#### IV. ORDER ON ASSIGNMENT TO INDIVIDUAL CALENDAR

#### READ THIS ORDER PRIOR TO CONTACTING YOUR ASSIGNED JUDGE

This case has been assigned to the Individual Calendar (I.C.) Judge whose name appears in the caption of this *Schedule*. The I.C. Judge will preside over and manage this case and will conduct trials, motions, and conferences in this matter until completion of all issues.

**COMPLEX LITIGATION:** If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

The following procedures hereafter apply to the processing of this case:

#### Applicable Rules:

Except as specifically modified below, all the provisions of KCLR 4-26 shall apply to the processing of civil cases before I.C. Judges.

#### I.C. Schedule and Requirements:

A. **Trial:** Trial is confirmed for 9:00 a.m. on the date on the *Schedule*. The Friday before trial, the assigned court will contact the parties to determine the status of the case and inform the parties of any adjustments to the Trial Date.

B. **Joint Status Report:** 120 days before the Trial Date, parties shall prepare and file, with a copy to the assigned judge, a joint status report setting forth the nature of the case, whether a jury demand has been filed, the expected duration of the trial, the status of discovery, the need to amend pleadings or add parties, whether a settlement conference has been scheduled, special problems, etc. Plaintiff's/Petitioner's counsel is responsible for proposing and contacting the other parties regarding said report.

C. **Pretrial Conference:** A pretrial conference will be scheduled by the assigned judge. Approximately thirty (30) days before the conference, you will receive an *Order Setting Pretrial Conference* that will set the specific date and time for the conference. The conference will be held in the courtroom of the assigned judge, and the following nonexclusive list of matters will be addressed at that time:

- 1) Status of settlement discussions;
- 2) Jury trial – selection and number of jurors;
- 3) Potential evidentiary problems;
- 4) Potential motions *in limine*;
- 5) Use of depositions;
- 6) Deadlines for nondispositive motions;
- 7) Procedures to be followed with respect to exhibits;
- 8) Witnesses – identity, number, testimony;
- 9) Special needs (e.g. interpreters, equipment);
- 10) Trial submissions, such as briefs, Joint Statement of Evidence, jury instructions, voir dire questions, etc.
- 11) Receipt of Public Assistance Payments (Domestic Cases) – **If any party is on public Assistance, notify the Prosecutor's Office of this proceeding now at 296-9020.**

#### D. Settlement/Mediation/ADR:

1) 45 days before the Trial Date, counsel for plaintiff shall submit a written settlement demand. Ten (10) days after receiving plaintiff's written demand, counsel for defendant shall respond (with a counteroffer, if appropriate).

2) 30 days before the Trial Date, a settlement/mediation/ADR conference shall have been held.  
**FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.**

3) 20 days before the Trial Date, counsel for plaintiff shall advise the assigned judge of the progress of the settlement process.

SEE NEXT PAGE

I.C. Motions Procedures:

A. Noting of Motions

1) Dispositive Motions: All Summary Judgment or other motions that dispose of the case in whole or in part will be heard with oral argument before the assigned judge. The moving party must arrange with the bailiff a date and time for the hearing, consistent with the court rules.

2) Nondispositive Motions: These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. **Rather than noting a time of day, the Note for Motion should state "Without Oral Argument."**

3) Motions in Family Law Cases: Discovery motions to compel, motions in limine and motions relating to trial dates shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions Calendar.

4) Emergency Motions: Emergency motions will be allowed only upon entry of an *Order Shortening Time*. However, emergency discovery disputes may be addressed by telephone call, and without written motion, if the judge approves.

B. Filing of Papers All original papers must be filed with the Clerk's Office on the 6th floor. *The working copies of all papers in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge.* The assigned judge's working copy must be delivered to his/her courtroom or to the judges' mailroom. Do not file working copies with the Motions Coordinator, except those motions to be heard on the Family Law Motions Calendar, in which case the working copies should be filed with the Family Law Motions Coordinator.

1) Original Proposed Order: Each of the parties must include in the materials submitted on any motion an original proposed order sustaining his/her side of the argument. Should any party desire a copy of the order as signed and filed by the judge, a preaddressed, stamped envelope shall accompany the proposed order.

2) Presentation of Orders: All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department. Formal Proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or Formal Proof may be entered in the Ex Parte Department. If final orders and/or Formal Proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.

C. Form: Memoranda/briefs for matters heard by the assigned judge may not exceed 24 pages for dispositive motions and 12 pages for nondispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

**IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PETITIONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.**

*Richard D. Eadie*  
Richard D. Eadie

JUDGE



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**BRUCE HILYER**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

**02-2-07014-1SEA**

CITY OF CLYDE HILL,  
  
Petitioner,  
  
v.  
  
WASHINGTON STATE UTILITIES AND  
TRANSPORTATION COMMISSION; and  
PUGET SOUND ENERGY, INC., ,  
  
Respondents.

NO.  
  
PETITION FOR REVIEW OF THE DECISION  
MADE BY THE UTILITIES AND  
TRANSPORTATION COMMISSION

**RECEIVED**  
In King County Superior Court Clerk's Office  
  
FEB 15 2002  
  
Cashier Section  
Superior Court Clerk

**I. NAME AND MAILING ADDRESS OF PETITIONER**

City of Clyde Hill  
9605 NE 24<sup>th</sup> Street  
Clyde Hill, WA 98004  
  
Telephone: (425) 453-7800.  
Fax: (425) 462-1936  
City Administrator: Mitchell Wasserman

**II. NAME AND MAILING ADDRESS OF PETITIONER'S ATTORNEY**

Greg A. Rubstello  
John D. Wallace  
Ogden Murphy Wallace, PLLC  
1601 Fifth Avenue, Suite 2100  
Seattle, WA 98101  
  
Telephone: (206) 447-7000  
Fax: (206) 447-0215

**COPY RECEIVE AND  
RETURN**

1 **III. NAME AND MAILING ADDRESS OF THE AGENCY WHOSE ACTION IS AT**  
2 **ISSUE**

3 Washington Utilities and Transportation Commission  
4 1300 S. Evergreen Park Drive SW  
5 PO Box 47250  
6 Olympia, WA 98504-7250

7 Telephone: (360) 664-1160  
8 Fax: (360) 586-1150

9 **IV. IDENTIFICATION OF AGENCY ACTION AT ISSUE**

10 Attached hereto is a true copy of the "Third Supplemental Order: Declaratory Order on  
11 Motions for Summary Judgment" dated January 28, 2002. Clyde Hill seeks judicial review of the  
12 order as it affects Clyde Hill in Docket No. UE-011027.

13 **V. IDENTIFICATION OF PERSONS WHO ARE PARTIES IN ANY ADJUDICATED**  
14 **PROCEEDING THAT LEAD TO THE AGENCY ACTION**

15 Puget Sound Energy, Inc., was the respondent in the proceedings before the Washington  
16 Utilities and Transportation Commission ("WUTC"). The City of Clyde Hill proceeding before the  
17 WUTC consolidated with the case of City of SeaTac v. Puget Sound Energy, Inc. The agency action  
18 at issue that was a final order in both consolidated proceedings.

19 **VI. FACTS TO DEMONSTRATE THAT PETITIONER IS ENTITLED TO OBTAIN**  
20 **JUDICIAL REVIEW**

21 The Washington Utilities and Transportation Commission issued the order attached hereto  
22 and referenced under IV above. The City of Clyde Hill is entitled to judicial review as provided for  
23 in Chapter 34.05 of the Revised Code of Washington.

24 **VII. PETITIONER'S REASONS FOR BELIEVING THAT RELIEF SHOULD BE**  
25 **GRANTED**

26 7.1 The agency has erroneously interpreted or applied the law.

27 7.2 The order is not supported by substantial evidence.

28 7.3 The order is inconsistent with the rule of the agency and the agency has failed to state  
facts and reasons to demonstrate a rational basis for the inconsistency.

7.4 The order is arbitrary or capricious.

1 **VIII. REQUEST FOR RELIEF**

2 The petitioner, City of Clyde Hill, requests the following relief:

3 8.1 That the agency decision and order attached hereto be reversed.

4 8.2 That the petitioner, City of Clyde Hill, be granted the relief requested by the city of  
5 the Washington Utilities and Transportation Commission in its petition and other pleadings filed  
6 with the Washington Utilities and Transportation Commission in WUTC Docket No. UE-010911.

7 8.3 That judgments be entered against Puget Sound Energy, Inc., and in favor of the City  
8 of Clyde Hill for its costs and disbursements, including reasonable attorney's fees.

9 8.4 For such other and further relief as is just and appropriate in the determination of the  
10 court.

11 DATED this 15<sup>th</sup> day of February, 2002.

12 OGDEN MURPHY WALLACE, P.L.L.C.

13  
14 By: 

15 Greg A. Rubstello, WSBA #6271  
16 Attorney for Petitioner  
17 City Of Clyde Hill

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the PETITION FOR REVIEW OF THE DECISION, filed by the City of Clyde Hill, upon all parties of record in this proceeding, as noted below:

Via U.S. Mail

Kirstin S. Dodge  
Perkins Coie  
411 - 108<sup>th</sup> Avenue NE, Suite 1800  
Bellevue, WA 98004

Simon Fitch  
Office of the Attorney General  
900 Fourth Avenue, Suite 2000  
Seattle, WA 98164-1012

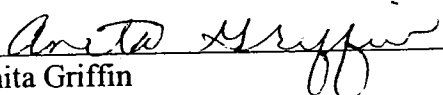
Mary M. Tennyson  
Office of the Attorney General  
1400 South Evergreen Park Drive SW  
PO Box 40128  
Olympia, WA 98504-0128

Carol S. Arnold  
Preston Gates Ellis  
701 Fifth Avenue, Suite 5000  
Seattle, WA 98104-7078

Via ABC Legal Messenger:

Dennis J. Moss, Administrative Law Judge  
Washington Utility and Transportation Commission  
1300 South Evergreen Park Drive SW  
Olympia, WA 98504-7250

DATED at Seattle, Washington, this 14<sup>th</sup> day of February, 2002..

  
\_\_\_\_\_  
Anita Griffin  
Legal Assistant to Greg A. Rubstello

SERVICE DATE

JAN 28 2002

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

CITY OF SEATAC,	)	
	)	
Petitioner,	)	
	)	
v.	)	DOCKET NO. UE-010891
	)	
PUGET SOUND ENERGY, INC.	)	
	)	
Respondent.	)	
.....	)	
CITY OF CLYDE HILL,	)	
	)	DOCKET NO. UE-011027
Petitioner,	)	
	)	
v.	)	THIRD SUPPLEMENTAL ORDER:
	)	DECLARATORY ORDER ON
PUGET SOUND ENERGY, INC.	)	MOTIONS FOR SUMMARY
	)	DETERMINATION
Respondent.	)	
.....	)	

*SYNOPSIS: The Commission interprets Puget Sound Energy, Inc.'s tariff Schedules 70 and 71, and determines the applicability of the two schedules to portions of underground relocation projects in the cities of SeaTac and Clyde Hill.*

**PROCEEDINGS:** Docket No. UE-010891 concerns a Complaint and Petition for Declaratory Relief filed by the City of SeaTac on June 19, 2001. Docket No. UE-011027 concerns a Complaint and Petition for Declaratory Relief filed by the City of Clyde Hill on July 18, 2001. The complaints request that the Commission enter a declaratory order, or orders, establishing the respective rights and obligations of the cities and Puget Sound Energy, Inc. (PSE) in connection with PSE's administration of its tariffs that provide for the conversion of overhead electric distribution systems to underground systems under Electric Tariff G, Schedules 70 and 71. The Commission consolidated Docket Nos. UE-010891 and UE-011027 by order entered on July 30, 2001.

2 The Parties requested that the Commission resolve these matters on a paper record including certain stipulated facts. SeaTac and Clyde Hill filed their respective Motions for Summary Determination by August 13, 2001, as required under the procedural schedule. PSE filed its Response and Cross-Motion for Summary Determination on August 24, 2001. SeaTac and Clyde Hill filed their respective Replies on August 31, 2001.

3 **PARTIES:** Carol S. Arnold and Laura K. Clinton, Preston Gates Ellis, LLP, Seattle, Washington, represent the City of SeaTac. John D. Wallace, City Attorney, Clyde Hill, Washington, and Greg A. Rubstello, Ogden Murphy Wallace, P.L.L.C. represent the City of Clyde Hill. Kirsten Dodge and Bill Bue, Perkins Coie, LLP, Bellevue, Washington, represent Puget Sound Energy. Mary Tennyson, Senior Assistant Attorney General, Olympia, Washington, represents Commission Staff.

4 **COMMISSION:** The Commission denies the City of SeaTac's Motion for Summary Determination on its Complaint and Petition for Declaratory Judgment. The Commission denies Clyde Hill's Motion for Summary Determination on its Complaint and Petition for Declaratory Judgment. The Commission grants PSE's Cross-Motion for Summary Determination.

### MEMORANDUM

#### **I. Background and Procedural History**

5 The City of SeaTac filed a Complaint and Petition for Declaratory Relief on June 19, 2001, initiating Docket No. UE-010891. SeaTac's pleading raised issues concerning the interpretation and application of PSE's tariff Schedules 70 and 71, which concern the conversion of overhead distribution facilities to underground facilities in residential and commercial areas in municipalities. PSE filed its Answer to SeaTac's Complaint and Petition on June 29, 2001. Later, on July 18, 2001, following certain process described below, the City of Clyde Hill filed a Complaint and Petition for Declaratory relief that raised issues factually and legally similar to those raised by SeaTac. The Clyde Hill matter was docketed under No. UE-011027. Generally, the Parties dispute the scope of PSE's and the cities' respective rights and obligations in connection with the conversion of certain overhead electric distribution facilities to underground facilities.

6 The Commission convened a joint prehearing conference in the SeaTac docket (*i.e.*, No. UE-010891), and in somewhat related proceedings in Docket Nos. UE-010778 and UE-010911, on April 23, 2001, in Olympia, Washington, before Administrative Law Judge Dennis J. Moss. Based on discussions at the prehearing conference, the Commission found that the pleadings in Docket Nos. UE-010778 and UE-010911 presented common issues of fact and law, and consolidated the two dockets. The Commission's resolution of the issues in Docket Nos. UE-010778 and UE-010911 (consolidated) is the subject of a separate order entered today.

7 The City of Clyde Hill initially sought to press its case via intervention in Docket No. UE-010891. It became apparent at the prehearing conference, however, that Clyde Hill should file its own pleading for separate docketing, even though it was also apparent that any such docket likely would be consolidated with Docket No. UE-010891. As noted above, Clyde Hill did file its own Complaint and Petition for Declaratory Relief in Docket No. UE-011027, and the matter was consolidated with Docket No. UE-010891.

8 Discussion at the prehearing conference also suggested that Docket Nos. UE-010891 and UE-011027 (consolidated) might be amenable to resolution on stipulated facts and cross-motions for summary determination pursuant to WAC 480-09-426. Accordingly, a schedule was set for such process. On August 2, 2001, the Parties filed their Joint Statement of Issues, Stipulations of Fact, and Stipulated Exhibit List. On August 13, 2001, SeaTac and Clyde Hill filed their respective Motions for Summary Determination. PSE filed its Response to Motions for Summary Determination and Cross Motion for Summary Determination on August 24, 2001. SeaTac filed its Reply on August 31, 2002, and Clyde Hill filed its Reply on September 4, 2001. The Commission heard oral argument on October 11, 2001.

## II. Discussion and Decision

### A. Governing Statutes, Rules, and Tariffs

9 Schedules 70 and 71 of PSE's Electric Tariff G are attached as Appendices A and B to this Order.

10 The following statutes and rules are most central to our consideration of the matters raised by the Parties' pleadings and motions:

**RCW 80.01.040 General Powers and Duties of Commission.**

The utilities and transportation commission shall:

\* \* \*

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies . . . .

**80.28.010 Duties as to rates, services, and facilities . . . .**

(1) All charges made, demanded or received by any . . . electrical company . . . for . . . electricity . . . , or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every . . . electrical company . . . shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any . . . electrical company . . . affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

**80.28.020 Commission to fix just, reasonable, and compensatory rates.**

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any . . . electrical company . . . for . . . electricity . . . , or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall



determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.

**80.28.080 Published rates to be charged—Exceptions.**

No . . . electrical company . . . , shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time . . .

No . . . electrical company . . . shall extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

**80.28.90 Unreasonable preference prohibited.**

No . . . electrical company . . . shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

**80.28.100 Rate discrimination prohibited—Exception.**

No . . . electrical company . . . shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for . . . any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

- 11 RCW 34.05.413 establishes our authority to conduct adjudicatory proceedings. RCW 34.05.240 and WAC 480-09-230 establish our authority to enter declaratory orders and establish certain process related to our consideration of petitions for such relief.
- 12 WAC 480-09-426 provides that parties to an adjudication may file motions for summary determination. Pursuant to WAC 480-09-426(2), a party requesting summary determination must show that "the pleadings filed in the proceeding, together with any properly admissible evidentiary support, show that there is no genuine issue as to any material fact and the moving party is entitled to summary determination in its favor." The Commission considers motions for summary determination under "the standards applicable to a motion made under CR 56 of the civil rules for superior court." *Id.* The civil rules provide:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

*CR 56(c)*. A material fact is one of such nature that it affects the outcome of the litigation. *Greater Harbor 2000 v. Seattle*, 132 Wn.2d 267, 279, 937 P.2d 1082 (1997).

#### B. Legal Standards and Analytical Framework.

- 13 Filed and approved tariffs such as Schedules 70 and 71 have the force and effect of state law. *General Tel. Co. v. City of Bothell*, 105 Wn.2d 579, 585 (1986). When, as here, parties dispute what particular provisions require, we must look first to the plain meaning of the tariff. *Nat'l Union Ins. Co. v. Puget Power*, 94 Wn. App. 163, 171, 972 P.2d 481 (1999). If the tariff language is plain and unambiguous, there is no need to resort to rules of construction. *Whatcom County v. Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996); *Food Servs. Of Am. v. Royal Heights, Inc.*, 123 Wn.2d 779, 784-85, 871 P.2d 590 (1994); *Waste Management of Seattle v. Utilities & Transp. Comm'n*, 123 Wn. 2d 621, 629, 869 P.2d 1034 (1994); *Vita Food Prods., Inc. v. State*, 91 Wn.2d 132, 134, 587 P.2d 535 (1978). If the tariff language is not plain, or is ambiguous, the Commission may examine the legislative history and other evidence to determine the meaning

of the tariff and how it should be applied to the facts at hand. In interpreting an ambiguous tariff the Commission is like a court interpreting an ambiguous statute. As the Court says in *Whatcom County*:

If the statute is ambiguous, the courts must construe the statute so as to effectuate the legislative intent. In so doing, we avoid a literal reading if it would result in unlikely, absurd or strained consequences. The purpose of an enactment should prevail over express but inept wording. The court must give effect to legislative intent determined 'within the context of the entire statute.' Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. The meaning of a particular word in a statute 'is not gleaned from that word alone, because our purpose is to ascertain legislative intent of the statute as a whole.'

128 Wn.2d at 546 (citations omitted); see *City of Seattle v. Dept of L&I*, 136 Wn.2d 693, 701, 965 P.2d 619 (1998).

### C. Substantive Issues

14 The central issue in this consolidated proceeding is whether PSE's schedule 70 (governing the conversion of overhead facilities to underground facilities in residential areas) or Schedule 71 (governing conversion of overhead facilities to underground facilities in commercial and certain other areas) applies to all or portions of certain projects planned or underway in the respective cities. The material facts are undisputed.

#### 1. Stipulated Facts Related to SeaTac.

15 SeaTac and PSE stipulated to the following facts in their Joint Statement of Issues, Stipulations of Fact, and Stipulated Exhibit List filed on August 2, 2001:

- a. The City of SeaTac ("SeaTac") has requested and PSE has agreed to convert its overhead facilities along South 170<sup>th</sup> Street between 37<sup>th</sup> Avenue South and Military Road South (the "SeaTac Conversion Area") to underground.

- b. SeaTac claims that PSE should undertake the conversion under the terms of Schedule 70, while PSE claims that Schedule 71 applies to the conversion.
- c. South 170th Street is a collector arterial that provides access between Military Road South and International Boulevard (Highway 99), as well as SeaTac Airport. International Boulevard and SeaTac Airport are commercial areas. The buildings currently located within the SeaTac Conversion Area are residential dwellings.
- d. Stipulated Exhibit A is a true and correct copy of the aerial photograph identified as "South 170<sup>th</sup> Street Phase 2 Improvements Project Area."
- e. Stipulated Exhibit B is a true and correct copy of the map identified as "City of SeaTac Zoning."
- f. Stipulated Exhibit C is a true and correct copy of the map identified as "City of SeaTac Comprehensive Plan."
- g. PSE's existing overhead distribution system in the SeaTac Conversion Area is a three-phase feeder system, not a single-phase system. The service lines from the distribution system are single-phase.

## 2. Stipulated Facts Relating to Clyde Hill:

16

Clyde Hill and PSE stipulated to the following facts in their Joint Statement of Issues, Stipulations of Fact, and Stipulated Exhibit List filed on August 2, 2001:

- a. The City of Clyde Hill ("Clyde Hill") has requested that PSE convert its overhead facilities to underground along 92nd Avenue N.E. between approximately N.E. 13th Street and N.E. 20th Street, along N.E. 13th Street from 92nd Avenue N.E. eastward to the end of N.E. 13th Street, along N.E. 19th Street from 92nd Avenue N.E. to 94th Avenue N.E., along N.E. 20th Street from just west of 92nd Avenue N.E. to 96th Avenue N.E., along 94th Avenue N.E. from N.E. 19th Street to approximately N.E. 21st Street, and along private drives and through private property running east of and perpendicular to 92nd Avenue N.E. and west of and perpendicular to 94th Avenue N.E. ("Clyde Hill Project"). Stipulated Exhibit D shows the details of the locations of facilities that Clyde Hill wishes to convert to underground.

- b. PSE has agreed that facilities in the following conversion areas within the Clyde Hill Project should be performed under Schedule 70: N.E. 13th Street from 92nd Avenue N.E. eastward to the end of N.E. 13th Street, N.E. 20th Street from just west of 92nd Avenue N.E. to 96th Avenue N.E., and along 94th Avenue N.E. from N.E. 19th Street to approximately N.E. 21st Street. See Exhibit D, pink highlighting. PSE's existing overhead facilities in these areas are a single-phase system.
- c. PSE claims that facilities in the following conversion area should be performed under Schedule 71: along 92nd Avenue N.E. between approximately N.E. 13th Street and N.E. 20th Street. See Exhibit D, yellow highlighting. PSE's existing overhead facilities along 92nd Avenue N.E. are a three-phase feeder system, not a single-phase system.
- d. PSE claims that facilities in the following conversion areas are not subject to either Schedule 70 or Schedule 71, and should be converted only if Clyde Hill pays 100% of the actual costs of the conversion: along private drives and through private property running east of and perpendicular to 92nd Avenue N.E. and west of and perpendicular to 94th Avenue N.E. See Exhibit D, green highlighting. PSE's existing overhead facilities in these areas are located on PSE easements, or by invitation of the property owner, and there is no public thoroughfare in these areas. Clyde Hill claims that Schedule 70 is applicable to these facilities.
- e. Clyde Hill consists of approximately 2,900 residents and 1,100 households. There are two commercially developed lots within the corporate limits of the City and certain public and private schools and churches and city buildings, all of which are located outside the conversion area and LID boundary and receive electrical service from service lines outside of the conversion area and LID boundary. The commercially developed lots contain a gas station/convenience store and a Tully's Coffee shop.
- f. The Clyde Hill Project arose after a neighborhood of about 100 homes in a contiguous location petitioned the City Council to form a local improvement district (LID) for the purpose of burying the utility lines and installing street lighting in the neighborhood.
- g. The City paid PSE \$4,000.00 for developing a set of preliminary design plans.

- h. On June 22, 2000, PSE provided to Clyde Hill PSE's estimate of the costs of the conversion for the Clyde Hill Project based on PSE's assertion of the application of Schedules 70 and 71, as described above. Stipulated Exhibit E is a true and correct copy of PSE's Project Estimate for Clyde Hill dated June 22, 2000. Clyde Hill advised PSE that it disagreed with PSE's position, and that it felt that Schedule 70 applied to the entire Project.
- i. Approximately one year later, on June 12, 2001, after a public hearing, the City Council passed Ordinance No. 836 (Stipulated Exhibit F) creating the Local Improvement District No. 2001-01 for the conversion of overhead to underground facilities and ordering "the making of certain improvements consisting of the undergrounding of overhead lines as described in the property owners' petition therefore, to include such proper appurtenances, if any, as may be determined by the Council."
- j. The total area within the boundary of the LID is zoned R1 Residential and is developed with single family residential structures. Stipulated Exhibit G is a true and correct copy of the City map depicting the zoning of the LID and boundary.
- k. The buildings currently located within the Clyde Hill Project are all residential dwellings.
- l. The electrical distribution lines proposed to be converted to underground in the LID are 15,000 volts or less.

### **3. Commission Analysis and Decision.**

*a. Which rate schedule applies to three-phase lines running through residential areas?*

- 17 The cities argue that Schedule 70 is unambiguous and applies to the facts by its plain terms. They focus on the residential character of the land-use on property adjacent to the roadways as the sole criterion by which the Commission should define the clause “in areas which are zoned and used exclusively for residential purposes.” Since there is no dispute that the land-use within the area where undergrounding is to occur is residential, the cities argue it follows that Schedule 70 applies.
- 18 In a similar vein, the cities argue that Schedule 71 does not apply because the residential character of the land-use adjacent to the undergrounding project means the project does not meet the Schedule 71 criterion: “areas of such municipalities which have electrical load requirements which are comparable with developed commercial areas.”
- 19 PSE argues that the tariff contemplates looking beyond the land-use in the Conversion Area to determine whether there is “exclusive” residential use. PSE argues that the character of the infrastructure (both the roadway and the electric system) also is a key criterion. Thus, PSE argues that because the roads are arterial collectors, which connect commercial areas that require three-phase power, and because the facilities are a three-phase distribution backbone system that runs along those roadways, the areas in question are not “used exclusively for residential purposes.”
- 20 PSE also argues that the tariff language is ambiguous, and that it is appropriate to look beyond the words to the legislative history. The “legislative history” PSE focuses on is the evidence and analysis that were used to determine the current rates and charges, which were based on the cost of undergrounding single-phase facilities, and which expressly excluded the significantly higher cost of undergrounding three-phase facilities. PSE urges us to infer from this history that Schedule 70 does not and was never meant to apply to the undergrounding of three-phase distribution systems.
- 21 PSE argues that Schedule 71 applies because the engineering characteristics of the distribution system along these roadways are dictated by the existence of

commercial electric load requirements (*i.e.*, three-phase power) at one or both ends of the arterial collector roadways. Thus, PSE argues, the project falls within the scope of Schedule 71's "areas of such municipalities which have electrical load requirements which are comparable with developed commercial areas." PSE contends that it does not matter whether the commercial areas served by the three-phase system are adjacent to the project area, as in the SeaTac case, or in some other part of the community, as in the Clyde Hill case.

22 We find that PSE's tariff Schedule 70 suffers from ambiguity. Viewed from different perspectives, as the parties have here, the schedule-applicability language at issue could reasonably be interpreted to mean quite different things, leading to entirely different results when applied to the facts at hand. The language in Section 2 of Schedule 70 that defines the availability of the rate schedule in terms of "areas which are zoned and used exclusively for residential purposes," if viewed strictly from a land-use perspective in the context of the stipulated facts, supports the interpretation argued by the cities. When we consider, however, that the rate schedule does not concern the governance of land-use, but rather the governance of services provided by an electric utility, the interpretation argued by PSE is at least equally plausible.

23 Guided by the principles stated in *Whatcom County, supra*, and reiterated in numerous Washington Supreme Court cases, we conclude that PSE's interpretation is the more reasonable of the two. Specifically, we find that the criterion "used exclusively for residential purposes" in Section 2 of Schedule 70 refers to electrical characteristics as well as land-use characteristics. In this case, the three-phase feeder lines that run along 170<sup>th</sup> Street in SeaTac, and along 92<sup>nd</sup> Avenue in Clyde Hill, are stipulated to be present in those locations to support PSE's distribution of electricity necessary to meet commercial load requirements. The areas in question, thus, are not used exclusively by PSE for residential purposes but, rather, are used by PSE for commercial purposes. It follows that Schedule 70 does not apply to the undergrounding projects along 170<sup>th</sup> Street in SeaTac, and along 92<sup>nd</sup> Avenue in Clyde Hill.

24 Alternatively, the undergrounding projects along 170<sup>th</sup> Street in SeaTac, and along 92<sup>nd</sup> Avenue in Clyde Hill are in areas of the respective municipalities that have electrical load requirements that are "comparable with developed commercial areas." Our focus, again, is on PSE's use of the right-of-way, or along the right-of-way, for purposes of electric power distribution. The pre



of commercial load requirements in various geographic locations in and around the specific project locations requires that PSE install three-phase feeders along specific routes. The routes at issue were selected as suitable for that purpose and PSE uses those routes to provide power to meet commercial load requirements. Thus, Schedule 71 applies by its terms to undergrounding projects in the locations at issue whether one interprets the route as "commercial" or as an area that has "electrical load requirements which are comparable with developed commercial areas."

25 Compelling support for our interpretation is found in the legislative history provided by Mr. Lynn Logen in his affidavit and in Addendum 9 to his affidavit. In support of the tariff when its rate was last revised in 1984, PSE submitted a cost study. PSE initially compiled the costs of undergrounding projects in six geographical areas. Two of these areas, however, were excluded from the cost-study because they contained three-phase facilities. The costs to underground the remaining four areas, which contained only single-phase facilities, formed the basis for the rates in Schedule 70 of \$20.33 per centerline foot. The clear (and only) inference to be drawn is that Schedule 70 was not intended to cover three-phase facilities regardless of their location. Indeed, if Schedule 70 were read to include three-phase facilities, it could not be said to reflect fair, just, reasonable, and compensatory rates, because the cost-study does not support application of the \$20.33 rate to three-phase facilities.

26 In light of the relative costs associated with the two types of conversion work (*i.e.*, single-phase and three-phase), it is logical and reasonable to apply Schedule 70 to single-phase conversion work and Schedule 71 to three-phase conversion work. Mr. Logen testified that:

PSE has estimated that the total cost for the SeaTac Conversion will be \$454,870.00. If the existing overhead system were a single-phase rather than a three-phase system, PSE estimates that the cost of the conversion would be \$222,632.39. Similarly, PSE has estimated that the total cost for converting the existing overhead facilities along 92<sup>nd</sup> Ave. N.E. in Clyde Hill will be \$382,521. If the existing overhead system along 92<sup>nd</sup> Avenue N.E. were a single phase system, PSE estimates that the cost of that conversion would be \$194,107.37.

*Id.* at ¶ 11. Thus, in the case of the SeaTac project, the cost for converting the three-phase system to underground is more than twice the cost that would be incurred were this a single-phase system. The difference for the Clyde Hill project is slightly less, but of a similar magnitude.

27 Our interpretation is rooted in the subject matter of the tariff (*i.e.*, the appropriate rate for an electric company's service) and its legislative history. This interpretation is also consistent with the way the tariff has been administered since its inception. Mr. Logen testified that, as the person responsible for the administration of Schedules 70 and 71 for the past eleven years, he has consistently interpreted Schedule 70 to apply only to conversions of single-phase distribution systems to underground, and he has consistently interpreted Schedule 71 to apply to conversions of three-phase systems to underground, regardless of whether the three-phase system has been located in an area that is residential in terms of its zoning and land-use. *Logen Affidavit at ¶13.* Mr. Logen testified that he is "not aware of any cases in which three-phase systems have been converted to underground under Schedule 70." *Id.* Thus, our interpretation of the tariff language in a way that is consistent with the history concerning the administration of these rate schedules, which has been continuously subject to our oversight, incidentally precludes assertions of discrimination and undue preference.

*b. Does Schedule 70 apply by its terms or by inference to the private drives in Clyde Hill?*

28 Turning to the additional dispute that is limited to the Clyde Hill matter, the City contends that PSE is required to treat the entire "conversion area," including public roads and private drives, under a single rate schedule, Schedule 70. Clyde Hill's initial argument is sufficiently brief to quote in full (underlining in original):

Schedule 70 applies to the work to be performed in private easements and along 92<sup>nd</sup> Avenue NE that is part of the conversion area because it is part of the "conversion area." The "conversion area" meets all of the criteria of Section 2. Even that portion of the conversion area described in Stipulated Fact No. 12, where the existing overhead lines are within easements along private drives, are within the clear language and criteria of Section 2 of Schedule 70. The conversion area is clearly greater than one city block in

length. There is no language in Section 2 that provides for segmenting, or breaking down, a contiguous conversion area into smaller segments for purposes of applications of the tariff. Therefore, there is no basis in Section 2 to reasonably argue that the private drives are to be evaluated separately from other segments of the conversion area.

In sum, all of the conversion area comes within the clear scope of coverage of Schedule 70. There is no ambiguity in the language of Schedule 70. There is no legal basis for the Commission to go beyond the clear language of Schedule 70 to ascertain the WUTC's intent when it approved the tariff.

29 PSE responds that it is entirely appropriate to treat different portions of the project under different schedules, depending on the character of the roadway and the electric system. PSE argues that it historically has interpreted Schedule 70 to not apply to private drives because neither a private landowner nor a municipality can require PSE to underground facilities where PSE has an easement or prescriptive right. PSE argues that Schedule 70 sets the terms and conditions only for undergrounding of facilities that could potentially be subject to mandatory undergrounding; that is, facilities located in public rights-of-way. PSE argues that it has the sole discretion when its facilities are on private property to decide whether, and on what terms, to underground, if requested. PSE argues that no tariff is required to permit it to charge private property owners, or municipalities requesting undergrounding on private property, 100 percent of the costs.

30 PSE also argues that to interpret Schedule 70 to apply to PSE's facilities located on private property would be contrary to the tariff language in Section 2 that refers to "public thoroughfares." PSE argues that if Schedule 70 is deemed to apply to private drives, it will not be able to charge any rate because the rate language in Section 3.b. of the tariff refers to "\$20.33 per centerline foot of all public thoroughfares."

31 Clyde Hill's logic suffers from a bootstrapping circularity (private drives must be converted at the Schedule 70 rate if the private drives are in a conversion area subject to Schedule 70) and does not reach the question at issue: whether private drives fall within the scope of Schedule 70. Clyde Hill's argument can only hold if we find that a "conversion area" comprises all work within a given geographic

area over a given period of time, and that once a “conversion area” is defined, all work within it must be charged at the same (presumably lowest) rate, regardless of whether the nature of the land and electrical use is commercial or residential, or on public thoroughfares or on private drives.

32 As our discussion in the previous section makes clear, it is not only rational but necessary that undergrounding work be segmented into different functional and rate categories—necessary in order to accord both Schedule 70 and 71 their full and complementary scopes, and necessary in order to align the rates with the underlying cost-studies that were used to support the schedules when they were first established. Whether one calls this segmentation separate conversion areas with separate rates, or one conversion area with separate rates, is a difference in semantics only. It is the character of the land and electrical function that determines whether the rate charged is covered by Schedule 70, Schedule 71—or, as Puget argues, no schedule at all.

33 The clear language of Schedule 70 limits its scope to areas that are a) at least one city block in length, or b) absent city blocks, at least six building lots abutting either side of a “public thoroughfare.” The parties have stipulated that “there is no public thoroughfare in these areas,” so they have stipulated to facts that by their explicit terms cannot qualify under (b). These same stipulated facts, we find, preclude application of (a), because city blocks are along public streets and rights-of-way, which must also be “public thoroughfares.” We do not believe “city block” can be read to mean an abstract length along something other than a public street or right-of-way, because the language in (a) directs that in the “absence of city blocks” (which to us implies the physical presence, in general, of city streets or rights-of-way that form “blocks,” not an abstract length), the language in (b) controls. That is, there are not three alternatives: a real city block, a private drive at least the length of a city block, and a public thoroughfare with at least six building lots on either side. There are only two alternatives, and private drives must fit within the definition of “public thoroughfare” to qualify. Also, only by reading the language as we have, does the rate—\$20.33 per centerline foot *along the public thoroughfare*—make sense, and cover all situations under Schedule 70.

34 There is no definition in Schedule 70 of “public thoroughfare.” In other contexts, (e.g., Schedule 85, which governs line extensions), the term encompasses private land that has certain aspects functionally similar to public roads. In a future case, or in a new tariff filing, we may have the opportunity to review the appropriate

definition of "public thoroughfare," for purposes of Schedule 70. In either event, we could contemplate one or more factual situations, which might inform such a review. Here, the stipulated facts preclude any discussion of what constitutes a "public thoroughfare" because the parties stipulate that there *is* no public thoroughfare.

35 Not being a "city block" or a "public thoroughfare," the private drives in question do not fall under Schedule 70, so we deny Clyde Hill's petition for declaratory judgment that Schedule 70 applies, and we grant Puget's motion for a determination that Schedule 70 does not apply.

36 The remaining question is whether, since Schedule 70 does not apply, we must grant Puget's cross-motion asking us for a summary determination that the customers on the private drives in Clyde Hill (or the City, on their behalf) must pay 100% of the costs. There was very little briefing on this question (none by Clyde Hill), as the parties were more focused on whether Schedule 70 applies. We find that Puget should be able to recover its costs under the facts of this case for discretionary undergrounding activities that fall outside the scope and prescriptions of any existing tariff. We caution, however, that our ruling is limited to the bare-bones facts of this case. The great variety of easements and other arrangements respecting private lands may admit of other treatment, in other situations, depending on the facts and applicable tariffs.

#### **FINDINGS OF FACT**

37 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include stipulated facts and other findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

38 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies.

- 39 (2) The pleadings filed in this proceeding, together with the evidentiary support provided by the parties' fact stipulations, affidavits, and other documents, show that there is no genuine issue as to any material fact.

### CONCLUSIONS OF LAW

40 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 41 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and all parties to, these proceedings. *Title 80 RCW.*
- 42 (2) PSE is a "public service company" and an "electrical company" as those terms are defined in RCW 80.04.010, and as those terms otherwise may be used in Title 80 RCW. PSE is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.
- 43 (3) PSE is entitled to judgment in its favor, as a matter of law, that Schedule 71 applies to the underground relocation of existing overhead electric distribution facilities that are located in the SeaTac and Clyde Hill Conversion Areas and are part of PSE's three-phase power distribution system.
- 44 (4) PSE is entitled to judgment in its favor, as a matter of law, that Schedule 70 does not apply to the underground relocation of existing overhead electric distribution facilities that are part of PSE's single-phase power distribution system located in the Clyde Hill Conversion Area on private property alongside private roadways.
- 45 (5) PSE is entitled to recover fully the costs it incurs in connection with the underground relocation of existing overhead electric distribution facilities that are part of PSE's single-phase power distribution system located in

the Clyde Hill Conversion Area on private property alongside private roadways.

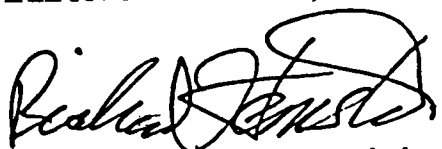
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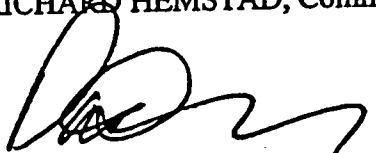
- 46 THE COMMISSION ORDERS That PSE's tariff Schedule 71 applies to the conversion of PSE's overhead facilities along South 170<sup>th</sup> Street between 37<sup>th</sup> Avenue South and Military Road South in SeaTac (the "SeaTac Conversion Area") to underground.
- 47 THE COMMISSION ORDERS FURTHER That PSE's tariff Schedule 71 applies to the conversion of PSE's overhead facilities along 92<sup>nd</sup> Avenue NE between NE 13<sup>th</sup> Street and NE 20<sup>th</sup> Street in Clyde Hill to underground.
- 48 THE COMMISSION ORDERS FURTHER That PSE's tariff Schedule 70 does not apply to the conversion of PSE's overhead facilities on private property along private drives that are within the Clyde Hill Conversion Area, and PSE is entitled to recover fully the costs it incurs in completing such conversion.

DATED at Olympia, Washington, and effective this 28<sup>th</sup> day of January 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
MARILYN SHOWALTER, Chairwoman

  
RICHARD HEMSTAD, Commissioner

  
PATRICK J. OSHIE, Commissioner

**NOTICE TO PARTIES:** This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).



# Appendix A

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First Revised Sheet No. 70  
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**PUGET SOUND ENERGY**  
**Electric Tariff G**

**SCHEDULE 70**  
**CONVERSION TO UNDERGROUND SERVICE**  
**IN RESIDENTIAL 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 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, driveways, pavement, and restoration thereof. Includes excavating, trenching, select backfill, compaction to Company specifications, 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 areas which are zoned and used exclusively for residential purposes, provided that at the time of such installation the Company shall have adequate operating rights, and provided further that the Conversion Area must be not less than one (1) city block in length, or in the absence of city blocks, not less than six (6) contiguous building lots abutting each side of the public thoroughfare with all real property on both sides of each public thoroughfare 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:
  - a. The Company and the governmental authority having jurisdiction in 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

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By Ronald E. Davis Vice President, Regulation & Utility Planning  
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**PUGET SOUND ENERGY**  
**Electric Tariff G**

**SCHEDULE 70**  
**CONVERSION TO UNDERGROUND SERVICE**  
**IN RESIDENTIAL AREAS**  
(Continued)

5. OPERATING RIGHTS - Adequate legal rights for the construction, operation, repair, and maintenance of the Main Distribution System in a form or forms satisfactory to the Company shall be provided by governmental authority or by the owners of real property within the Conversion Area at no cost to the Company.
6. 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.
7. STREET LIGHTING INSTALLATIONS - Separate arrangements must be made for installation or replacement of street lighting units at the time of conversion.
8. UNDERGROUND SERVICE LINES - Underground Service Lines shall be installed as provided in Schedule 86 of this tariff.
9. GENERAL RULES AND PROVISIONS - Service under this schedule is subject to the General Rules and Provisions contained in this tariff.

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# Appendix B

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**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:

(K) Transferred to Sheet No. 71-a

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**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. (M)
- 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, (M) Transferred from Sheet No. 71 (K) Transferred to Sheet No. 71-b (K)

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**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. (M)

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.

(M) Transferred from Sheet No. 71-a

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

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By *F. Davis* Vice President, Regulation & Utility Planning