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Honorable Susan K. Serke
Hearing Date: March 2, 2018
Hearing Time: 9:00 am
KEVIN STOCK
COUNTY CLERK
NO. 17-2-08907-4

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

EDWARD E. (TED) COATES; MICHAEL
CROWLEY; MARK BUBENIK and
MARGARET BUBENIK d/b/a Steele
Manor Apartments; THOMAS H.
OLDFIELD; and INDUSTRIAL
CUSTOMERS OF NORTHWEST
UTILITIES, an Oregon nonprofit
corporation,

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

No.: 17-2-08907-4

DEFENDANT CITY OF TACOMA'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT
GRANTING DECLARATORY
RELIEF

1 **INTRODUCTION**

2 More than twenty years ago, this Court confirmed that the City of Tacoma (“City”)
3 had authority to construct a telecommunications system to serve the existing and
4 anticipated needs of Tacoma Power and its customers. This authority included the right to
5 provide various telecommunications services to Tacoma Power’s customers, directly or
6 via lease, on excess capacity built into the system. Tacoma Power would treat the
7 revenues and expenses from the operation of its system, including whatever it earned and
8 spent on the excess capacity, as an integrated part of its Power Fund. The City informed
9 the Court that, as a result, electricity rates could rise if the sale of services on the excess
10 capacity did not prove as lucrative as hoped.

11 For a number of reasons, Tacoma Power has not been able to fully utilize its
12 telecommunications system as designed. But Tacoma Power’s Click! unit (“Click”) is an
13 exception, selling internet access, data transport and cable television services on the
14 system’s excess capacity. As envisioned, any revenues that Click earns go into the Power
15 Fund, while Click’s costs are likewise covered by the Power Fund. Yet Plaintiffs allege
16 that Click is being illegally “subsidized” by the electric utility. That mischaracterization
17 ignores key facts about Tacoma Power, its telecommunications system and the
18 configuration of its Power Fund. It also runs headlong into this Court’s prior
19 determinations, which preclude Plaintiffs’ claims but are not discussed in their Motion.

20 Even if Plaintiffs could challenge Click’s funding, they have not identified an
21 appropriate avenue to do so. Neither of the bases advanced in their Motion (RCW
22 43.09.210 or the City’s Charter) apply to the instant facts, and the few cases Plaintiffs cite
23 are inapposite. Plaintiffs are left to repeatedly refer to a memorandum written by the City
24 Attorney’s office, the contents of which are not properly before the Court (or otherwise
25 correct) for multiple reasons. Nor do policy arguments cut in Plaintiffs’ favor, as granting

1 their Motion would cause immediate and long-term harm to Tacoma Power, its employees
2 and customers, and other Washington utilities. Finally, a primary justification for
3 Plaintiffs' Motion - the specter of the City passing the so-called "All-In Plan" - is now
4 moot given recent legislative and policy developments.

5 For all of these reasons, the Court should explicitly reject Plaintiffs' invitation to
6 disturb prudent decisions made by the City and Tacoma Power. Indeed, the City is entitled
7 to summary judgment here as reasonable minds could only conclude that Click is lawfully
8 funded. But even if Plaintiffs are somehow able to raise genuine issues of material fact on
9 reply, the City respectfully requests that the Court deny their Motion and resolve these
10 important issues at trial.

11 **COUNTERSTATEMENT OF FACTS**

12 **A. Tacoma Power Made a Court-Approved, Prudent Investment Decision in
13 1996 to Construct a Telecommunications System**

14 In the mid-1990s, Steve Klein was the Superintendent of Tacoma Power¹ when the
15 electric utility industry was responding to significant telecommunications advances that
16 would enable utilities like Tacoma Power to improve the operations of their generation,
17 distribution, and transmission assets. Klein Decl., ¶¶3-4²; Saleba Decl., ¶3; Vander Stoep
18 Decl., ¶3, Ex. A at 88. At the same time, there was nationwide interest in the introduction
19 of retail competition that would allow customers of electric utilities to choose their
20 electricity suppliers. Klein Decl., ¶5; Saleba Decl., ¶4; Vander Stoep Decl., ¶3, Ex. A at
21 14-16, 29-31. Retail electric utility customers would be allowed to choose a company
22 other than their electric utility to supply their electricity, while their utility continued to

23 _____
24 ¹ Tacoma Power is part of Tacoma Public Utilities ("TPU"), which consists of Tacoma Power, Tacoma
Water, and Tacoma Rail. Cherullo Decl., ¶3. TPU is the City's largest department. *Id.* at ¶4.

25 ² All declarations cited herein are in support of the City's Opposition to Plaintiffs' Motion for Partial
Summary Judgment and will be referenced as "[last name] Decl." for brevity.

1 provide the distribution and transmission system and metering to deliver that electricity.
2 Klein Decl., ¶5; Saleba Decl., ¶4. Mr. Klein established a team at Tacoma Power to
3 research the possibility of using telecommunications as a way to respond to electric
4 competition. Klein Decl., ¶6 After internal research and input from consultants, Tacoma
5 Power determined that the best option was to construct a hybrid fiber coaxial
6 telecommunications system (“System”) to connect its generation, distribution, and
7 transmission assets. *Id.* The System would also support the installation of “smart meters”
8 at the residence or place of business of every Tacoma Power electric customer. *Id.* In
9 addition to providing important data for tracking and billing electricity consumption if
10 retail competition were adopted, smart meters would provide immediate benefits to
11 Tacoma Power’s customers by allowing remote meter reading, remote connection and
12 disconnection, and pay-as-you-go electricity consumption programs. *Id.*; Vander Stoep
13 Decl., ¶3, Ex. A at 14-16, 30-31; Saleba Decl., ¶5. As originally designed, the coaxial part
14 of the System would support the smart meters and the fiber part of the System would
15 support connection of Tacoma Power’s generation, distribution, and transmission assets to
16 achieve a variety of operating efficiencies. Klein Decl., ¶7.

17 TPU’s Board and the City Council authorized Tacoma Power’s proposal to
18 construct its System in 1996. Cherullo Decl., ¶8, Ex. A. The TPU Board and City Council
19 anticipated using electric revenue bonds to pay for the construction of the System. *Id.* To
20 confirm that Tacoma Power had the authority to own and operate the System, and to use
21 electric revenue bonds to fund its construction, the City brought a declaratory judgment
22 action in Pierce County Superior Court against all Tacoma taxpayers (via a court-
23 appointed representative) and a certified class of all electric ratepayers. Vander Stoep
24 Decl., ¶¶6-8, Exs. D, E, F.

1 The City informed the Court that it planned to use the System to connect its
2 generation, distribution, and transmission assets and to support the installation of smart
3 meters. Vander Stoep Decl., ¶6, 10, Exs. D at ¶12, H at ¶¶3-4. The City also informed the
4 Court that it would be building more capacity on the System than initially needed for the
5 electric utility. As a result, the City would use the excess capacity to: (1) sell data
6 transport and internet access services to Internet Service Providers (“ISPs”) and others,
7 and (2) sell retail cable television service to Tacoma Power’s electric customers. *Id.* at
8 ¶¶3, 6, 9-10, Exs. A at 28-29, D at ¶13, G, H at ¶¶9-13. In opposing the City’s second
9 motion for summary judgment, the defendants argued that the revenue from such sales
10 was unlikely to fully cover the costs of providing internet and cable television services,
11 thereby resulting in electricity rate increases for all Tacoma Power customers.³ *Id.* at ¶15,
12 Ex. M at 3, 8. The City agreed it was a possible outcome and so informed the Court:

13 12. As [Tacoma Power] staff explained to the [TPU] Board and [City] Council,
14 and as the Council itself found in the Resolution approving the Project, a key
15 purpose of the Telecommunications Project is to protect and enhance the value of
16 [Tacoma Power]’s existing electric utility assets by having a telecommunications
17 system sophisticated enough to enable [Tacoma Power] to compete effectively in
18 the rapidly evolving electric industry. To fulfill this important purpose of
19 protecting the value of existing [Tacoma Power] *electric* assets, it is not at all
20 necessary that the revenues from the provision of telecommunications and cable
21 television services cover the entire cost of the Telecommunications Project.

22 13. The [City] Council and [TPU] Board were aware when they voted to proceed
23 that revenue from the provision of telecommunications and cable services might
24 fall short of projections. As [Tacoma Power] staff informed the Board and
25 Council, under a “worst case” shortfall, electric rates might have to be increased
by as much as 2.5%. This scenario assumed that we incurred all the cost of
building the system but obtained no revenues from provision of cable television
service or from provision of telecommunications service to third parties. ...

³ Defendants contested both summary judgment motions filed by the City. Vander Stoep Decl., ¶¶11, 15, Exs. I, M. Their efforts included hiring a certified public accountant who opined that the System was likely to fall \$154,468,000 short in total income projections over a 20 year period. *Id.* at ¶15, Ex. M at 7.

1 14. [Tacoma Power] staff explained to the City Council our view that even if the
2 Telecommunications Project's revenues fell short of projections, even to the point
3 of a worst case scenario (resulting in a 2.5% rate increase), still the City should
4 proceed with the Project in order to secure the value of the City's electric system
assets. I believe that in voting to proceed with the Project, the Council fully
understood and accepted the risk of an electric rate increase.

5 ***

6 16. The important question is whether Light Division revenues will be sufficient
7 to cover Telecommunications Project costs, since we are issuing electric system
8 revenue bonds for the Project and other Project costs will be funded by
9 accumulated Light Division revenues. Obviously, Light Division revenues are
sufficient. Indeed, Light Division revenues are 40 times greater than worst-case
project costs. Thus there is zero possibility that the Telecommunications Project
could somehow affect the City's general fund and its taxpayers.

10 Vander Stoep Decl., ¶17, Ex. O at ¶¶12-14, 16 (emphasis in original) (footnote omitted).
11 With this knowledge, the Court issued two orders authorizing the System and the use of
12 electric revenue bonds to fund its construction. *Id.* at ¶¶12, 18, Exs. J, P. In reliance on
13 this Court's authorization, the City and Tacoma Power made a prudent investment
14 decision to build Tacoma Power's System and to sell excess capacity on it. *Id.* at ¶3, Ex.
15 A at 69-70; Klein Decl., ¶8; Saleba Decl., ¶6.

16 **B. The System, Including Click, is Part of the Tacoma Power Fund**

17 Tacoma Power consists of six units, one of which is Click. Gyaltzen Decl., ¶3.
18 Click uses the excess capacity on the System to sell internet access and data transport
19 services to ISPs and others and cable television service to Tacoma Power's electric
20 customers who choose it and for whom it is available. *Id.* at ¶4. Importantly, all customers
21 of the ISPs and Click are also Tacoma Power electric customers. *Id.* at ¶5. As a result,
22 Click/ISP customers are a subset of Tacoma Power's customer base. *Id.*

23 The original construction of and additions to the System have been funded through
24 the revenues that come into Tacoma Power from a variety of sources, including but not
25 limited to rates paid by retail electric customers, transmission charges paid by other

1 utilities using Tacoma Power’s transmission assets, wholesale power sales from Tacoma
2 Power’s generation assets to other utilities and power marketers, recreation fees for public
3 use of Tacoma Power’s recreation assets, and rates paid by the ISPs and Click’s cable
4 television customers. Leinneweber Decl., ¶3; Vander Stoep Decl., ¶3, Ex. A at 25-26. All
5 of those revenues are accounted for in the City’s Power Fund. Cherullo Decl., ¶7.

6 Contrary to the unsupported representations in Plaintiffs’ Motion (*e.g.*, Mot. at 1, 6, 11
7 and 16), the System, including Click, always has been an integrated part of Tacoma Power
8 and the City’s Power Fund. *Id.* at ¶¶6-9, 13, Exs. A at Art. II, § 2.1, Ex. C at 1; Vander
9 Stoep Decl., ¶3, Ex. A at 64-65. Click is organized as a unit under Tacoma Power, just
10 like the Generation unit or the Transmission and Distribution unit. Robinson Decl., ¶3.
11 The Click General Manager reports to the Power Superintendent and is part of the Power
12 management team. *Id.* at ¶4. The revenue and expenses associated with Click’s use of the
13 excess capacity on the System have always been handled within a sub-fund of the Power
14 Fund for the purposes of city government accounting. Cherullo Decl., ¶¶10, 13, Ex. C at
15 1; Vander Stoep Decl., ¶4, Ex. B at 25, 41-42.

16 Each year, the City’s Finance Department prepares a financial statement for the
17 Tacoma Power Fund to ensure that all revenue and expense transactions are appropriately
18 recorded in accordance with generally accepted accounting principles (“GAAP”) and local
19 and state regulatory requirements. Cherullo Decl., ¶¶12, 13, Ex. C at p.1; Bailey Decl., ¶4.
20 Within that financial statement, the City reports on the expenses and revenues associated
21 with Click. Cherullo Decl., ¶¶12, 13, Ex. C at p.1. The annual financial statement is
22 audited every year by the accounting firm Moss Adams LLP and then presented to the
23 Washington Auditor’s Office. *Id.*; Bailey Decl., ¶5. The financial statement must show
24 that the Power Fund has a positive balance. Cherullo Decl., ¶12; Bailey Decl., ¶6.

1 However, there is no requirement, that sub-funds within the Power Fund, such as Click,
2 must have a positive cash balance at year-end. Cherullo Decl., ¶12; Bailey Decl., ¶6.

3 **C. Tacoma Power’s Cost-of-Service Ratemaking Process**

4 Tacoma Power’s Rates, Planning, and Analysis unit (“RPA”) engages in a
5 forward-looking cost-of-service ratemaking process on a biennial basis. Leinneweber
6 Decl., ¶4-5; Saleba Decl., ¶7-8. The results of the process must be approved by the TPU
7 Board and City Council. Leinneweber Decl., ¶6. RPA and the City’s policymakers first
8 develop a “retail revenue requirement” that must be recovered through electric rates.
9 Leinneweber Decl., ¶7; Saleba Decl., ¶9. This step involves quantifying a myriad of
10 inputs, including revenues coming into the utility. Leinneweber Decl., ¶7; Saleba Decl.,
11 ¶9. For example, Tacoma Power sells excess generation at wholesale competitive market
12 prices to other utilities and power marketers. Leinneweber Decl., ¶7. Between 2012 and
13 2016, Tacoma Power made between \$50,380,147 and \$82,796,740 each year from these
14 wholesale power sales (referred to as bulk power sales). Cherullo Decl., ¶11, Ex. B at 48-
15 49. Similarly, Tacoma Power, through its Click unit, sells its excess telecommunications
16 capacity to ISPs and retail cable customers. Leinneweber Decl., ¶7. The revenues from
17 these sales are considered when setting the size of the revenue requirement. *Id.*; Klein
18 Decl., ¶9, Ex. A at 22-23.

19 RPA also must consider the expenses attributable to the Power Fund when
20 developing the revenue requirement. Leinneweber Decl., ¶8; Saleba Decl., ¶9. For
21 example, RPA considers operations and maintenance costs for generation assets that
22 provide electricity to retail ratepayers and for bulk power sales. Leinneweber Decl., ¶8;
23 Saleba Decl., ¶9. RPA also considers the expenses Tacoma Power incurs to, *inter alia*, (i)
24 operate a 24/7 trading desk that manages its bulk power sales, and (ii) operate and
25 maintain the System. Leinneweber Decl., ¶8; Saleba Decl., ¶9.

1 After considering all of the revenue coming in and expenses charged to the Power
2 Fund, RPA sets a revenue requirement necessary to meet Tacoma Power's financial
3 targets. Leinneweber Decl., ¶9; Saleba Decl., ¶9. RPA then engages in cost-of-service
4 analysis to set the rates charged to its retail electric customers to meet that requirement.
5 Leinneweber Decl., ¶10; Saleba Decl., ¶10. Tacoma Power's retail customers are divided
6 into classes (e.g., residential, small general, high-voltage general), and RPA attempts to
7 equitably distribute the revenue requirement among these classes. Leinneweber Decl.,
8 ¶10; Saleba Decl., ¶11. Because analysis of the cost to serve is based on best estimates
9 and averages, there are imperfect cost distributions between customers within a class.
10 Leinneweber Decl., ¶11; Saleba Decl., ¶11. For example, there may be years when more
11 of the maintenance on Tacoma Power's distribution and transmission system occurs in the
12 north half of its service territory. Leinneweber Decl., ¶11; Saleba Decl., ¶12. However,
13 those maintenance costs are recovered from all Tacoma Power customers. Leinneweber
14 Decl., ¶11; Saleba Decl., ¶12. Overall, Tacoma Power, just like all other municipal
15 utilities that engage in cost-of-service ratemaking, must do its best to set a revenue
16 requirement and then recover it from Tacoma Power's electric ratepayers in a way that is
17 equitable, although never perfect. Leinneweber Decl., ¶12; Saleba Decl., ¶13.

18 **D. Tacoma Power Allocates to Inform Its Decisions**

19 In 2002, Tacoma Power decided to develop an allocation formula to track what
20 System expenses and revenues could be respectively attributed to Tacoma Power's
21 generation and delivery of electricity versus Click's sale of excess System capacity.
22 Cherullo Decl., ¶17; Klein Decl., ¶10; Leinneweber Decl., ¶13, Ex. A at
23 TAC_PRA_HR_0018100. Tacoma Power did so in order to in order to make informed
24 management decisions about the telecommunications system. Klein Decl., ¶10; Vander
25 Stoep Decl., ¶3, Ex. A at 104-05; Leinneweber Decl., ¶13, Ex. A at

1 TAC_PRA_HR_0018100. However, when a City has costs within one fund (here, the
2 Power Fund) it is not required or typical to allocate them amongst sub-funds. Cherullo
3 Decl., ¶17; Bailey Decl., ¶9; Vander Stoep Decl., ¶4, Ex. B at 106.

4 Historical review of Tacoma Power's financial statements show that Click's total
5 costs exceed its revenues. Cherullo Decl., ¶18. Despite this, neither Moss Adams LLP nor
6 the Washington State Auditor's Office has ever raised an issue with the losses recorded in
7 the Click sub-fund. Cherullo Decl., ¶¶13, 18, Ex C at 1. Why? Because the System,
8 including Click, is part of the Power Fund and only the Power Fund must have positive
9 cash balance at year-end. Cherullo Decl., ¶¶13, 18, Ex. C at 1; Bailey Decl., ¶¶6, 9.

10 **E. The System Remains a Valuable Asset**

11 Ever since the construction of the System in the late 1990s, it has connected
12 Tacoma Power's distribution and transmission assets, allowing for efficient and remote
13 operation of those assets, including outage tracking and detection, automatic substation
14 control, and monitoring for preventative maintenance. Robinson Decl., ¶5. The System
15 also enabled automated meter reading and billing, distribution automation, and remote
16 turn on/turn off for electric customers. *Id.*; Cherullo Decl., ¶8, Ex. A at A-1. During the
17 mid-2000s, Tacoma Power also developed gateway meters (Tacoma Power's name for its
18 smart meters) that could relay information from its electric customers to Tacoma Power
19 headquarters via the System. Klein Decl., ¶¶11, 12, Ex. B at 7. At its peak, Tacoma Power
20 had over 18,000 gateway meters deployed. Robinson Decl., ¶6.

21 At the time of its construction, the System was a state-of-the-art hybrid fiber
22 coaxial system. Klein Decl., ¶14; Gyaltzen Decl., ¶7. Unfortunately, shortly afterwards,
23 Tacoma Power and the rest of the electric utility industry was sent into a financial tailspin
24 by the California Electricity Crisis in 2000-01. Klein Decl., ¶15; Saleba Decl., ¶14. This
25

1 delayed Tacoma Power's deployment of its gateway meters and the full and robust use of
2 its new System. Klein Decl., ¶15; Vander Stoep Decl., ¶3, Ex. A at 79-80.

3 While Tacoma Power was recovering from the financial crisis,
4 telecommunications technology continued to evolve at a rapid rate. Klein Decl., ¶16. By
5 the mid-to-late 2000s, the electric utility industry began to recognize that wireless
6 technology would take the place of wired telecommunications systems with respect to
7 smart meter applications. Robinson Decl., ¶7; Saleba Decl., ¶15. As a result, Tacoma
8 Power stopped deploying new gateway meters in 2009 and stopped replacing existing
9 gateway meters in 2015. Robinson Decl., ¶8. Tacoma Power continues to use the System
10 to operate the remaining 14,240 gateway meters still installed and operating at its
11 customers' residences and places of business. *Id.* at ¶9. Tacoma Power also continues to
12 use the System to gather information from and control some of the operations of its
13 generation, distribution, and transmission assets. *Id.* at ¶9.

14 As Tacoma Power's use of the System for smart metering has diminished over the
15 years due to changes in telecommunications technology, Tacoma Power, the TPU Board,
16 and City Council have been grappling with what to do in response. Robinson Decl., ¶10.
17 Although they have not yet been formally designated, significant parts of the System
18 essentially are (or will become) surplus property. *Id.* This includes hundred of miles of
19 unused or "dark" fiber as well as coaxial cable that runs to individual residences and
20 businesses in anticipation of future use by the electric system. *Id.* at ¶21.

21 Municipal utilities and cities must care for surplus property and decide how and
22 when to dispose of it. Robinson Decl., ¶10; Bailey Decl., ¶10; Cherullo Decl., ¶20; Saleba
23 Decl., ¶16. Often the best choice for a city is not to immediately sell or dispose of its
24 surplus utility property, but rather, to be deliberate and consider market conditions. Bailey
25 Decl., ¶10; Cherullo Decl., ¶20; Saleba Decl., ¶16. Although the System has not reached

1 its full anticipated usage, industry experts report that it still has very significant latent
2 value to Tacoma Power and its ratepayers. Cherullo Decl., ¶13, Ex. C at 2; Saleba Decl.,
3 ¶17; Robinson Decl., ¶21. Tacoma Power and the City need time to determine how best to
4 repurpose the telecommunications assets. Saleba Decl., ¶16; Gyaltzen Decl., ¶12.

5 In 2016 and 2017, the TPU Board and City Council explored whether the System
6 could be enhanced using Tacoma Power or City funds to allow Click to offer more robust
7 internet and cable services -- referred to as the "All-In Plan."⁴ Gyaltzen Decl., ¶9.

8 However, on January 24 and 30, 2018, the TPU Board and City Council rescinded their
9 previous resolutions directing development and implementation of the All-In Plan. *Id.* at
10 ¶¶10-11, Exs. A at 6, and B at 6.⁵ The new resolutions direct TPU management and the
11 City Manager to issue requests for information or requests for proposals for future uses of
12 the System. *Id.* at ¶¶10-11, Exs. A at 7, and B at 7. In the meantime, while TPU
13 management and the City proceed with developing a plan for repurposing this valuable
14 Tacoma Power asset, Tacoma Power will continue to use the System for efficient electric
15 system management and to sell its excess capacity through its Click division. Robinson
16 Decl., ¶23. Similar to other surplus properties, Tacoma Power will spend utility revenues
17 to maintain this asset until TPU decides how best to repurpose it. *Id.*

18 STANDARD OF REVIEW

19 Summary judgment is proper if there is no genuine issue as to any material fact
20 and a party is entitled to judgment as a matter of law. *Bostain v. Food Exp., Inc.*, 159
21 Wn.2d 700, 708, 153 P.3d 846 (2007). Put another way, summary judgment is proper if
22 reasonable minds could reach only one conclusion from the evidence presented. *Id.* In

23 _____
24 ⁴ In 2015, Tacoma Power received but rejected an offer from a private entity, WaveDivision Holdings, LLC,
to lease capacity on the System to replace Click's offerings. Gyaltzen Decl., ¶9.

25 ⁵ Plaintiffs' Motion asserts that the City is waiting for a ruling from this Court before proceeding with the
All-In Plan. Mot. at 13. This is not true, as the All-In Plan is dead regardless at this point.

1 reviewing a motion for summary judgment, all facts and reasonable inferences therefrom
2 must be viewed most favorably to the nonmoving party. *Id.* If the relevant facts are not in
3 dispute, the court may enter summary judgment in favor of the nonmoving party. *See*
4 *Impecoven v. Dep't of Revenue*, 120 Wn.2d 357, 365, 841 P.2d 752 (1992).

5 ARGUMENT

6 A. Plaintiffs' Claims are Precluded by the Court's Earlier Rulings

7 The prior litigation confirmed the City's authority to construct and operate the
8 System and to use excess System capacity to provide cable television service and internet
9 access (including via lease to the ISPs).⁶ In reaching its decision, this Court knew that (i)
10 the System would be integrated into Tacoma Power and its Power Fund, (ii) Power Fund
11 revenues would be used for System activities, and to pay off any bonds used to finance
12 construction, and (iii) those revenues could include retail electric rates if the sale of excess
13 capacity did not prove as fruitful as hoped. Vander Stoep Decl., ¶¶6, 17, Exs. D, O. The
14 parties and the Court clearly intended that the prior case would preclude any claims by
15 future ratepayers challenging the legality of the System's fundamental operations and
16 funding, which have not changed to this day. Accordingly, the Plaintiffs' claims are
17 barred by the doctrines of res judicata and collateral estoppel.

18 1. Res Judicata Bars Plaintiffs' Claims Against the City

19 Res judicata bars the relitigation of claims that were, or should have been, brought

20 _____
21 ⁶ The City relied upon various sources of statutory and case law authority, as well as the City Charter, in the
22 declaratory judgment proceeding, including RCW 22.280(3) (power to control municipal finances and
23 property); RCW 35A.11.020 (broad grant of authority to code cities, including to operate utilities and
24 provide municipal services); RCW 35.22.570 (omnibus grant of power to charter cities, including all powers
25 of code cities); RCW 35.22.900 (requiring liberal construction of powers granted); RCW 80.36.300
(promoting diversity in supply of telecommunications services); City Charter §9.1 (allows leasing of City
property); *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 743 P.2d 793 (1987) (affirming broad
municipal powers when city acts in proprietary capacity); *Hite v. PUD No. 2*, 112 Wn.2d 456, 772 P.2d 481
(1989) (confirming production and sale of electricity are proprietary functions); and *Issaquah v.*
Teleprompter Corp., 93 Wn.2d 567, 611 P.2d 741 (1980) (recognizing authority to offer
telecommunications services). *See Vander Stoep Decl.*, ¶¶9, 13, Exs. G, K.

1 in a prior proceeding. *Storti v. Univ. of Washington*, 181 Wn.2d 28, 40–41, 330 P.3d 159
2 (2014). The doctrine applies “not only to points upon which the court was actually
3 required by the parties to form an opinion and pronounce a judgment, but to every point
4 which properly belonged to the subject of litigation, and which the parties, exercising
5 reasonable diligence, might have brought forward at the time.” *Hisle v. Todd Pac.*
6 *Shipyards Corp.*, 151 Wn.2d 853, 865, 93 P.3d 108 (2004) (citations omitted).
7 Furthermore, “[m]erely asserting a new legal basis for a claim that has already been
8 decided does not bar the application of res judicata.” *Irondale Cmty. Action Neighbors v.*
9 *W. Washington Growth Mgmt. Hearings Bd.*, 163 Wn. App. 513, 529, 262 P.3d 81 (2011)
10 (citations omitted). Res judicata applies when the prior judgment and the current litigation
11 have the same: (1) subject matter, (2) cause of action, (3) persons and parties, and (4)
12 quality of the persons. *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings*
13 *Bd.*, 164 Wn.2d 768, 791, 193 P.3d 1077 (2008). Each of these elements is satisfied here.

14 **Same Subject Matter.** The prior ratepayers contested reliance on electric revenues
15 to fund what would become Click, arguing that it would lose money and cause increased
16 electric rates for Tacoma Power customers. Plaintiffs challenge the same issue here.

17 **Same Cause of Action.** Washington has adopted four criteria to help determine
18 this issue: (1) whether rights or interests established in the prior judgment would be
19 destroyed or impaired; (2) whether substantially the same evidence is presented in both
20 actions; (3) whether the suits involve infringement of the same right; and (4) whether the
21 suits arise out of the same transactional nucleus of facts. *Rains v. State*, 100 Wn.2d 660,
22 663–64, 674 P.2d 165 (1983). It is not necessary to establish all four criteria for res
23 judicata, although all are satisfied in this case. See *Feminist Women's Health Ctr. v.*
24 *Codispoti*, 63 F.3d 863, 867 (9th Cir. 1995).

25

1 First, the prior litigation established the City's right to fund and operate Click
2 through its Power Fund.⁷ A contrary judgment now would destroy the City's ability to
3 preserve and market the valuable assets into which it has invested millions of dollars in
4 reliance on the first judgment. Second, the prior ratepayers offered evidence (that would
5 have been regarded as true given the procedural posture) that would prove that Tacoma
6 Power ratepayers would be "subsidizing" Click. Vander Stoep Decl., ¶¶15, 17, Exs. M, O.
7 Third, the right that Plaintiffs are asserting - to avoid paying for Click through electric
8 rates - was raised in the prior litigation. *Id.* Finally, both suits arise out of the same
9 transactional nucleus of facts, namely the creation and funding of the System.

10 ***Same Persons or Parties.*** Washington has long recognized a public interest
11 exception to the normal requirement of mutuality. *Stallcup v. City of Tacoma*, 13 Wn. 141,
12 146, 42 P. 541 (1895) (taxpayer challenging validity of bonds barred by res judicata where
13 different taxpayer had lost similar suit). Furthermore, the 1996 lawsuit was brought
14 against an appointed representative for all taxpayers as well as a certified class of all
15 electric ratepayers to preclude future suits such as this. *Supra* at 3.

16
17
18 ⁷ Plaintiffs may contend that this Court's prior summary judgment orders did not authorize Tacoma Power
19 to sell the excess System capacity because the orders reference the City but not Tacoma Power. *See* Vander
20 Stoep Decl., ¶¶12, 18, Exs. J, P. This argument fails because the City's Complaint for Declaratory Judgment
21 attached Ordinance 25930, which explicitly stated that (1) the System would be part of Tacoma Power, (2)
22 revenue associated with the System would be paid into the Power Fund, (3) electric system revenue bonds
23 were authorized to fund the System, and (4) Tacoma Power might use the excess capacity to provide
24 telecommunications services or lease the capacity to providers of telecommunications services. Vander
25 Stoep Decl., ¶6, Ex. D. TPU Board Substitute Resolution No. U-9258 and City Council Substitute
Resolution No. 33668 were also included in the Court's record and established that Tacoma Power would be
using the System's excess capacity to provide telecommunications services. Vander Stoep Decl., ¶14, Ex. L
at Exs. A, B; *see also id.* at ¶16, Ex. N at 3 (stating that "the City's obligation under a revenue bond is
limited to funds available from the Electric System (which includes the Telecommunications Project)") *and*
at ¶17, Ex. O at ¶2 ("The City of Tacoma, through [Tacoma Power], plans to construct and operate
telecommunications facilities and services to enhance [Tacoma Power's] ability to provide highly reliable,
cost-effective and convenient electric service to its customers Such as system would also be capable of
carrying other telecommunications services, including cable television service." (emphasis added)).

1 **Same Quality of Persons.** This factor applies in rare cases where a party is acting
2 in one capacity in the first lawsuit and then in a different capacity in a subsequent lawsuit.
3 *Flessher v. Carstens Packing Co.*, 96 Wn. 505, 510, 165 P. 397 (1917). In this case, the
4 ratepayers and City are acting in the same capacities as they were in the first case.

5 2. Plaintiffs are Collaterally Estopped from Challenging Click’s Funding

6 The doctrine of collateral estoppel, or issue preclusion, applies when four
7 conditions are met: (1) the two cases involve identical issues; (2) a final judgment on the
8 merits; (3) the party against whom the plea is asserted must have been a party to or in
9 privity with a party to the prior case; and (4) application not work an injustice on the party
10 against whom the doctrine is to be applied. *Shoemaker v. City of Bremerton*, 109 Wn.2d
11 504, 507, 745 P.2d 858 (1987). All four elements are met in this case.

12 First, Plaintiffs are challenging the use of electric utility funds to pay for Click. As
13 discussed above, Click’s anticipated funding was a known and disputed issue in the prior
14 litigation. Second, a summary judgment satisfies the “final judgment” element of
15 collateral estoppel. *Chau v. Attorney Gen. of Washington*, 149 Wn. App. 1056 (2009).

16 Third, all Tacoma Power ratepayers were fully and fairly represented by a class
17 representative in the prior lawsuit. *See Carlson v. Innis Arden Club, Inc.*, 144 Wash. App.
18 1037 (2008). Fourth, application of collateral estoppel will not “work an injustice” against
19 Plaintiffs as there were no procedural bars that limited or discouraged the prior ratepayers
20 from fully disputing Click’s funding sources. *See Christensen v. Grant Cty. Hosp. Dist.*
21 *No. 1*, 152 Wn.2d 299, 309, 96 P.3d 957 (2004). Accordingly, Plaintiffs are collaterally
22 estopped from contesting this issue here.

23 **B. Plaintiffs Cannot Successfully Challenge Click’s Funding**

24 Even if the Court were inclined to re-litigate issues resolved in the prior lawsuit,
25 Plaintiffs still cannot prevail on their asserted claims. Plaintiffs ignore or distort key

1 foundational facts regarding the System’s purpose, configuration, and continued
2 operation. Because Click is an integrated part of Tacoma Power and its Power Fund,
3 Plaintiffs’ arguments under RCW 43.09.210 (sometimes known as the “accountancy act”)
4 and the City’s Charter must fail. Additionally, the limited authority in their brief is readily
5 distinguishable, as most of it concerns an unrelated statute (RCW 35.92.050) and an issue
6 (whether a utility is authorized to charge any amount for certain governmental services
7 provided to the general public) not presented here.

8 1. The Accountancy Act Does Not Apply Here

9 Plaintiffs challenge Tacoma Power’s continued expenditure of money on Click
10 under RCW 43.09.210, which “prohibits one government entity from receiving services
11 from another government entity for free or at reduced cost absent a specific statutory
12 exemption.” *Okeson I*, 150 Wn.2d at 557. However, Click is a unit of Tacoma Power, and
13 its revenue and expenses are recorded in a sub-fund of the Power Fund for accounting
14 purposes. The State Auditor, charged with enforcing RCW 43.09.210, has never raised an
15 accountancy act concern regarding Click despite annual reviews of Tacoma Power
16 financials. *Supra* at 9; RCW 43.09.260.

17 The Court of Appeals rejected the applicability of RCW 43.09.210 in a case very
18 analogous to the facts here. In that case, Mason County operated separate water and sewer
19 systems in three residential subdivisions (Rustlewood, Hartstene Pointe and Beard’s
20 Cove). *Rustlewood Ass’n v. Mason County*, 96 Wn. App. 788, 790, 981 P.2d 7 (1999).
21 The County eventually created a single fund for the three systems, with subsidiary
22 accounts for each system for accounting purposes. *Id.* Years after setting a uniform rate
23 for all residential users, the County realized that it “had spent more money maintaining
24 and operating the Rustlewood and Beard’s Cove systems than it had collected from

1 Rustlewood and Beard’s Cove residents, and less money on the Hartstene Pointe system
2 than it had collected from Hartstene Pointe residents.” *Id.* at 790-91.

3 The County justified efforts to recoup monies from Rustlewood and Beard’s Cove
4 residents based on RCW 43.09.210. *Id.* at 791. Echoing the Plaintiffs’ challenge here, the
5 Court framed the issue as “the expenditure of combined funds to benefit some, though not
6 all, of one class of ratepayers [sic]” (*id.* at 795) before rejecting it:

7 ...Merely because over time the County expended more money on
8 Rustlewood’s sewer and water system than it did on Hartstene Pointe’s
9 system does not require a repayment from the Rustlewood account. Rather,
10 these subsidiary accounts are a single combined fund operated by a single
department; they constitute one public service industry for the purposes of
the accountancy act.

11 ...Here, the County did not make interdepartmental transfers of
12 funds; rather, it used monies collected into a common sewer/utility fund to
13 pay the various maintenance and operating expenses of the three
subdivisions’ systems as they arose.

14 That the County maintained separate subsidiary accounts for each
15 of the three subdivisions does not make Rustlewood a separate entity for
purposes of the accountancy act....

16 *Id.* at 796-97 (emphasis added).

17 Plaintiffs attempt to avoid this outcome by stretching the phrase “undertaking” in
18 the statute beyond its rational bounds.⁸ Mot. at 16-17. Tacoma Power has always treated
19 its System and the sale of excess capacity through its Click unit as an integrated part of the
20 Power Fund. Plaintiffs cannot escape this reality via their unsupported interpretation of
21

22 ⁸ RCW 43.09.210, provides, in pertinent part:

23 All service rendered by, or property transferred from, one department, public
24 improvement, undertaking, institution, or public service industry to another, shall be paid
25 for at its true and full value by the department, public improvement, undertaking,
institution, or public service industry receiving the same, and no department, public
improvement, undertaking, institution or public service industry shall benefit in any
financial manner whatever by an appropriation or fund made for the support of another.

1 two cherry-picked phrases.⁹ *Id.* at 16. Nor may they rely on different of sources of
2 authority or taxes for different municipal activities.¹⁰ If either were enough to establish a
3 violation of RCW 43.09.120, Washington’s government would grind to a halt.¹¹

4 2. Continuing to Operate and Maintain Click does not Violate the City Charter

5 Section 4.5 of the Tacoma City Charter provides:

6 The revenues of utilities owned and operated by the City shall never
7 be used for any purposes other than the necessary operating expenses
8 thereof, including the aforesaid gross earnings tax, interest on and
9 redemption of the outstanding debt thereof, the making of additions and
10 betterments thereto and extensions thereof, and the reduction of rates and
11 charges for supplying utility services to consumers. The funds of any utility
shall not be used to make loans to or purchase the bonds of any other
utility, department or agency of the City.

12 Tacoma City Charter, § 4.5 (emphasis added). Click is and always has been a unit of
13 Tacoma Power. Similarly, the System, including Click, is and always has been a part of
14 the Power Fund. *Supra* at 5-6. This arrangement was not one “of administrative

15 _____
16 ⁹ Plaintiffs quote the use of “separate system” in City Ordinance No. 25930, yet ignore its cover and first
17 page (“AN ORDINANCE of the City of Tacoma, Washington establishing a telecommunications system as
18 part of the Light Division...”) and its recitals (“WHEREAS, the City has determined that it should create a
19 telecommunications system as part of the Electric System in order to construct these telecommunications
improvements; ...”). Cherullo Decl., ¶8, Ex. A (emphasis added). Likewise, Plaintiffs speculate as to the
20 meaning of “new business lines” in Substitute Resolution No. 33668, whereas the ordinance is clearly
21 focused on the integrated System’s value to Tacoma Power’s generation, distribution, and transmission
22 assets. Vander Stoep Decl. ¶14, Ex. L. Even if Plaintiffs could contest these issues, the attendant factual
23 dispute would necessitate denial of their Motion.

20 ¹⁰ Municipalities and their utilities derive authority for various activities from a broad array of sources,
21 including but not limited to RCW 35.22.570 (omnibus grant of power to charter cities like Tacoma), RCW
22 35.A.11.020 (broad power to offer utilities and other municipal services), RCW 35.94 (right to lease surplus
23 utility property and equipment), RCW 80.60.020 (allowing utility to offer net metering), etc. Similarly, like
any utility, Tacoma Power pays many different kinds of taxes depending on its activities during the course
of a year. Cherullo Decl., ¶¶21-22.

23 ¹¹ Plaintiffs take references to “subsidies” in TPU’s 2013 Management Review (the “Sage Report”) out of
24 context to argue that this case is equivalent to the *Okeson* line of cases that held that electric ratepayers
cannot subsidize a public good or service. Mot. 9-10. In truth, the Sage Report acknowledges the central
25 point the City makes in this opposition brief: “Click! is not a separate business unit or enterprise fund. It is
an organizational unit within the Power enterprise fund.” Robinson Decl., ¶12, Ex. H at 9099-9101.

1 convenience” as Plaintiffs theorize (Mot. at 17), but rather at the core of the City’s
2 successful effort to obtain authorization to launch the System. Similarly, the use of
3 allocations to inform Tacoma Power’s decision-making process is inapposite to an
4 analysis of the City Charter. Try as Plaintiffs might to recast the facts, this case does not
5 involve the transfer of any funds (loans or otherwise) between utilities or other City
6 departments or agencies. Moreover, funds expended on Click and the rest of the System
7 go toward its operation or the making of additions, betterments, or extensions of the
8 System. Plaintiffs’ challenge via the City’s Charter must fail.

9 3. Plaintiffs Rely on Inapposite Authority

10 Although Plaintiffs do not cite to or offer any specific argument regarding RCW
11 35.92.050, they quote from and rely upon cases interpreting it. Mot. at 15.¹² What
12 Plaintiffs present as general utility governance principles are in fact inextricably linked to
13 that statute and its jurisprudence. Significantly, this includes the “sufficiently close nexus”
14 test that Plaintiffs seek to apply here. *Taxpayers*, 108 Wn.2d at 695-96 (“Consequently,
15 RCW 35.92.050 authorizes Tacoma’s conservation program if the program bears a
16 sufficiently close nexus to the purpose and object the Legislature intended to serve in
17 granting the power to operate an electric utility.”); *accord Okeson III*, 159 Wn.2d at 450;
18 *Okeson II*, 130 Wn. App. at 822; *Okeson I*, 108 Wn.2d at 695-96.

19 However, cable television and broadband internet are not subject to RCW 35.92.
20 In recognizing the power of a code city under RCW 35A.11.020 to utilize its
21 telecommunications system to provide cable television service, the Supreme Court
22 rejected the argument “that municipal ownership of a cable television system conflicts

23 _____
24 ¹² RCW 35.92.050 provides municipalities authority to acquire and operate utilities. The specific cases
25 Plaintiffs cite are *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 743 P.2d 793 (1987);
Okeson v. City of Seattle, 150 Wn.2d 540, 78 P.3d 1279 (2003) (“*Okeson I*”); *Okeson v. City of Seattle*, 130
Wn. App. 814, 125 P.3d 172 (2005) (“*Okeson II*”); *Okeson v. City of Seattle*, 159 Wn.2d 436, 150 P.3d 556
(2007) (“*Okeson III*”).

1 with...RCW 35.92 and therefore exceeds the delegated authority of the city.”
2 *Teleprompter Corp.*, 93 Wn.2d at 573. See also *In re Ltd. Tax Gen. Obligation Bonds*, 162
3 Wn. App. 513, 526-27, 256 P.3d 1242 (2011) (citing *Teleprompter* to uphold City of
4 Edmonds’ authority to operate fiber optic network and provide broadband internet via
5 excess network capacity).

6 Moreover, Plaintiffs’ cases are further distinguishable by their focus on
7 governmental services provided to the general public. See, e.g., *Okeson I*, 108 Wn.2d at
8 550 (“Providing streetlights, however, is a governmental function because they operate for
9 the benefit of the general public, and not for the comfort and use of individual
10 customers.”). In contrast, the System was a prudent investment with actual and anticipated
11 benefits for all electric ratepayers. Tacoma Power operates its System in a proprietary
12 capacity only for the use of paying customers, not the general public.¹³ Judicial review of
13 charges imposed for proprietary functions “are limited to whether the costs were arbitrary,
14 capricious or unreasonable.” *Okeson I*, 150 Wn.2d at 550. Under this standard, Tacoma
15 Power’s proprietary operation of a conservation program among its electricity customers
16 survived judicial scrutiny. *Taxpayers*, 108 Wn.2d at 700. This was true even though
17 “Tacoma’s activity served broader utility purposes of efficiency, pollution and cost
18 control, and planning for future needs.” *Okeson III*, 159 Wn.2d at 451 n. 5. Even if
19 Plaintiffs’ authority were on point, the City would prevail. *Okeson III*, 159 Wn.2d at 451
20 (“In other words, a close nexus to supplying electricity exists when the action benefits the
21 utility and its customers, but not when it benefits the general public.”).¹⁴

22 _____
23 ¹³ Challenges to municipal utilities under the accountancy act can only be brought when the utility is
24 providing proprietary, rather than governmental, services. See *Fisk v. City of Kirkland*, 164 Wn.2d 891, 194
P.3d 984, (2008). Plaintiffs cannot dispute that Tacoma Power is providing proprietary services via Click.

25 ¹⁴ Summary judgment should be granted to the City on the claims brought in the instant Motion, as
reasonable minds could only draw the conclusion that Click is a lawfully funded part of Tacoma Power and
its Power Fund. However, even if Plaintiffs could produce contrary facts regarding Click’s purpose,

1 **C. The City is Exercising its Authority to Control and Maintain its Assets**

2 Properly viewed, Plaintiffs are challenging Click’s integration into the Power Fund
3 and its continued use of the System’s excess capacity when it has not proven as lucrative
4 as hoped. Like all legislative decisions, the City’s decisions here are subject only to very
5 limited judicial review. Because the City is appropriately exercising its broad authority to
6 control and maintain its assets, Plaintiffs’ claims must fail.¹⁵

7 “[I]f municipal utility actions come within the purpose and object of the enabling
8 statute and no express limitations apply, this court leaves the choice of means used in
9 operating the utility to the discretion of municipal authorities. We limit judicial review of
10 municipal utility choices to whether the particular contract or action was arbitrary or
11 capricious, or unreasonable.” *Municipality of Metro. Seattle v. Div. 587, Amalgamated*
12 *Transit Union*, 118 Wn.2d 639, 645–46, 826 P.2d 167 (1992). The “enabling statutes” for
13 Tacoma Power’s continued ownership and operation of the System, including the lease of
14 excess System capacity via Click as an integrated part of the Power Fund, are described in
15 detail above. *Supra* at 3, 12 n. 7. Moreover, Washington also recognizes a municipal
16 utility’s right to recover investments in stranded assets through electric rates, as long as
17 the original investment was prudently made. *See POWER v. Utilities, Transp. Comm’n*,
18 104 Wn.2d 798, 805, 820-22, 711 P.2d 319 (1985). The City also has express authority to
19 control and dispose of property, including utility property and equipment rendered surplus
20 to the City’s needs. RCW 35.22.280(3); RCW 35.94.040.

21
22
23 configuration or operation, a trial would be necessary to resolve the attendant factual disputes. Either way,
the Court should deny Plaintiffs’ Motion.

24 ¹⁵ Plaintiffs are not challenging Tacoma Power’s use of Power Fund monies for its bulk power sales. Yet
25 this activity requires the payment of costs for activity that does not provide electricity to Tacoma Power
ratepayers. If the distinction is that one makes money while the other does not, it confirms that Plaintiffs’
actual challenge here is to how the City and Tacoma Power are deploying assets.

1 As against these multiple sources of authority for Tacoma Power's decisions, the
2 only alleged limitations identified by the Plaintiffs are the accountancy act and City
3 Charter, neither of which is implicated here. Plaintiffs cannot point to any aspect of
4 Tacoma Power's decision to continue using (and spending monies on) the System and
5 Click as originally planned that is arbitrary, capricious, or unreasonable. The System
6 continues to provide necessary services to Tacoma Power and is estimated to have
7 considerable value for Tacoma Power and all ratepayers. *Supra* at 9-11. In addition, Click
8 has thousands of customers and considerable goodwill. Click would quickly lose both if it
9 has to curtail or end operations due to a lack of funds, which would in turn impede or
10 derail the City's imminent search for a partner or alternative mechanism for future System
11 use.¹⁶ Gyaltzen Decl., ¶¶12-13, Ex. C; Robinson Decl., ¶20, Ex. H at 9097. Nothing
12 requires Tacoma Power or the City to immediately or prematurely sell or dispose of these
13 assets. To the contrary, the City's use of electric utility funds to maintain these assets
14 while determining next steps is consistent with prudent utility practices and well above the
15 standard of arbitrary, capricious, or unreasonable. Accordingly, the Court should grant
16 summary judgment in favor of the City.

17 **D. Granting Plaintiffs' Motion Would Have Negative Policy Implications**

18 Plaintiffs conclude their brief with speculation on the potential benefits for electric
19 ratepayers if the Court orders Tacoma Power to cut off funds for Click.¹⁷ Mot. at 18-19. In
20 fact, such a development would have serious negative consequences for Tacoma Power,
21

22 ¹⁶ In addition, even if Click were shuttered tomorrow, there presumably still would be depreciation for the
23 System assets previously allocated to Click. Cherullo Decl., ¶23; Bailey Decl., ¶11. Tacoma Power would
24 either need to continue to depreciate those assets in the Power Fund or write them off, with either approach
impacting Power Fund financials and electric ratepayers. *Id.*

25 ¹⁷ To the extent Plaintiffs base their policy argument on an alleged 2-3% electric rate reduction if Tacoma
Power abandoned Click (Mot. at 9), Tacoma Power Superintendent Chris Robinson repeatedly questioned
the validity of that estimate (Vander Stoep Decl., ¶5, Ex. C at 39-42, 50-53). This is at best a disputed issue.

1 its employees and customers and other utilities far beyond the four corners of this case.
2 Depriving Click of revenue it has always relied upon as a unit of Tacoma Power would
3 likely lead to employee layoffs and the interruption or cessation of cable and internet
4 services to Click and ISP customers. Gyaltzen Decl., ¶14. This is particularly true if the
5 disruption were immediate. *Id.* The affected customer base includes elderly and low
6 income individuals, as well as public schools, universities, and government offices. *Id.*

7 In addition to these human costs, Plaintiffs' request would impact Tacoma Power's
8 ability to manage its assets and make other business decisions for the ultimate benefit of
9 all ratepayers. *Supra* at 21-22. Moreover, if the Court adopted Plaintiffs' characterization
10 of Click customers receiving "subsidies" from other electric ratepayers, it could limit
11 Tacoma Power's ability to offer services available only to a subset of ratepayers,
12 including energy conservation loans, assistance to low income seniors, real-time payment
13 options and local improvement district projects. Robinson Decl. ¶22. Finally, viewing the
14 customers who consume more services as "subsidized" could also call into question the
15 cost-of service model employed by Tacoma Power and other utilities, which is based on
16 averaging costs for non-identical customers in various classes. *Supra* at 7-8.

17 **E. The Court Should Decline to Consider Improper Arguments or Material**

18 Plaintiffs heavily rely upon a 2015 memo drafted by the City Attorney and Chief
19 Deputy City Attorney (Mot. at 1-4, 11-12, 14, 16-18), even asking the Court "to consider
20 it as part of the legal support for this motion." *Id.* at 14. However, the Court should
21 disregard some or all of the memo for multiple reasons. First, literally incorporating the
22 seven page memo into Plaintiffs' 19 page motion would violate PCLR 7(a)(8)'s 24-page
23 limit. Second, Plaintiffs improperly cite to multiple legal conclusions contained in the
24 memo. *Id.* at 1-4, 11-12, 14, 16-18. While the City anticipates filing a separate motion to
25 strike these and other improper portions of Plaintiffs' submission, it is clear that the Court


1 should disregard these conclusory hearsay statements.¹⁸ *Ebel v. Fairwood Park II*
2 *Homeowners' Ass'n*, 136 Wn. App. 787, 790–91, 150 P.3d 1163 (2007). Third, Plaintiffs
3 are limited to the challenges specifically argued in their Motion (*i.e.*, under City Charter
4 §4.5 and RCW 43.09.210). CR 7(b)(1) (motion “shall state with particularity the grounds
5 therefore”). Plaintiffs are free to mine the memo, but cannot incorporate by reference
6 other statutes or issues discussed therein. Fourth, the memo’s analysis is abbreviated and
7 contains certain clear inaccuracies. Vander Stoep Decl., ¶19, Ex. Q at 38. For example, it
8 attributes the outcome in *Okeson I* to the accountancy act, when the Court declined to rule
9 on that basis. 150 Wn.2d at 557 (2003). More broadly, it discusses cases involving
10 governmental functions not at issue here, misconstrues the nature of Tacoma Power’s
11 allocations and searches for statutory authorization when the correct approach would be to
12 confirm that nothing prevents the City from reaching prudent decisions to continue
13 operating the System and Click as configured.

14 CONCLUSION

15 For all of the reasons discussed above, the City respectfully requests that the Court
16 either grant summary judgment to the City on the Plaintiffs’ claims under RCW 43.09.210
17 and the City’s Charter, or reserve the claims for trial.

18 DATED this 7th day of February, 2018.

19 K&L GATES LLP

20
21 By 
22 Mark S. Filipini, WSBA #32501
23 Kari L. Vander Stoep, WSBA #35923
Attorneys for Defendant City of Tacoma

24 ¹⁸ Significantly, Plaintiffs do not and cannot contend that the memo constitutes an admission by a party-
25 opponent under ER 803. While Plaintiffs undoubtedly find the memo and its content “[a]n interesting
feature of this case” (Mot. at 1), it does not contain the full or proper analysis as outlined in this brief, and is
ultimately no more admissible than a memo penned tomorrow drawing opposite conclusions.

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

EDWARD E. (TED) COATES, et. al.,

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

No. 17-2-08907-4

DECLARATION OF ANDY
CHERULLO IN SUPPORT OF
DEFENDANT’S OPPOSITION TO
PARTIAL SUMMARY JUDGMENT

I, Andy Cherullo, declare as follows:

- 1. I am over the age of 18, have personal knowledge of the facts stated herein, and am competent to testify thereto.
- 2. I am Finance Director for the City of Tacoma (“City”). I have served as Finance Director since February of 2013. I manage the City’s Finance Department.
- 3. Tacoma Power is part of Tacoma Public Utilities (“TPU”), which consists of Tacoma Power, Tacoma Water, and Tacoma Rail.
- 4. Tacoma Power is the City of Tacoma’s (“City’s”) largest department.
- 5. For government accounting purposes, the City Finance Department manages several separate funds for TPU including what are commonly referred to as the

1 Power Fund, Water Fund, and Rail Fund. The Power Fund tracks the expenses and
2 revenues attributable to Tacoma Power.

3 6. Since the construction of the telecommunications system was authorized in
4 1996, the expenses, revenues, depreciation, and taxes associated with the
5 telecommunications system have always been included in the Power Fund.

6 7. Revenues come into Tacoma Power from a variety of sources, including
7 but not limited to rates paid by retail electric customers, transmission charges paid by
8 other utilities using Tacoma Power's transmission assets, wholesale power sales from
9 Tacoma Power's generation assets to other utilities and power marketers, recreation fees
10 for public use of Tacoma Power's recreation assets, proceeds from electric revenue bonds,
11 and rates paid by the ISPs and Click's cable television customers. All of those revenues
12 are accounted for in the City's Power Fund.

13 8. Attached as Exhibit A is an accurate and complete copy of City Ordinance
14 25930, establishing the "telecommunications system as part of the Light Division,
15 supplementing Ordinance No. 23514 and providing for the issuance and sale of the City's
16 Electric System Revenue Bonds in the aggregate principal amount of not to exceed
17 \$1,000,000 to provide part of the funds necessary for the acquisition, construction and
18 installation of additions and improvements to the telecommunications system." (Emphasis
19 added.)

20 9. Article II, Section 2.1 of Ordinance 25930 established that the
21 telecommunications system would be part of the Power Fund: "The City hereby
22 covenants that all revenues received from the Telecommunications System shall be
23 deposited into the Revenue Fund." The "Reserve Fund" referred to in Ordinance 25930
24 is defined in Ordinance 23514 on page 15 as the "Light Fund" created by Ordinance 2849,
25

1 which is what the City Finance Department and Tacoma Power now call the "Power
2 Fund."

3 10. Within the Power Fund, Tacoma Power and the City Finance Department
4 administratively created a sub-fund for Click, which is a division of Tacoma Power that
5 sells excess capacity on the telecommunications system to Internet Service Providers
6 ("ISPs") and Tacoma Power's electric customers who want retail cable television service.
7 The sub-fund for Click was created in 1997.

8 11. Attached as Exhibit B is an accurate and complete copy of Tacoma
9 Power's Annual 2016 Financial Report.

10 12. Each year, the City's Finance Department prepares a financial statement
11 for the Tacoma Power Fund to assure that all revenue and expense transactions are
12 appropriately recorded in accordance with generally accepted accounting principles
13 ("GAAP") and local and state regulatory requirements. Within that financial statement,
14 the City reports on the expenses and revenues associated with Click. The annual financial
15 statement is audited every year by the accounting firm Moss Adams LLP to assure that
16 they are free of material misstatement and in compliance with GAAP and Washington
17 state law. The audited financial statement is reviewed each year by the Washington State
18 Auditor's Office. The financial statement must show that the Power Fund has a positive
19 cash balance at year-end. There is no requirement in state law or GAAP, however, that
20 sub-funds within the Power Fund, such as Click, have a positive cash balance at year-end.

21 13. Attached as Exhibit C is an accurate and complete copy of a memo written
22 by one of my former employees in the City Finance Department, Doug Swanson, to the
23 Superintendent of Tacoma Power, Chris Robinson, on March 4, 2016.

24 14. Attached as Exhibit D is an accurate and complete copy of TPU Board
25 Resolution U-10879.

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15. There are some City departments that provide services that benefit a number of other departments. As a result, allocation formulas are developed to allocate the revenues and expenses of shared services between City funds for accounting purposes. For example, the City's legal department provides legal services to the City Council and Tacoma Power. The expenses for providing these legal services are allocated among the City's funds, including the Power Fund, as required by GAAP.

16. While allocation formulas need to be based on a reasonable methodology pursuant to Washington law and GAAP, considerable flexibility exists and many formulas may be reasonable for the same service.

17. In 2002, Tacoma Power decided to develop an allocation formula to track what expenses and revenues generated by the telecommunications system could be respectively attributed to Tacoma Power's generation and delivery of electricity versus Click's sale of excess capacity to the ISPs and for retail cable services. However, when a City has costs within one fund (the Power Fund, for instance) it is not required or typical to allocate them amongst sub-funds. Nor is it required that sub-funds must have a positive cash balance at year-end.

18. Historical review of the financial statements of Tacoma Power show that total costs incurred by Click exceed the revenues generated by Click. Neither Moss Adams LLP, the accounting firm that audits Tacoma Power every year, nor the Washington State Auditor's Office has raised an issue with the losses recorded in the Click sub-fund. The reason why this has never been an issue for Moss Adams LLP or the Washington State Auditor's Office is because the telecommunications system, including Click's sale of excess capacity on the telecommunications system, is part of the Power Fund and only the Power Fund must have positive cash balance at year-end.

1 19. Historical review of the financial statements of Tacoma Power show that
2 Click! operating revenues are approximately 6% of the Power Fund Operating Revenues,
3 Click! operating expenses are approximately 7.5% of the Power Fund Operating
4 Expenses.

5 20. As the City of Tacoma's Finance Director, I have encountered numerous
6 situations where the property of a city department becomes surplus and the City must care
7 for this surplus property and decide how and when to dispose of it. Often the best choice
8 for the City is not to immediately sell or dispose of the surplus property. The City must
9 be deliberate and consider market conditions and other issues when making the decision
10 on how and when to dispose of surplus property.

11 21. The Power Fund pays many different kinds of taxes depending on the
12 activities of Tacoma Power during the course of a year. For example, the Power Fund
13 may pay a retail sales tax for retail sales that it makes at its campgrounds as well as a
14 lodging tax for the camp sites. It also pays a state public utility tax on its electric
15 business. . The Power Fund also pays the city tax on cable television service sold by
16 Click. For the purposes of RCW 43.09.210, the City does not treat Click or Tacoma
17 Power's campground operations as separate "undertakings" because they pay different
18 types of taxes over the course of a year.

19 22. The fact that the City Finance Department does not split Tacoma Power
20 into a number of separate "undertakings" for the purposes of RCW 43.09.210 because
21 different parts of Tacoma Power engage in different activities that trigger the assessment
22 of different local and state taxes is not surprising or illogical. Businesses face the
23 assessment of different local and state taxes depending on the activities they engage in.
24 For example, in Tacoma, car dealerships are taxed at .153% for sales of cars to customers
25 under Tacoma's Retailing Business and Occupation (B&O) tax, while the same car

1 dealerships are taxed at .4% for leases of cars to customers under B&O Service & Other.
2 A car dealership does not split itself into two entities because it pays different tax rates on
3 sales and leases. Likewise, a pub does not split itself into three entities because it pays
4 different tax rates on pull-tab revenues (either 1.5% or 1.63% under Gambling), sales of
5 food to customers (.471% under Retailing), and commission from amusement games such
6 as pool (1.5% under Service & Other).

7 23. If Tacoma Power was ordered or instructed to immediately stop selling the
8 telecommunications system's excess capacity to the ISPs and retail cable television
9 customers, eliminating Click's revenues and expenses, there still would be depreciation
10 for the telecommunications system assets previously allocated to Click. Tacoma Power
11 would need to decide to continue to use and maintain those assets or potentially dispose of
12 or write-off those assets which could result in either a gain or a loss to the Power Fund.

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

14
15 EXECUTED this 7th day of February, 2018, in Tacoma, Washington.

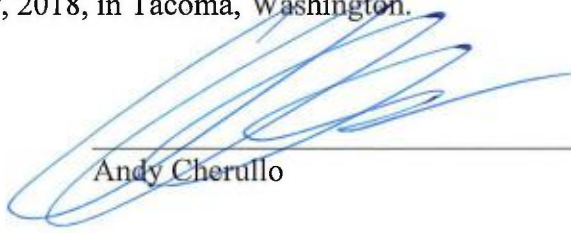
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EXHIBIT A



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ORDINANCE NO. 25930

AN ORDINANCE of the City of Tacoma, Washington establishing a telecommunications system as part of the Light Division, supplementing Ordinance No. 23514 and providing for the issuance and sale of the City's Electric System Revenue Bonds in the aggregate principal amount of not to exceed \$1,000,000 to provide part of the funds necessary for the acquisition, construction and installation of additions and improvements to the telecommunications system.

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ORDINANCE NO. 25930

AN ORDINANCE of the City of Tacoma, Washington establishing a telecommunications system as part of the Light Division, supplementing Ordinance No. 23514 and providing for the issuance and sale of the City's Electric System Revenue Bonds in the aggregate principal amount of not to exceed \$1,000,000 to provide part of the funds necessary for the acquisition, construction and installation of additions and improvements to the telecommunications system.

WHEREAS, the City of Tacoma (the "City") owns and operates an electric utility system (the "Electric System"); and

WHEREAS, the Ordinance provides that the City may create a separate system as part of the Electric System and pledge that the income of such separate system be paid into the Revenue Fund; and

WHEREAS, RCW 35A.11.020 authorizes the City to operate and supply utility and municipal services commonly or conveniently rendered by cities or towns; and

WHEREAS, RCW 35.92.050 authorizes cities to construct and operate works and facilities for the purpose of furnishing any persons with electricity and other means of power and to regulate and control the use thereof or lease any equipment or accessories necessary and convenient for the use thereof; and

WHEREAS, the Utility Board and the Council have determined that it is in the best interest of the City that it install a telecommunications system among all of its Electric System substations in order to improve communications for automatic substation control; and

WHEREAS, the City has determined that it is prudent and economical to provide additional capacity on such telecommunications system to provide the Electric System with sufficient capacity to perform or enhance such functions as automated meter reading and billing, appliance control, and load shaping; and

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WHEREAS, the Light Division may wish to connect such telecommunications system to individual residences and businesses in its service area or to other providers of telecommunications services; and

WHEREAS, the City has determined that it should create a telecommunications system as part of the Electric System in order to construct these telecommunications improvements; and

WHEREAS, the City by Ordinance No. 23514 passed November 20, 1985 (as amended and supplemented, the "Ordinance"), authorized Electric System Revenue Bonds (the "Bonds") of the City to be issued in series, made covenants and agreements in connection with the issuance of such Bonds and authorized the sale and issuance of the first series of such Bonds in the aggregate principal amount of \$125,505,000 (the "1985 Bonds") for the purpose of refunding all of the City's then outstanding light and power revenue bonds; and

WHEREAS, the 1985 Bonds were issued under date of December 1, 1985 and are now outstanding; and

WHEREAS, the City has heretofore issued ten additional series of Bonds on a parity with the 1985 Bonds, which bonds were issued and are now outstanding:

<u>Authorizing Ordinance</u>	<u>Bonds Dated</u>	<u>Principal Amount Issued</u>
23663	July 1, 1986	\$ 30,000,000
24073	May 1, 1988	60,400,000
24296	May 1, 1989	48,500,000
25004	December 1, 1991	13,800,000
25004	December 5, 1991	42,400,000
25004	December 5, 1991	42,400,000
25089	May 1, 1992	31,295,000
25165	September 1, 1992	131,675,000
25333	August 1, 1993	3,318,500
25489	May 10, 1994	135,665,000

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1 Section 1.1 of the Ordinance, as amended and supplemented by the First, Second, Third,
2 Fourth, Fifth, Sixth, and Seventh Supplemental Ordinances.

3 B. In this Eighth Supplemental Ordinance:

4 "Arbitrage and Tax Certification" means the certificate executed by the Director of
5 Finance of the City pertaining to the calculation and payment of any Rebate Amount with
6 respect to the Bonds.

7 "Bond Sale Resolution" means the resolution to be adopted by the City Council setting
8 forth the final terms of the Bonds.

9 "Bonds" means the Electric System Revenue Bonds, 199__, of the City issued pursuant
10 to the Ordinance and this Eighth Supplemental Ordinance.

11 "Code" means the Internal Revenue Code of 1986, as amended, together with
12 corresponding and applicable final, temporary or proposed regulations and revenue rulings
13 issued or amended with respect thereto by the United States Treasury or the Internal Revenue
14 Service, to the extent applicable to the Bonds.

15 "Eighth Supplemental Ordinance" means this Ordinance No. 25930.

16 "Rebate Amount" means the amount, if any, determined to be payable with respect to
17 the Bonds by the City to the United States of America in accordance with Section 148(f) of the
18 Code.

19 Section 1.3. Authority for this Eighth Supplemental Ordinance. This Eighth
20 Supplemental Ordinance is adopted pursuant to the provisions of the laws of the State of
21 Washington, the Tacoma City Charter and the Ordinance.
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ARTICLE II
**FINDINGS; ESTABLISHMENT OF THE TELECOMMUNICATIONS PROJECT AS A
SEPARATE SYSTEM; AND ADOPTION OF PLAN AND SYSTEM**

Section 2.1. Establishment of Telecommunication System. The City hereby creates a separate system of the City's Light Division to be known as the telecommunications system (the "Telecommunications System"). The public interest, welfare, convenience and necessity require the creation of the Telecommunications System, contemplated by the plan adopted by Section 2.2 hereof, for the purposes set forth in Exhibit A. The City hereby covenants that all revenues received from the Telecommunications System shall be deposited into the Revenue Fund.

Section 2.2. Adoption of Plan; Estimated Cost. The City hereby specifies and adopts the plan set forth in Exhibit A for the acquisition, construction and implementation of the Telecommunications System (the "Telecommunications Project"). The City may modify details of the foregoing plan when deemed necessary or desirable in the judgment of the City. The estimated cost of the Telecommunications Project, including funds necessary for the payment of all costs of issuing the Bonds, is expected to be approximately \$40,000,000.

Section 2.3. Findings of Parity. The Council hereby finds and determines as required by Section 5.2 of the Ordinance as follows:

- A. The Bonds will be issued for financing capital improvements to the Electric System.
- B. At the time of issuance and delivery of the Bonds, there will be no deficiency in the Bond Fund and no Event of Default shall have occurred.
- C. At the time of issuance and delivery of the Bonds, there will be on file with the City Clerk the certificate of the Director of Finance required by Section 5.2(B)(1) or Section 5.2(C) of the Ordinance.

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1 The applicable limitations contained in Section 5.2 of the Ordinance having been
2 complied with in the issuance of the Bonds, the Bonds will have a lien upon the Net Revenues
3 of the Electric System for the payment of principal thereof and interest thereon equal in priority
4 to the lien upon the Net Revenues of the Electric System for the payment of the principal of
5 and interest on the 1985 Bonds, the 1986 Bonds, the 1988 Bonds, the 1989 Bonds, the 1991
6 Bonds, the 1992 Bonds, the 1992B Bonds, the 1993 Bonds and the 1994 Bonds.

7 Section 2.4. Due Regard. The Council and Board hereby find and determine that due
8 regard has been given to the cost of the operation and maintenance of the Electric System and
9 that it has not obligated the City to set aside into the Bond Fund for the account of the Bonds a
10 greater amount of the revenues and proceeds of the Electric System than in its judgment will
11 be available over and above such cost of maintenance and operation.

12 Section 2.5. Findings. The Council and Board hereby find it to be necessary and in the
13 best interests of the City to issue the Bonds in order to provide part of the funds necessary to
14 finance the Telecommunications Project.

ARTICLE III

AUTHORIZATION OF BONDS

17 Section 3.1. Principal Amount, Designation and Series. Pursuant to the provisions of
18 the Ordinance, a series of Bonds of the City entitled to the benefit, protection and security of
19 such provisions is hereby authorized in the aggregate principal amount of not to exceed
20 \$1,000,000. Such Bonds shall be designated as, and shall be distinguished from the Bonds of
21 all other series by the title, "City of Tacoma, Washington Electric System Revenue Bonds,
22 199_."

23 Section 3.2. Purpose. The purpose of the Bonds is to provide part of the funds
24 necessary to finance the Telecommunications Project, make any necessary deposit to the
25 Reserve Account and to pay the costs of issuance and sale of the Bonds.
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1 Section 3.3. Date, Maturities and Interest. The Bonds shall be issued in the aggregate
2 principal amount of not to exceed \$1,000,000 and shall be dated as of the date provided in the
3 Bond Sale Resolution and shall bear interest from their dated date to their stated dates of
4 maturity or prior redemption. The exact principal amount of the Bonds shall be established by
5 the Bond Sale Resolution. The Bonds shall mature on the dates of the years and in the
6 principal amounts and shall bear interest payable semiannually on the dates and at the rates per
7 annum set forth in the Bond Sale Resolution.

8 Section 3.4. Denomination and Numbers. The Bonds shall be issued in fully registered
9 form in the denominations of \$5,000 or any integral multiple of \$5,000 within a maturity. The
10 Bonds shall be numbered separately in such manner and with any additional designation as the
11 Registrar deems necessary for purposes of identification. The Bond Sale Resolution may
12 provide for the Bonds to be held in book-entry only form.

13 Section 3.5. Redemption Terms. By the Bond Sale Resolution, the City Council may
14 determine that all or a portion of the Bonds shall be subject to redemption prior to maturity at
15 the option of the City, in whole or in part, on any date and at the respective redemption prices
16 specified in the resolution. The City Council may designate certain Bonds as Term Bonds that
17 will be subject to redemption by operation of the Bond Retirement Account through Sinking
18 Fund Requirements in the years and amounts set forth in the resolution.

19 Section 3.6. Reservation of Right to Purchase. The City reserves the right to use
20 money in the Revenue Fund or any other legally available funds at any time to purchase any of
21 the Bonds in the open market provided there is no deficiency in the accounts within the Bond
22 Fund. Any purchases of Bonds may be made with or without tenders of Bonds and at either
23 public or private sale.

24 Section 3.7. Tax Exemption. The City shall comply with the provisions of this section
25 unless, in the written opinion of nationally-recognized Bond Counsel to the City, such
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1 compliance is not required in order to maintain the exemption of the interest on the Bonds
2 from federal income taxation.

3 The City hereby covenants that it will not make any use of the proceeds from the sale
4 of the Bonds or any other funds of the City which may be deemed to be proceeds of such
5 Bonds pursuant to Section 148 of the Code and the applicable regulations thereunder which
6 will cause the Bonds to be "arbitrage bonds" within the meaning of said Section and said
7 regulations. The City will comply with the applicable requirements of Section 148 of the Code
8 (or any successor provision thereof applicable to the Bonds) and the applicable regulations
9 thereunder throughout the term of the Bonds.

10 The City further covenants that it will not take any action or permit any action to be
11 taken that would cause the Bonds to constitute "private activity bonds" under Section 141 of
12 the Code.

13 Section 3.8. Arbitrage Rebate. The City will pay the Rebate Amount, if any, to the
14 United States of America at the times and in the amounts necessary to meet the requirements
15 of the Code to maintain the federal income tax exemption for interest payments on the Bonds,
16 in accordance with the Arbitrage and Tax Certification.

17 ARTICLE IV

18 REGISTRATION, FORM AND GENERAL TERMS

19 Section 4.1. Registrar and Paying Agent. The initial Registrar and Paying Agent shall
20 be the fiscal agencies for the state of Washington in Seattle, Washington, and New York, New
21 York.

22 Section 4.2. Transfer and Exchange. So long as the Bonds are not in book-entry form,
23 any Bond may be transferred pursuant to its provisions at the Registrar's principal office for
24 such purpose by surrender of such Bond for cancellation, accompanied by a written instrument
25 of transfer, in form satisfactory to the Registrar, duly executed by the registered owner in
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1 person or by the registered owner's duly authorized attorney. Upon payment of any applicable
2 tax or governmental charge, the City will execute and the Registrar will authenticate and
3 deliver at the principal office of the Registrar (or send by registered mail to the owner thereof
4 at the owner's expense), in the name of the transferee or transferees, a new Bond or Bonds in
5 authorized denominations of the same interest rate, aggregate principal amount and maturity,
6 dated as of the last interest payment date to which interest has been paid so that there shall
7 result no gain or loss of interest as a result of such transfer. To the extent of authorized
8 denominations, one Bond may be exchanged for several bonds of the same interest rate and
9 maturity, and for a like aggregate principal amount, and several Bonds of the same interest rate
10 and maturity may be exchanged for one or several Bonds, respectively, of the same interest
11 rate and maturity and for a like aggregate principal amount.

12 In every case of a transfer or exchange of any Bonds, the surrendered Bonds shall be
13 canceled by the Registrar and a certificate evidencing such cancellation shall be promptly
14 transmitted by the Registrar to the City. As a condition of any such transfer or exchange, the
15 City at its option may require the payment of a sum sufficient to reimburse it for any tax or
16 other governmental charge that may be imposed thereon. All Bonds executed, authenticated
17 and delivered in exchange for or upon transfer of Bonds so surrendered shall be valid
18 obligations of the City evidencing the same debt as the Bonds surrendered, and shall be entitled
19 to all the benefits and protection of the Ordinance to the same extent as the surrendered
20 Bonds.

21 Section 4.3. Limitation on Transfer or Exchange of Bonds. The City shall not be
22 required to (a) issue, transfer, or exchange Bonds after the 15th day of the month prior to any
23 interest payment date therefor, or (b) to register, discharge from registration, transfer or
24 exchange any Bonds which have been designated for redemption within a period of 30 days
25 next preceding the date fixed for redemption.
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Section 4.4. Effect of Payment. All payments of or on account of interest to any registered owner of any Bond, and all payments of or on account of principal to any registered owner of any Bond (or to his or her assigns), shall be valid and effectual and shall be a discharge of the City, the Paying Agent and the Registrar in respect of the liability upon the Bonds or claims for interest, as the case may be, to the extent of the sum or sums paid.

All Bonds upon the payment or redemption thereof shall be canceled and destroyed by the Paying Agent, and a certificate evidencing such payment, cancellation and destruction shall be promptly transferred by the Paying Agent to the City.

Section 4.5. Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall at any time become mutilated or be lost, stolen or destroyed, the City in the case of such mutilated Bond shall, and in the case of such lost, stolen or destroyed Bond in its discretion may, execute and direct the Registrar to authenticate and deliver a new Bond of the same interest rate and maturity and of like tenor and effect in exchange or substitution for and upon surrender and cancellation of such mutilated Bond, or in lieu of or in substitution for such destroyed, stolen or lost Bond. If such stolen, destroyed or lost Bond shall have matured or have been called for redemption, instead of issuing a substitute therefor, the City may without the surrender of such Bond at its option pay the same (in which case the City shall promptly file a certificate to that effect with the Paying Agent and Registrar) or cause the same to be paid by the Paying Agent by a certificate of the City directing such payment filed with the Paying Agent. Except in the case where a mutilated Bond is surrendered, the applicant for the issuance of a substitute Bond shall furnish to the City and the Registrar evidence satisfactory to them of the theft, destruction or loss of the original Bond, and also such security and indemnity as may be required by the City or the Registrar, and no such substitute Bond shall be issued unless the applicant for the issuance thereof shall reimburse the City and the Registrar for the expenses incurred in connection with the preparation, execution, authentication, issuance and

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1 delivery of the substitute Bond. Any such substitute Bond shall be equally and proportionately
2 entitled to the security of the Ordinance with all other Bonds issued hereunder, whether or not
3 the Bond alleged to have been lost, stolen or destroyed shall be found at any time. The
4 Registrar shall cancel all mutilated Bonds surrendered to it.

5 Section 4.6. Execution and Authentication of Bonds. The Bonds shall be executed on
6 behalf of the City with the manual or facsimile signature of the Mayor and attested with the
7 manual or facsimile signature of the City Clerk and the seal of the City shall be imprinted or
8 impressed on each of the Bonds. The Bonds shall bear thereon a certificate of authentication,
9 in the form set forth in Section 4.7 of this Eighth Supplemental Ordinance, executed manually
10 by the Registrar. Only such Bonds as shall bear thereon such certificate of authentication shall
11 be entitled to any right or benefit under the Ordinance and no Bond shall be valid or obligatory
12 for any purpose until such certificate of authentication shall have been duly executed by the
13 Registrar. Such certificate of the Registrar upon any Bond executed on behalf of the City shall
14 be conclusive evidence that the Bond so authenticated has been duly authenticated and
15 delivered under the Ordinance and that the owner thereof is entitled to the benefits of the
16 Ordinance.

17 In case any of the officers who shall have signed or attested any of the Bonds shall
18 cease to be such officers before the Bonds so signed or attested shall have been actually
19 delivered, such Bonds shall be valid nevertheless and may be issued by the City with the same
20 effect as though the persons who had signed or attested such Bonds had not ceased to be such
21 officers.
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Section 4.7. Form of Bonds.

(a) The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF WASHINGTON
CITY OF TACOMA
ELECTRIC SYSTEM REVENUE BOND, 199_

No. _____ \$ _____
Interest Rate: _____ Maturity Date: _____ CUSIP No: _____
_____% _____
Registered Owner: _____
Principal Amount: _____ DOLLARS

The City of Tacoma, a municipal corporation of the State of Washington (hereinafter called the "City"), for value received, hereby promises to pay to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, the Principal Amount indicated above and to pay interest on such principal amount from the date hereof or the most recent date to which interest has been paid or duly provided for, at the Interest Rate set forth above per annum, payable _____, 199_, and semiannually thereafter on the first day of each _____ and _____ until payment shall have been made or provided for.

Principal of and interest on this bond are payable solely out of the special fund of the City known as the "Electric System Revenue Bond Fund" created and established by Ordinance No. 23514 of the City (the "Bond Fund"). Both principal of and interest on this bond are payable in lawful money of the United States of America. Interest shall be paid by mailing a check or draft or by wire transfer as provided in the Bond Ordinance (as hereinafter defined) to the registered owner or assigns at the address shown on the bond register as of the 15th day of the month prior to the interest payment date. Principal shall be paid to the registered owner or assigns upon presentation and surrender of this bond at the principal office of the Paying Agent or Agents which initially are the fiscal agencies of the State of Washington in Seattle, Washington, and New York, New York. (Such fiscal agencies also act, and are hereinafter referred to collectively, as the "Bond Registrar").

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.

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1 This bond is one of a duly authorized series of bonds aggregating \$ _____
2 in principal amount and designated as "Electric System Revenue Bonds, 199_." This bond and
3 the bonds of this series (the "Bonds") are issued under and pursuant to Ordinance No. 23514
4 as amended and supplemented by Ordinance No. 23663, Ordinance No. 24073, Ordinance No.
5 24296, Ordinance No. 25004, Ordinance No. 25089, Ordinance No. 25165, Ordinance
6 No. 25489 and Ordinance No. 25930 of the City (together the "Bond Ordinance"), and under
7 the authority of and in full compliance with the Constitution and laws of the State of
8 Washington.

9 The Bonds are issued for the purpose of providing part of the funds necessary for
10 financing capital improvements to the Electric System. The Bond Ordinance permits the
11 issuance of Future Parity Bonds payable from the Bond Fund ranking on a parity with the 1985
12 Bonds, the 1986 Bonds, the 1988 Bonds, the 1989 Bonds, the 1991 Bonds, the 1992 Bonds,
13 the 1992B Bonds, the 1993 Bonds, the 1994 Bonds and the Bonds and secured by an equal
14 charge and lien on the Net Revenues and permits the costs associated with certain Contract
15 Resource Obligations to be included in the Electric System's Operating Expenses (as such
16 terms are defined in the Bond Ordinance). The 1985 Bonds, the 1986 Bonds, the 1988 Bonds,
17 the 1989 Bonds, the 1991 Bonds, the 1992 Bonds, the 1992B Bonds, the 1993 Bonds, the
18 1994 Bonds, the Bonds and any Future Parity Bonds are hereinafter collectively referred to as
19 the "Parity Bonds."

20 Copies of the Bond Ordinance are on file at the office of the City Clerk and at the
21 principal office of each Paying Agent for this bond. Reference is hereby made to the Bond
22 Ordinance and to any and all modifications and amendments thereof for a more complete
23 description of the Revenues available for the payment of the principal of and interest on the
24 Bonds and the rights and remedies of the owners of the Bonds with respect thereto, the terms
25 and conditions upon which the Bonds have been issued, and the terms and conditions upon
26 which this bond shall no longer be secured by the Bond Ordinance or deemed to be
outstanding thereunder if money or certain specified securities sufficient for the payment of this
bond shall have been set aside in a special account and held in trust for the payment thereof.
Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the
Bond Ordinance.

 Under the Bond Ordinance, the City is obligated to set aside and pay into the Bond
Fund out of the Revenues of said Electric System certain fixed amounts sufficient to pay the
principal of and interest and premium, if any, on all Parity Bonds at any time outstanding as the
same become due and payable, all as is more fully provided in the Bond Ordinance. The Bonds
and the interest thereon constitute the only charge against the Bond Fund and the amount of
the Net Revenues pledged to said Bond Fund, as provided in the Bond Ordinance.

 In and by the Bond Ordinance, the City covenants to establish, maintain and collect
rates and charges for electric energy sold through the ownership or operation of the Electric

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System and all other services, facilities and commodities sold, furnished or supplied by the City in connection with the ownership or operation of the Electric System which shall be fair and adequate to provide Revenues sufficient for the payment of the Parity Bonds and all payments which the City is obligated to set aside in the Bond Fund and for the proper operation and maintenance of the Electric System, including payment of certain Contract Resource Obligations, all necessary repairs, replacements and renewals thereof and other costs thereof, as provided in the Bond Ordinance.

The Bonds maturing on and after _____ 1, _____ are subject to redemption prior to maturity at the option of the City on any date on and after _____ 1, 20__, in whole or in part, upon written notice as provided hereinafter, at the redemption prices with respect to each Bond (expressed as a percentage of the principal amount of the Bonds to be redeemed) set forth below, together with the interest, if any, accrued thereon to the date fixed for redemption:

Redemption Period	Redemption Price
-------------------	------------------

If less than all of the Bonds subject to optional redemption are to be called for redemption, the City shall choose the maturities to be redeemed. In the event that less than all of the Bonds of any maturity are called for redemption, the particular Bonds of such maturity to be redeemed shall be selected by lot by the Bond Registrar, or, so long as the Bonds are held in book-entry form, by the Securities Depository.

The Bonds maturing on _____ 1, _____ (hereinafter referred to as the "Term Bonds") shall be redeemed prior to maturity by lot, not later than _____ 1 in the years _____ through _____, inclusive, from amounts credited to the Bond Retirement Account in the Bond Fund as sinking fund installments therefor (to the extent such amounts have not been used to redeem or purchase such Bonds as provided below) and in the principal amounts as set forth below, upon written notice as provided hereinafter by payment of the principal amount thereof, together with the interest, if any, accrued thereon to the date fixed for redemption.

Year	Amount
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The City may purchase or redeem the Term Bonds through the application of part or all of the respective sinking fund installments therefor at any time prior to any _____ 1 due date.

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Any money not so used to redeem or to purchase such Term Bonds shall be substantially exhausted by application to the redemption of such bonds on such succeeding _____ 1. If, as of any _____ 1, the principal amount of Term Bonds retired by purchase or redemption from any source exceeds the cumulative requirement for sinking fund installments through such date, such excess may be credited against the sinking fund installment for the next fiscal year.

Written notice of redemption shall be given by first class mail, postage prepaid, not less than 30 days nor more than 60 days before the redemption date to the registered owners of the Bonds to be redeemed in whole or in part at their last addresses, if any, appearing on the Bond Register, but any defect with respect to the redemption of any bond shall not invalidate the redemption of any other bond. Notice of redemption having been given by mailing, as aforesaid, the Bonds so called for redemption shall on the date specified in such notice become due and payable at the applicable redemption price herein provided, and from and after the date so fixed for redemption (except as to any bond, or portion of any bond, not so redeemed in accordance with such call for redemption) interest on said Bonds so called for redemption shall cease to accrue.

A portion of the principal sum of this bond in the amount of \$5,000, or any integral multiple thereof, may be redeemed, and if less than all of the principal sum hereof is to be redeemed, in such case upon the surrender of this bond at the principal office of the Bond Registrar, there shall be issued to the registered owner, without charge therefor, for the then unredeemed balance of the principal sum hereof, fully registered bonds of like series, maturity and interest rate in any of the denominations authorized by the Bond Ordinance.

This bond shall be transferable by the registered owner at the principal offices of the Bond Registrar upon surrender and cancellation of this bond, and thereupon a new registered bond or bonds of the same principal amount and interest rate and maturity will be issued to the transferee as provided in the Bond Ordinance. The City, the Bond Registrar, the Paying Agents and any other person may treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment hereof and for all purposes and shall not be affected by any notice to the contrary, whether this bond be overdue or not.

It is hereby certified, recited and declared that all acts, conditions and things required by the Constitution and statutes of the State of Washington to exist, to have happened and to have been performed precedent to and in the issuance of this bond do exist, have happened and

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have been performed in due time, form and manner as prescribed by law, and that the amount of this bond, together with all other obligations or indebtedness of the City, does not exceed any constitutional or statutory limitations of indebtedness.

IN WITNESS WHEREOF, the City of Tacoma, by its City Council, has caused this bond to be executed in its name with the facsimile or manual signature of its Mayor, and attested by the facsimile or manual signature of its Clerk, and the seal of said City to be imprinted or impressed hereon, all as of the _____ day of _____, 199_.

CITY OF TACOMA, WASHINGTON

By _____
Mayor

(SEAL)

Attest:

City Clerk

Authentication Date: _____

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Bond Ordinance and is one of the Electric System Revenue Bonds, 199_ of the City of Tacoma, Washington, dated _____, 199_.

WASHINGTON STATE FISCAL
AGENCY, Bond Registrar

By _____
Authorized Officer

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

**PLEASE INSERT SOCIAL SECURITY OR TAXPAYER
IDENTIFICATION NUMBER OF TRANSFEREE**

[Empty rectangular box for Social Security or Taxpayer Identification Number]

(Please print or typewrite name and address, including zip code, of Transferee)

_____ the
within bond and does hereby irrevocably constitute and appoint _____
attorney-in-fact to transfer said bond on the books kept for registration thereof with full power
of substitution in the premises.

DATED: _____.

SIGNATURE GUARANTEED:

NOTE: The signature on this Assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

ARTICLE V

APPLICATION OF PROVISIONS OF ORDINANCE TO BONDS

Section 5.1. Issuance of Future Parity Bonds. The provisions of Article V of the Ordinance relating to the issuance of Future Parity Bonds shall apply to the Bonds.

Section 5.2. Contract Resource Obligations. The provisions of Article VI of the Ordinance relating to Contract Resource Obligations shall apply to the Bonds.

Section 5.3. Application of Sections 7.1 through 7.3 of Ordinance Relating to Special Funds and Accounts. Except as otherwise provided below in Section 5.10, the provisions of

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1 Sections 7.1 through 7.3 of the Ordinance relating to the Revenue Fund and the accounts
2 therein, the Bond Fund and the accounts therein, the Cumulative Reserve Fund, and the
3 investment of money held for the credit of such Funds shall apply to the Bonds.

4 Section 5.4. Covenants to Secure Bonds. The provisions of Article IX of the
5 Ordinance setting forth the covenants to secure Bonds, as amended by Article VII of the First
6 Supplemental Ordinance, shall apply to the Bonds.

7 Section 5.5. Supplemental and Amendatory Ordinances. The provisions of Article X
8 of the Ordinance relating to supplemental and amendatory ordinances shall apply to the Bonds.

9 Section 5.6. Defaults and Remedies. The provisions of Article XI of the Ordinance
10 relating to defaults and remedies shall apply to the Bonds.

11 Section 5.7. Amendments and Bondowners' Meetings. The provisions of Article XII
12 of the Ordinance relating to amendments and bondowners' meetings shall apply to the Bonds.

13 Section 5.8. Miscellaneous. The provisions of Article XIII of the Ordinance relating
14 to the City's contract with the owners of Bonds, money held by the Paying Agent one year
15 after the due date, the benefits of the Ordinance and severability shall apply to the Bonds.

16 Section 5.9. Rights of AMBAC. The provisions of Article X of the Second
17 Supplemental Ordinance and Article VII of the Fifth Supplemental Ordinance and Article VIII
18 of the Sixth Supplemental Ordinance relating to the rights of AMBAC Indemnity Corporation
19 are incorporated herein by reference and shall be in force and effect so long as any 1988 Bond,
20 1992 Bond or 1992B Bond, respectively, is Outstanding and insured by the municipal bond
21 guaranty insurance policy therein authorized.

22 Section 5.10. Reserve Subaccount. There is hereby established within the Reserve
23 Account a special subaccount entitled the "199__ Reserve Subaccount." Funds in such
24 Reserve Subaccount shall be treated in all respects as other funds in the Reserve Account. The
25 City shall make transfers into the Reserve Subaccount from money and investments in the
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1 Reserve Account, from proceeds of the Bonds, or from other available money in amounts
2 sufficient to satisfy the Reserve Account Requirement with respect to the Bonds.

3 The City is authorized to satisfy the requirements of Section 7.2 of the Ordinance with
4 respect to the Reserve Account as to the Bonds through the use of Qualified Insurance, or a
5 Qualified Letter of Credit, which may be purchased on the date of closing of the Bonds or after
6 the issuance of the Bonds and substituted for amounts in the Reserve Subaccount pursuant to
7 the provisions of Section 7.2 of the Ordinance.

8 ARTICLE VI

9 DISPOSITION OF BOND PROCEEDS

10 Section 6.1. Construction Account. A special fund of the City has heretofore been
11 created and designated the "City of Tacoma Electric System Construction Fund" (the
12 "Construction Fund"). There is hereby created within the Construction Fund a special account
13 to be known as the "199__ Bonds Construction Account" into which shall be deposited from
14 the proceeds of sale of the Bonds. Money in the Construction Account shall be used for
15 paying part of the costs of the acquisition, construction and installation of the additions and
16 improvements described in Exhibit A, and for paying all expenses incidental thereto (including
17 but not limited to costs of issuance of the Bonds, engineering, financing, legal or any other
18 incidental costs) and for repaying any advances heretofore or hereafter made on account of
19 such costs, and such money or so much thereof as may be necessary be and hereby is
20 appropriated for such purpose.

21 All proceeds of the Bonds so deposited in the Construction Account shall be
22 continuously and fully invested to the extent practicable in Permitted Investments. Interest
23 earned and income or profits derived by virtue of such investments shall remain in the account
24 and be used for the purposes for which the Bonds are issued or other lawful purposes. Money
25 in the Construction Account may be transferred to the Bond Fund in such amounts as shall be
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necessary to pay principal of and interest on Bonds, and may be used to pay any Rebate Amount.

Section 6.2. Disposition of Proceeds. The proceeds of the Bonds are hereby appropriated for the following purposes and shall be deposited as follows:

1. The amount equal to the interest accruing on the Bonds from their dated date to the date of their delivery shall be deposited in the Interest Account in the Bond Fund and invested in Permitted Investments.

2. To the extent permitted by the Code, the amount that when added to other money in the Reserve Account will ensure that the total amount in the Reserve Account equals the Reserve Account Requirement shall be deposited in the Reserve Account in the Bond Fund.

3. The balance of the Bond proceeds shall be deposited in the Construction Account and used for the purposes specified in Sections 6.1, including payment of costs of issuance of the Bonds.

ARTICLE VII
SALE OF BONDS

Section 7.1. Sale of Bonds. The Bonds may be sold by competitive or negotiated sale, which sale shall be approved by the Bond Sale Resolution.

Section 7.2. Official Statement; Insurance. The Director and/or Deputy Director of Utilities are authorized to prepare a preliminary official statement for the marketing of the Bonds and to solicit bids for bond insurance. The Bond Sale Resolution shall approve the preliminary and final official statements and any bond insurance.

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ARTICLE VIII
MISCELLANEOUS

Section 8.1. Defeasance. In the event that the City, in order to effect the payment, retirement or redemption of any Bond, sets aside in the Bond Fund or in another special account, advance refunding bond proceeds or other money lawfully available or direct obligations of the Department of the Treasury of the United States of America ("Government Obligations"), or any combination of such proceeds, money and/or Government Obligations, in amounts which, together with known earned income from the investment thereof are sufficient to redeem, retire or pay such Bond in accordance with its terms and to pay when due the interest and redemption premium, if any, thereon, and such proceeds, money and/or Government Obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Bond Fund for the payment of the principal of and interest on such Bond, and the owner of such Bond shall cease to be entitled to any lien, benefit or security of the Ordinance except the right to receive payment of principal, premium, if any, and interest from such special account, and such Bond shall be deemed not to be outstanding hereunder.

Section 8.2. Undertaking to Provide Ongoing Disclosure. In the Bond Sale Resolution the City shall undertake to provide certain ongoing disclosure for the benefit of the owners of the Bonds as required by Section (b)(5) of the Securities and Exchange Commission's Rule 15c2-12 under the Securities and Exchange Act of 1934.

Section 8.3. Severability. If any one or more of the provisions of this Eighth Supplemental Ordinance is or are held by any court of competent jurisdiction to be contrary to law, then such provision or provisions shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of the other provisions of this Eighth Supplemental Ordinance or the Bonds.

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Section 8.4. Effective Date. This Eighth Supplemental Ordinance shall take effect and be in force thirty days after its passage, approval and publication as required by law. Any actions taken pursuant to this Eighth Supplemental Ordinance before its effective date and after its passage are hereby ratified, approved and confirmed.

INTRODUCED AND READ FOR THE FIRST TIME at a regular meeting of the City Council held the 16th day of July, 1996.

PASSED by the City Council of the City of Tacoma, Washington, and authenticated by its Mayor at a regular meeting of the Council held this 23rd day of July, 1996.

CITY OF TACOMA, WASHINGTON

By *[Signature]*
Mayor

Attest:

[Signature]
Rick Rosenblatt
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney, ch. 1557.

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CLERK'S CERTIFICATE

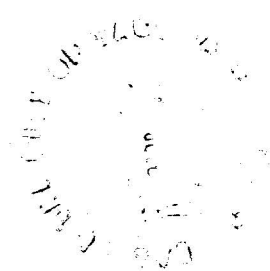
I, the undersigned, the duly chosen, qualified and ~~acting~~ City Clerk of the City of Tacoma, Washington, and keeper of the records of the City Council (herein called the "Council"), DO HEREBY CERTIFY:

1. That the attached Ordinance No. 25930 (herein called the "Ordinance") is a true and correct copy of an Ordinance of the Council, as finally passed at a regular meeting of the Council held on the 23rd day of July, 1996 and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of said Ordinance; that all other requirements and proceedings incident to the proper adoption of said Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City as of this 24th day of July, 1996.

Rick Rosenblatt
City Clerk
City of Tacoma, Washington



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EXHIBIT A

TELECOMMUNICATIONS PROJECT

The Telecommunications Project will include some or all of the following elements:

Infrastructure improvements

Construct a hybrid fiber coax ("HFC") telecommunications infrastructure consisting of fiber optic rings and branches connecting nodes throughout the Light Division service area. This telecommunications system will be asymmetrically two-way capable. It will interconnect all Light Division substations. Connections may also be made with Light Division customers and with other providers of telecommunications infrastructure and services. This telecommunications system will have 500 channels. It will utilize existing Light Division rights-of-way.

Functions to be performed by infrastructure improvements

Through construction of the HFC telecommunications system, the Light Division's Telecommunications System will be capable of performing some or all of the following functions:

- conventional substation communications functions
- automated meter reading (electric and water)
- automated billing (electric and water)
- automated bill payment (electric and water)
- demand side management (DSM) functions, such as automated load (*e.g.* water heater) control
- provision of information to customers that is relevant to their energy and water purchasing decisions (*e.g.* information on time-of-use or "green" power rates)
- distribution automation
- remote turn on/turn off for electric and water customers
- city government communications functions
- CATV service
- transport of signals for service providers offering telecommunications services (*e.g.* Personal Communications Service (PCS), video on demand, high speed data, as well as conventional wired and wireless telecommunications services)
- Internet access service

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REQUEST FOR ORDINANCE OR RESOLUTION

CITY CLERK USE

Request #:
Ordinance #:
Resolution #:

5937
25930

1. Date: June 21, 1996

Requesting Department/Division/Program	Sponsored By	Phone/Extension
2. Tacoma Public Utilities/Light Division	<i>Steve Klein</i>	8203
Contact Person (for questions):		Phone/Extension
3. Steve Klein		502-8203

4. Preparation of is requested for the City Council meeting of Tuesday July 16, 1996.

5. Summary Title/Recommendation: (A concise sentence, as it will appear on the Council Agenda)

Authorize a Bond Ordinance for City of Tacoma, Washington, Department of Public Utilities, Light Division to clarify its legal authority to develop telecommunication capacity for cable television outside the City limits, certain telecommunications services, and other uses.

6. Background Information/General Discussion: (Why is this request necessary? Are there legal requirements? What are the viable alternatives? Who has been involved in the process?)

Approval of this Bond Ordinance is necessary to confirm Light Division authority to engage in certain telecommunications activities. This determination will facilitate the decision-making process at the conclusion of the feasibility studies currently underway.

7. Financial Impact: (Future impact on the budget.)

8. List all material available as backup information for the request and indicate where filed:

Source Documents/Backup Material	Location of Document
Proposed Ordinance	Attached
Public Utility Board Resolution U-9198	Attached
Letter to City Council and Public Utility Board dated June 19, 1996.	Attached

9. Funding Source: (Enter amount of funding from each source)

Fund Number & Name:	State \$	City \$	Other \$	Total Amount
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If an expenditure, is it budgeted? Yes No Where? Org # Acct #

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 10. Department Director/Utility Division Approval	Approved as to Availability of Funds Director of Finance	 City Manager/Director Utilities Approval
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Mark Crisson
Director

3628 South 35th Street
P.O. Box 11007
Tacoma, WA 98411-0007

June 19, 1996

Divisions
Light
Water
Belt Line

To the Mayor and Members of the City Council
and
To the Chairman and Members of the Public Utility Board

RE: Proposed Bond Ordinance Approval and Authorization to Proceed
With a Declaratory Judgment Legal Action to Confirm Authority to
Construct and Operate a Fiber Optics System With Cable Television
and Telecommunications Capabilities/Board Resolution U-9198

As we previously discussed with you, the Light Division is proceeding to move forward with a further in-depth analysis of the feasibility of a fiber optics system. We will not move forward with this project until we have reviewed this future analysis with you and obtained your further appropriate approval.

This enabling legislation ordinance is specifically necessary at this time, however, in order to seek and obtain a declaratory judgment by the appropriate Washington State court to clarify the legal authority for certain aspects of the project. Chief Assistant City Attorney Mark Bubenik's confidential memorandum dated June 21, 1996 which has been furnished to each of you delineates the legal issues and procedures involved.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Mark Crisson'.

Mark Crisson
Director of Utilities

f/m/cabletv2



MEMORANDUM

To: Rick Rosenblatt, City Clerk

From: Mark Bubenik, Chief Assistant City Attorney *MB*

Date: June 27, 1996

Subject:

Please place the following proposed resolution(s) ordinance(s) on the agenda for the July 16, 1996 Council Meeting:

U-9198 Authorize approval of a proposed bond ordinance for the City of Tacoma, Light Division to clarify its legal authority to develop telecommunication capacity for cable tv outside the City limits



RESOLUTION NO. U-9198

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2 WHEREAS the Light Division has determined that a
3 telecommunications network system-wide will provide substantial benefits for
4 the Light Division for substation communications, meter reading, demand
5 side management, communications and other beneficial Light Division
6 Electric System uses, and

7 WHEREAS by the installation of additional telecommunications
8 capacity, this system would have the capability of providing additional public
9 benefits for the City, and Light Division ratepayers, and

10 WHEREAS for the above-stated purposes it will be necessary to
11 approve a plan and system ordinance declaring the estimated cost thereof
12 providing for the method of financing and providing for the adoption and
13 implementation thereof, and a proposed ordinance providing for the issuance
14 and sale of special obligation bonds of the City of Tacoma consisting of one
15 million dollars (\$1,000,000) of electric system revenue bonds to be issued to
16 provide funds for such purposes, all as more specifically stated in the said
17 proposed ordinance, which by this reference is incorporated herein, and

18 WHEREAS it is in the best public interest to approve the proposed
19 ordinance and to request its passage by the City Council; Now, therefore,
20 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

21 That the findings, terms and conditions of said proposed ordinance is
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approved and the Council of the City of Tacoma is requested to concur by passing an ordinance substantially in the same form as attached and as approved by the City Attorney.

Approved as to form & legality:
Mark Bubenik

Chief Assistant City Attorney

Lydia Stevenson

Clerk

Carl W. Virgil

Chairman

Bil Moss

Acting Secretary

Adopted 6/26/96

ASLRA

Ordinance No. 5930

First Reading of Ordinance: JUL 16 1996 (Final reading 7/23/96)

Final Reading of Ordinance: JUL 23 1996

Passed: JUL 23 1996

Roll Call vote:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Baarsma	✓			
Mr. Crowley	✓			
Mr. DeForrest	✓			
Mr. Evans	✓			
Mr. Kirby	✓			
Dr. McGavick	✓			
Mr. Miller	✓			
Dr. Silas	✓			
Mayor Moss	✓			

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Baarsma				
Mr. Crowley				
Mr. DeForrest				
Mr. Evans				
Mr. Kirby				
Dr. McGavick				
Mr. Miller				
Dr. Silas				
Mayor Moss				

EXHIBIT B

ANNUAL

TACOMA POWER

2016

**FINANCIAL
REPORT**



EXHIBIT 50
30(b)(6) Robins
DATE: 9-29-17
Mindi L. Pettit, RPR, CCR #2519

Public Utility Board

MARK PATTERSON
Chair

MONIQUE TRUDNOWSKI
Vice-Chair

WOODROW JONES
Secretary

KAREN LARKIN
Member

BRYAN FLINT
Member

WILLIAM A. GAINES
Director of Utilities/CEO

CHRIS ROBINSON
Power Superintendent/COO

ANDREW CHERULLO
Finance Director

DEPARTMENT OF PUBLIC UTILITIES

CITY OF TACOMA

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES

TACOMA POWER

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FINANCIAL DATA

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REPORT OF INDEPENDENT AUDITORS

The Chair and Members of the Public Utility Board
City of Tacoma, Washington Department of Public Utilities, Power Division
Tacoma, Washington

Report on the Financial Statements

We have audited the accompanying financial statements of City of Tacoma, Washington Department of Public Utilities, Power Division (the Division), which comprise the statements of net position as of December 31, 2016 and 2015, and the related statements of revenue, expenses, and changes in net position, and cash flows for the years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

REPORT OF INDEPENDENT AUDITORS (continued)

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Division as of December 31, 2016 and 2015, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the accompanying management's discussion and analysis on pages 5 through 13, schedule of proportionate share of net pension liability, and schedule of the city of Tacoma's contributions employer contributions on page 46 be presented to supplement the basic financial statements. Such information, although not a part of the financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the financial statements, and other knowledge we obtained during our audit of the financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information

Our audit was conducted for the purpose of forming an opinion on the financial statements taken as a whole. The statistical data presented on pages 47 through 64, and the superintendent's report presented on pages 65 through 82 are presented for purposes of additional analysis, and are not a required part of the financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the basic financial statements, and, accordingly, we express no opinion on it.



Tacoma, Washington
April 19, 2017

MANAGEMENT'S DISCUSSION AND ANALYSIS

The following discussion and analysis of Tacoma Power's financial performance provides an overview of the financial activities for the years ended December 31, 2016 and 2015. This discussion and analysis is designed to assist the reader in focusing on the significant financial issues, provide an overview of the Utility's financial activities, and identify changes in the Utility's financial position. We encourage readers to consider the information presented here in conjunction with the financial statements and notes taken as a whole.

The management of the Finance Department of the City of Tacoma is responsible for preparing the accompanying financial statements and for their integrity. The statements were prepared in accordance with generally accepted accounting principles (GAAP) in the United States of America applied on a consistent basis and include amounts that are based on management's best estimates and judgment.

The basic financial statements, presented on a comparative basis for the years ended December 31, 2016 and 2015, include the Statements of Net Position, Statements of Revenues, Expenses and Changes in Net Position and Statements of Cash Flows. The Statements of Net Position present information on all of the Utility's assets, deferred outflows of resources, liabilities, and deferred inflows of resources, with the difference being reported as net position. The Statements of Revenues, Expenses and Changes in Net Position report all of the revenues and expenses during the time periods indicated. The Statements of Cash Flows provide information on cash receipts and disbursements during the year and report changes in cash resulting from operating, non-capital financing, capital and related financing, and investing activities.

The Notes to Financial Statements provide additional disclosures that are essential to a full understanding of the data provided in the financial statements. They are an integral part of the Utility's presentation of financial position, results of operations and changes in cash flows.

The Division adopted GASB Statement No. 72, *Fair Value Measurement and Application*, during fiscal year 2016. The statement provides guidance for determining fair value to certain investments and disclosures related to all fair value measurements, and requires accounting for investments at fair value (See note 3).

Financial Highlights

- Tacoma Power reported a decrease in total net position of \$3.9 million (150.6%) in 2016, compared to a decrease of \$1.6 million (106.6%) in 2015.
- Operating revenues increased \$8.0 million (1.9%) in 2016. Operating revenues in 2015 decreased \$30.6 million (6.9%).

- Utility Plant in Service increased \$143.1 million (7.7%) in 2016 and \$43.2 million (2.4%) in 2015.
- Construction work in progress decreased \$61.5 million (70.0%) in 2016 and increased \$33.2 million (60.5%) in 2015.

Overview of Financial Statements

Tacoma Power reported net operating income of \$30.4, \$34.1 and \$68.1 million in 2016, 2015 and 2014 respectively. Operating revenues increased \$8.0 million during 2016 and operating expenses increased \$11.6 million. For 2015, operating revenues decreased \$30.6 million and operating expenses increased \$3.4 million compared to 2014. Tacoma Power reported a decrease in net position of \$3.9 million in 2016 compared to a decrease of \$1.6 million in 2015 and an increase of \$23.7 million in 2014.

The following tables highlight Tacoma Power's past three years' operating results and megawatt-hours billed.

OPERATING RESULTS

(in thousands)

<u>Category</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	16/15	15/14
				Increase	Increase
				(Decrease)	(Decrease)
Operating Revenues	\$ 418,614	\$ 410,626	\$ 441,246	\$ 7,988	\$ (30,620)
Operating Expenses	388,220	376,576	373,173	11,644	3,403
Net Operating Income	30,394	34,050	68,073	(3,656)	(34,023)
Net Non-Operating Expenses	(12,716)	(20,036)	(25,138)	7,320	5,102
Capital Contributions	5,162	5,708	4,120	(546)	1,588
BABs and CREBs subsidies	3,684	3,676	3,668	8	8
Transfers Out	(30,462)	(24,969)	(26,999)	(5,493)	2,030
Change in Net Position (Net Income)	\$ (3,938)	\$ (1,571)	\$ 23,724	\$ (2,367)	\$ (25,295)

MEGAWATT-HOURS BILLED

(in thousands)

<u>Type of Customer</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	16/15	15/14
				Increase	Increase
				(Decrease)	(Decrease)
Residential	1,856	1,801	1,891	55	(90)
Commercial/General/Industrial	2,715	2,791	2,869	(76)	(78)
Wholesale	2,731	1,918	2,843	813	(925)
Total	7,302	6,510	7,603	792	(1093)

Net Position

Net position may serve over time as a useful indicator of an entity's financial position. The following analysis highlights net position for the last three years.

Statements of Net Position (in thousands)

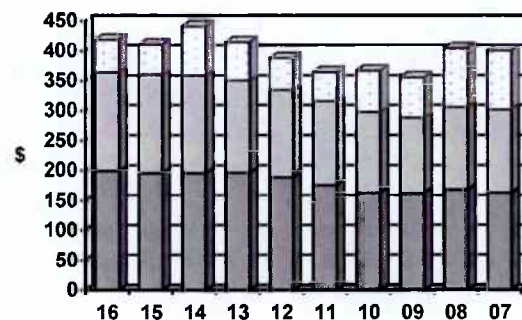
<u>Description</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>16/15 Increase (Decrease)</u>	<u>15/14 Increase (Decrease)</u>
Net Utility and Non-Utility Plant	\$ 1,033,591	\$ 1,002,993	\$ 979,067	\$ 30,598	\$ 23,926
Current Assets, Other Assets and Special Funds	384,884	392,482	525,770	(7,598)	(133,288)
Total Assets	1,418,475	1,395,475	1,504,837	23,000	(109,362)
Deferred Outflows	39,469	10,977	8,026	28,492	2,951
Total Assets and Deferred Outflows	\$ 1,457,944	\$ 1,406,452	\$ 1,512,863	\$ 51,492	\$ (106,411)
Net Position:					
Net Investment in Capital					
Assets	\$ 581,629	\$ 594,626	\$ 499,659	\$ (12,997)	\$ 94,967
Restricted	15,225	21,028	34,666	(5,803)	(13,638)
Unrestricted	225,142	210,279	288,478	14,863	(78,199)
Total Net Position	821,996	825,933	822,803	(3,937)	3,130
Long-Term Debt	457,602	441,928	530,581	15,674	(88,653)
Other Liabilities	128,058	86,555	111,479	41,503	(24,924)
Total Liabilities	585,660	528,483	642,060	57,177	(113,577)
Deferred Inflows	50,288	52,036	48,000	(1,748)	4,036
Total Net Position, Liabilities and Deferred Inflows	\$ 1,457,944	\$ 1,406,452	\$ 1,512,863	\$ 51,492	\$ (106,411)

Revenues

2016 Compared to 2015

Operating revenues totaled \$418.6 million in 2016 compared to \$410.6 million in 2015, an increase of \$8.0 million (1.9%). Revenues from residential customers increased \$4.9 million (3.3%). Wholesale revenues increased \$4.1 million (8.2%) as compared to 2015. The majority of the increase was due to higher volume. Streamflows were up 116% over 2015, and were 113% of average for 2016. Generation was up 27%, while purchases were down, which left more to sell.

OPERATING REVENUES
(in millions)



■ Residential and Other ■ Comm/Gen/Ind ■ Wholesale

In 2016 residential sales accounted for 41.4% of electric revenues, commercial, general and industrial revenues accounted for 44.0% and wholesale power revenues accounted for 14.6%.

2015 Compared to 2014

Operating revenues totaled \$410.6 million in 2015 compared to \$441.2 million in 2014, a decrease of \$30.6 million (6.9%). Revenues from general customers increased \$1.3 million (1.2%). There was a rate increase of 3.8% effective 2015, which was partially offset by a decrease of 62,000 MWh billed. Wholesale revenues in 2015 decreased \$32.4 million as compared to 2014. Streamflows in 2015 were 79% of 2014 streamflows, resulting in lower generation and therefore lower sales.

In 2015 residential sales accounted for 41.4% of electric revenues, commercial, general, and industrial revenues accounted for 44.8% and wholesale power revenues accounted for 13.8%.

Expenses

2016 Compared to 2015

Total operating expenses increased \$11.6 million or 3.1% compared to 2015.

GASB 68, *Accounting and Financial Reporting for Pensions*, resulted in an increase in expense of \$10.0 million in 2016. This expense was allocated across the Power sections as follows: Admin & General \$2.9 million, Distribution \$2.9 million, Maintenance \$1.4 million, Generation \$1.0 million, Telecommunications \$0.8 million, Other \$0.7 million, and Transmission \$0.4 million.

Purchased power increased \$0.5 million (0.4%). The increase was primarily due to increased contract costs and renewable energy credits purchased offset by increased credits and decreased purchased power.

Transmission expense increased \$6.1 million (28.0%) and distribution expense increased \$10.3 million (101.5%). In 2015 Tacoma Power conducted a review of expenses and determined that a large amount of costs that were assigned to administration and general expense should be reclassified to non-administrative groups. The increases in transmission and distribution expenses are primarily due to reclassifying these expenses effective January 1, 2016.

Generation expense increased \$5.1 million (35.7%), maintenance expense increased \$4.6 million (16.7%) and other production expenses increased \$3.7 million (24.3%) primarily due to the reclassification of expenses previously mentioned.

Administration and general expenses decreased \$17.5 million (29.9%) primarily due to the reclassification of expenses previously mentioned.

2015 Compared to 2014

Total operating expenses increased \$3.4 million or 0.9% compared to 2014.

Purchased power increased \$4.9 million (4.1%). Bonneville Power Administration (BPA) purchases increased \$8.1 million. The Slice and Block portions of the BPA contract increased \$3.1 million and credits for the Energy Conservation Agreement (ECA) decreased \$5.0 million. Purchases from Priest Rapids increased \$1.6 million. Part of the contract includes a credit for a portion of the proceeds of sale of the output from the project. Credits were less in 2015 than in 2014. Purchases from Grand Coulee Project Hydroelectric Authority increased \$0.3 million due increased operating costs that were passed on to Tacoma Power. Other portfolio purchases decreased \$5.5 million primarily due to lower volume. Temperatures for most of the year were higher than normal and streamflows were lower.

Telecommunications expense increased \$5.7 million primarily due to an updated cost allocation between Power and Click! Previously, allocated costs were approximately 75% Click! and 25% Power. The cost allocation has been updated to reflect shared costs of approximately 94% to Click! and 6% to Power. This change was effective January 1, 2015.

Maintenance expense decreased \$5.6 million (16.8%). Generation maintenance increased \$0.5 million primarily due to a mechanical overhaul at Wynoochee. Distribution maintenance decreased \$2.6 million and Transmission maintenance expense decreased \$3.5 million. This is mostly due to the updated cost allocation between Power and Click.

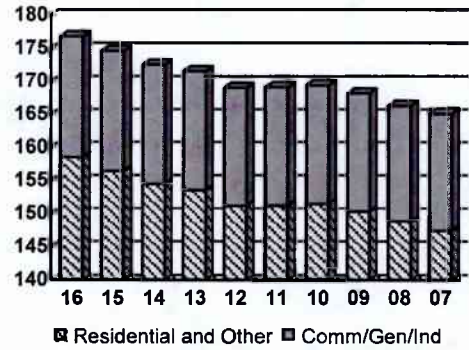
Distribution operations expense decreased \$3.6 million (26.4%) primarily due to the updated cost allocation between Power and Click! and the implementation of GASB 68, resulting in a \$1.3 million decrease in pension expense.

Generation operations expense increased \$1.9 million (15.7%). Natural Resources costs increased \$1.3 million due to testing and operations of new fish related facilities and to hiring new personnel. Contributions to the Fleet Replacement Fund increased \$0.7 million.

Customer Counts

Tacoma Power's overall customer growth during the past 10 years has been relatively steady averaging between less than 1% and 3% per year. The customer count for 2016 is 176,784 compared to 174,562 in 2015 and 172,531 in 2014.

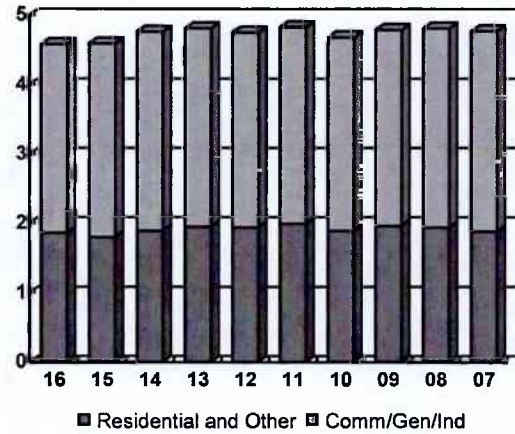
NUMBER OF CUSTOMERS
(in thousands)



Megawatt-hours Billed

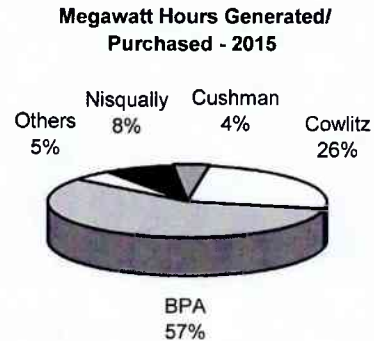
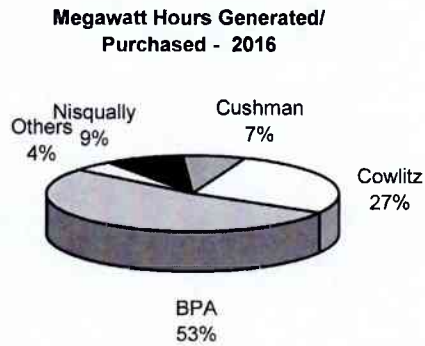
Megawatt-hours billed to residential and other customers increased 3.3% in 2016, while commercial / general / industrial billings decreased 2.5%. Wholesale power billed in 2016 was 2,731,076 megawatt-hours compared to 1,917,685 in 2015, an increase of 813,391 megawatt-hours or 42.4%. During 2016 hydro generation increased 735,503 megawatt-hours compared to the previous year. Streamflows into Tacoma Power's system were 113% of average in 2016 compared to 97% of average in 2015.

MEGAWATT HOURS BILLED
(in millions)



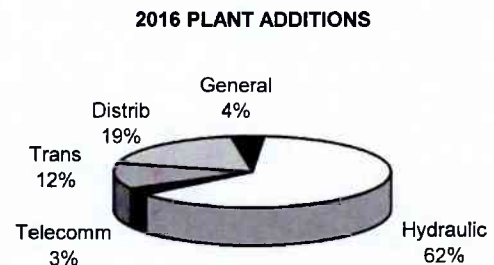
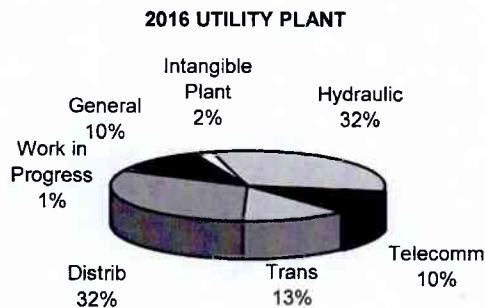
Sources of Power

Tacoma Power's total resources for power supply to serve its retail and wholesale customers for the last two years are shown in the following graphs.

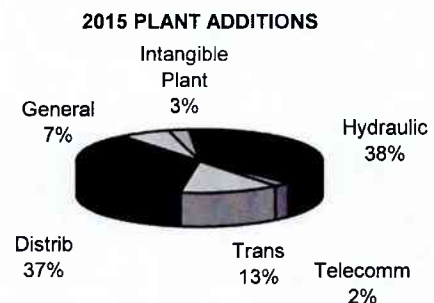
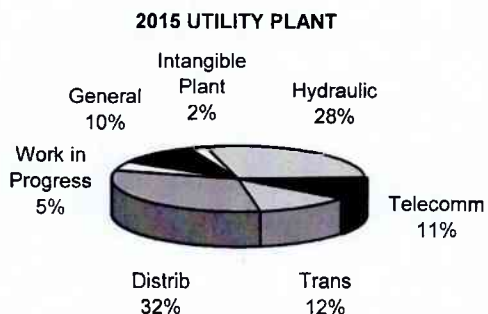


Utility Plant and Plant Additions

Tacoma Power has \$2.0 billion invested in its utility plant assets on a cost basis. The largest portion is for the generation (hydroelectric) business unit followed by the combined distribution and transmission business unit. The following graphs show the allocation of plant additions and total investment in plant.



Additions to Hydraulic plant in 2016 were \$89.2 million, which included the Cowlitz Falls Downstream Fish Passage and the Cushman License Implementation. Distribution plant additions were \$27.2 million, which included addition and replacement programs for new services, pole replacements, and road related additions and replacements. Transmission plant additions were \$16.5 million, which included system reliability improvements and substation additions and replacements.



Additions to Hydraulic plant in 2015 were \$18.2 million, which included the Cushman fish hatcheries, Wynoochee modernization, and a hydro exciter replacement program. Distribution plant additions were \$17.3 million, which included addition and replacement programs for new services, pole replacements, and road related additions and replacements. Transmission plant additions were \$6.1 million, which included system reliability improvements and substation additions and replacements.

The following table summarizes Tacoma Power's capital assets, net of accumulated depreciation, for the years ended December 31, 2016 through 2014.

Capital Assets, Net of Accumulated Depreciation
(in thousands)

<u>Net Utility Plant</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>16/15</u> <u>Increase</u> <u>(Decrease)</u>	<u>15/14</u> <u>Increase</u> <u>(Decrease)</u>
Intangible Plant	\$ 32,030	\$ 29,404	\$ 29,510	\$ 2,626	\$ (106)
Hydraulic Plant	441,163	359,992	349,472	81,171	10,520
Transmission Facilities	125,357	118,765	122,213	6,592	(3,448)
Distribution Facilities	290,766	284,826	288,242	5,940	(3,416)
General Plant	77,081	78,190	81,443	(1,109)	(3,253)
Telecommunications Plant	40,600	43,682	53,216	(3,082)	(9,534)
Construction Work in Progress	26,412	87,952	54,789	(61,540)	33,163
Total Net Utility Plant	<u>\$ 1,033,409</u>	<u>\$ 1,002,811</u>	<u>\$ 978,885</u>	<u>\$ 30,598</u>	<u>\$ 23,926</u>

Additional information on Tacoma Power's capital assets can be found in Note 4 of the financial statements and also in the supplementary Statistical Data.

Debt Administration

At December 31, 2016 Tacoma Power had outstanding revenue bonds of \$371.1 million, a decrease of \$14.7 million compared to 2015. No new revenue bonds were issued in 2016. On March 10, 2016 and August 16, 2016 Tacoma Power took draws of \$15 million respectively on the line of credit agreement with Wells Fargo bringing the total drawn to \$80.3 million. No draws have been taken on the 3-year line of credit agreement with Key Bank.

At December 31, 2015 Tacoma Power had outstanding revenue bonds of \$385.8 million, a decrease of \$154.3 million compared to 2014. In July 2015, Tacoma Power called \$122.1 million of Series 2005 B Electric System Revenue Bonds. No new revenue bonds were issued in 2015. On May 15, 2015 Tacoma Power entered into a 3-year line of credit agreement with Wells Fargo in the amount of \$100 million, of which draws were taken in the amount of \$50.3 million.

Also, on May 1, 2015 Tacoma Power entered into a 3-year line of credit agreement with Key Bank in the amount of \$50 million, of which no draws were taken.

All bonds are rated Aa3 by Moody's Investors Service, AA by Standard and Poor's and AA- by Fitch, Inc.

Additional information on Tacoma Power's long-term debt can be found in Note 5 of the financial statements.

Debt Service Coverage

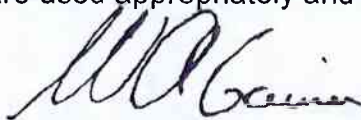
Tacoma Power is required by its bond covenants to maintain a debt service coverage ratio of 1.25. In 2016, principal and interest were covered 2.94 times compared to 2.54 times in 2015 and 2.26 times in 2014.

Summary

The management of the Finance Department of the City of Tacoma is responsible for preparing the accompanying financial statements and for their integrity. We prepared the financial statements according to GAAP in the United States of America, and they fairly portray Tacoma Power's financial position and operating results. The Notes to Financial Statements are an integral part of the basic financial statements and provide additional financial information.

The financial statements have been audited by Moss Adams LLP. We have made available to them all pertinent information necessary to complete the audit.

Management considers and takes appropriate action on audit recommendations. Management has established and maintains a system of controls which includes organizational, administrative and accounting processes. These controls provide reasonable assurance that records and reports are complete and reliable, that assets are used appropriately and that business transactions are carried out as authorized.


William A. Gaines
Director of Utilities/CEO


Andrew Cherullo
Finance Director

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CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

STATEMENTS OF NET POSITION

	DECEMBER 31,	
ASSETS AND DEFERRED OUTFLOWS	2016	2015
UTILITY PLANT		
In Service, at Original Cost	\$2,004,204,782	\$1,861,142,589
Less - Accumulated Depreciation	(997,207,625)	(946,283,353)
Total	1,006,997,157	914,859,236
Construction Work in Progress	26,411,907	87,951,638
Net Utility Plant	1,033,409,064	1,002,810,874
NON-UTILITY PROPERTY	182,051	182,051
SPECIAL FUNDS		
Construction Funds	13,387,867	41,412,285
Debt Service Funds	22,180,111	24,549,803
Special Bond Reserve Funds	4,981,885	4,984,302
Wynoochee Reserve Funds	2,557,943	2,534,915
Total Special Funds	43,107,806	73,481,305
CURRENT ASSETS		
Operating Funds Cash and Equity in		
Pooled Investments	214,474,287	193,804,373
Accounts Receivable	30,021,427	30,667,987
(Net of Allowance for Doubtful Accounts of \$2,174,162 in 2016 and \$1,080,447 in 2015)		
Accrued Unbilled Revenue	28,587,295	29,427,771
Materials and Supplies	7,468,481	6,318,431
Interfund Receivables	2,226,220	1,484,313
Prepayments and Other	6,384,609	5,757,216
Total Current Assets	289,162,319	267,460,091
OTHER ASSETS		
Regulatory Asset - Conservation		
(Net of Amortization of \$25,121,809 in 2016 and \$18,629,468 in 2015)	50,071,005	46,293,923
Net Pension Asset	-	3,823,476
Conservation Loans Receivable	2,542,470	1,423,037
Total Other Assets	52,613,475	51,540,436
Total Assets	1,418,474,715	1,395,474,757
DEFERRED OUTFLOWS OF RESOURCES		
Deferred Outflow for Pensions.....	39,469,454	9,077,586
Unamortized Loss on Refunding Bonds	-	1,899,931
Total Deferred Outflows	39,469,454	10,977,517
TOTAL ASSETS AND DEFERRED OUTFLOWS	\$1,457,944,169	\$1,406,452,274

The accompanying notes are an integral part of these financial statements.

NET POSITION, LIABILITIES AND DEFERRED INFLOWS	DECEMBER 31,	
	2016	2015
NET POSITION		
Net Investment in Capital Assets	\$581,629,142	\$594,626,313
Restricted for:		
Wynoochee Reserve Funds	2,557,943	2,534,915
Debt Service Funds	12,667,207	14,669,173
Net Pension Asset	-	3,823,476
Unrestricted	225,141,401	210,279,420
Total Net Position	<u>821,995,693</u>	<u>825,933,297</u>
LONG-TERM DEBT		
Revenue Bonds	377,351,726	391,678,130
Revolving Line of Credit	80,250,000	50,250,000
Total Long-Term Debt	<u>457,601,726</u>	<u>441,928,130</u>
CURRENT LIABILITIES		
Current Portion of Long-Term Debt	12,730,000	14,735,000
Taxes and Other Payables	27,457,682	20,356,768
Purchased Power Payable	12,639,142	12,013,478
Salaries, Wages and Compensated Absences Payable ..	2,912,713	2,487,419
Interest Payable	9,512,905	9,880,630
Customers' Deposits	2,772,395	3,108,808
Interfund Payables	2,140,909	1,324,441
Total Current Liabilities	<u>70,165,746</u>	<u>63,906,544</u>
LONG-TERM LIABILITIES		
Long Term Accrued Compensated Absences	9,681,941	9,522,650
Net Pension Liability	34,177,293	-
Other Long Term Liabilities	14,033,787	13,125,264
Total Long Term Liabilities	<u>57,893,021</u>	<u>22,647,914</u>
Total Liabilities	<u>585,660,493</u>	<u>528,482,588</u>
DEFERRED INFLOWS OF RESOURCES		
Deferred Inflow for Pensions	2,287,983	4,036,389
Rate Stabilization	48,000,000	48,000,000
Total Deferred Inflows	<u>50,287,983</u>	<u>52,036,389</u>
TOTAL NET POSITION, LIABILITIES AND DEFERRED INFLOWS..	<u>\$1,457,944,169</u>	<u>\$1,406,452,274</u>

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CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

	YEAR ENDED DECEMBER 31,	
	2016	2015
OPERATING REVENUES		
Sales of Electric Energy	\$374,249,290	\$366,263,055
Other Operating Revenue	17,690,192	17,106,442
Click! Network Operating Revenue	26,674,906	27,256,718
Total Operating Revenue	<u>418,614,388</u>	<u>410,626,215</u>
OPERATING EXPENSES		
Operations		
Purchased and Interchanged Power	126,835,928	126,315,151
Generation	19,270,201	14,197,116
Transmission	28,075,318	21,928,763
Distribution	20,477,257	10,163,887
Other	18,677,827	15,025,954
Maintenance	32,342,896	27,705,373
Telecommunications Expense	26,059,166	25,304,001
Administrative and General	41,051,795	58,560,459
Depreciation	55,702,297	57,381,578
Taxes	19,727,313	19,993,833
Total Operating Expenses	<u>388,219,998</u>	<u>376,576,115</u>
Net Operating Income	30,394,390	34,050,100
NON-OPERATING REVENUES (EXPENSES)		
Interest Income	2,405,144	1,796,071
Contribution to Family Need	(480,000)	(480,000)
Other	1,555,659	(1,923,329)
Interest on Long-Term Debt (Net of AFUDC).....	(15,893,207)	(19,225,735)
Loss on Defeasance or Refunding of Debt and Amortization of Debt Premium	(303,527)	(202,938)
Total Non-Operating Expenses.....	<u>(12,715,931)</u>	<u>(20,035,931)</u>
Net Income Before Capital Contributions and Transfers	17,678,459	14,014,169
Capital Contributions		
Cash	4,741,136	5,183,295
Donated Fixed Assets	421,334	524,713
BABs and CREBs Interest Subsidies	3,683,746	3,675,836
Transfers		
City of Tacoma Gross Earnings Tax	(30,460,098)	(25,481,823)
Transfers to/(from) Other Funds	(2,181)	512,401
CHANGE IN NET POSITION	(3,937,604)	(1,571,409)
TOTAL NET POSITION - BEGINNING OF YEAR	<u>825,933,297</u>	<u>822,803,061</u>
ACCUMULATED ADJUSTMENT FOR CHANGE IN ACCOUNTING PRINCIPLE	-	4,701,645
NET POSITION, BEGINNING OF YEAR, AS ADJUSTED	<u>825,933,297</u>	<u>827,504,706</u>
TOTAL NET POSITION - END OF YEAR	<u>\$821,995,693</u>	<u>\$825,933,297</u>

The accompanying notes are an integral part of these financial statements.

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

STATEMENTS OF CASH FLOWS

	YEAR TO DATE	
	December 31, 2016	December 31, 2015
CASH FLOWS FROM OPERATING ACTIVITIES		
Cash from Customers	\$ 420,101,423	\$ 414,491,290
Cash Paid to Suppliers	(193,431,153)	(206,195,837)
Cash Paid to Employees	(111,575,956)	(106,153,040)
Taxes Paid	(19,155,309)	(19,876,260)
Conservation Loans	(1,119,433)	454,432
Net Cash from Operating Activities	<u>94,819,572</u>	<u>82,720,585</u>
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Transfer Out for Gross Earnings Tax	(30,460,098)	(25,481,823)
Transfer to/from Other Funds	(2,181)	512,401
Transfer to Family Need Fund	(480,000)	(480,000)
Net Cash from Non-Capital Financing Activities..	<u>(30,942,279)</u>	<u>(25,449,422)</u>
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES		
Capital Expenditures	(82,126,418)	(77,374,831)
Proceeds from Issuance of Long-Term Debt	30,000,000	50,250,000
Debt Issuance Costs	-	(114,250)
Principal Payments on Long-Term Debt	(14,735,000)	(32,115,000)
Payments for Early Extinguishment of Debt	-	(122,135,000)
Interest Paid	(20,013,668)	(26,065,944)
BABs and CREBs Interest Subsidies	3,683,746	3,675,836
Contributions in Aid of Construction	4,741,136	5,183,295
Other Long-Term Liabilities	908,523	763,091
Net Cash from Capital and Related Financing Activities	<u>(77,541,681)</u>	<u>(197,932,803)</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest Received	2,405,144	1,796,071
Other Non-Op Revenues and Deductions	<u>1,555,659</u>	<u>2,081,901</u>
Net Cash from Investing Activities	<u>3,960,803</u>	<u>3,877,972</u>
Net Change in Cash and Equity in Pooled Investments	(9,703,585)	(136,783,668)
Cash and Equity in Pooled Investments at January 1..	<u>267,285,678</u>	<u>404,069,346</u>
Cash and Equity in Pooled Investments at December 31	<u>\$257,582,093</u>	<u>\$267,285,678</u>

The accompanying notes are an integral part of these financial statements.

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

STATEMENTS OF CASH FLOWS

	December 31, 2016	December 31, 2015
Reconciliation of Net Operating Income to Net Cash Provided by Operating Activities:		
Net Operating Income	\$30,394,390	\$34,050,100
Adjustments to reconcile net operating income to net cash provided by operating activities:		
Depreciation	55,702,297	57,381,578
Amortization of Regulatory Assets	6,492,341	5,566,247
Pension (Credits) Expenses	5,860,495	(4,163,028)
Cash provided from changes in operating assets and liabilities:		
Accounts Receivable and Accrued Unbilled Revenue..	1,487,036	3,865,072
Conservation Loans Receivable	(1,119,433)	454,432
Interfund Receivables	(741,907)	1,025,123
Materials and Supplies, and Other	(1,777,443)	(1,322,513)
Taxes and Other Payables	7,100,914	(871,453)
Purchased Power Payable	625,664	453,294
Salaries, Wages and Compensated Absences Payable..	425,294	(3,120,542)
Long Term Accrued Compensated Absences	159,291	97,628
Customers' Deposits	(336,413)	211,540
Regulatory Asset - Conservation	(10,269,422)	(9,260,924)
Interfund Payables	816,468	(1,645,969)
Total Adjustments	64,425,182	48,670,485
Net Cash from Operating Activities	\$94,819,572	\$82,720,585
Reconciliation of Cash and Equity in Pooled Investments to Balance Sheet:		
Cash and Equity in Pooled Investments in Special Funds	\$43,107,806	\$73,481,305
Cash and Equity in Pooled Investments in Operating Funds	214,474,287	193,804,373
Cash and Equity in Pooled Investments at December 31	\$257,582,093	\$267,285,678

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**CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER**

**NOTES TO FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2016 AND 2015**

NOTE 1 OPERATIONS

OPERATIONS OF TACOMA POWER - The Light Division, doing business as Tacoma Power (Tacoma Power or the Division), is a division of the City of Tacoma, Washington (the City), Department of Public Utilities (the Department) and is included as an enterprise fund in the Comprehensive Annual Financial Report (CAFR) of the City. The Department consists of Tacoma Power, Tacoma Water and Tacoma Rail and is governed by a five-member Public Utility Board (the Board) appointed by the City Council. Certain matters relating to utility operations, such as system expansion, issuance of bonds and setting of utility rates and charges, are initiated and executed by the Board, but also require formal City Council approval. Tacoma Power owns and operates the City's electrical generation and distribution facilities and telecommunication infrastructure. Tacoma Power serves approximately of 176,784 retail customers and has 838 employees. Tacoma Power is organized into six business units: Generation, Power Management, Transmission and Distribution, Rates, Planning and Analysis, Click! Network, and Utility Technology Services.

GENERATION operates four hydroelectric generating projects (Cowlitz, Cushman, Nisqually and Wynoochee) and the associated recreational facilities, fish hatcheries and other project lands.

POWER MANAGEMENT manages the power supply portfolio, markets bulk and ancillary power supply services, schedules and dispatches division-owned generation and contract power supplies and performs power trading and risk management activities. Revenues and the cost of electric power purchases vary from year to year depending on the electric wholesale power market, which is affected by several factors including the availability of water for hydroelectric generation, marginal fuel prices and the demand for power in other areas of the country.

TRANSMISSION AND DISTRIBUTION plans, constructs, operates and maintains the transmission and distribution systems including substations, the underground network system, supervisory control and data acquisition (SCADA) systems, revenue metering facilities and all overhead transmission and distribution systems. Electricity use by retail customers varies from year to year primarily because of weather conditions, customer growth, the economy in Tacoma Power's service area, conservation efforts, appliance efficiency and other technology.

RATES, PLANNING AND ANALYSIS plans for and manages the retail rate process, financial planning, analysis and modeling, budget strategies, the capital program and risk management.

CLICK! NETWORK plans, constructs, operates and maintains a hybrid fiber coaxial (HFC) telecommunications network that supports the operation of Tacoma Power's electrical transmission and distribution system, provides retail cable TV and wholesale high-speed Internet services to residential and business customers, and data transport services to retail customers.

UTILITY TECHNOLOGY SERVICES (UTS) maintains communication networks, operational and informational technology systems, and related equipment and infrastructure to optimize utility operations and improve reliability and service quality. This includes a Project Management Office that establishes and leads Tacoma Public Utilities Information Systems project governance process and implements project portfolio management tools. UTS is responsible for all matters related to Tacoma Power's compliance with North American Electric Reliability Corporation (NERC) Reliability Standards, maintains overall responsibility for the NERC Reliability Standards and manages Tacoma Power's Internal Reliability and Compliance Project.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

BASIS OF ACCOUNTING AND PRESENTATION - The financial statements of the Division are prepared under the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP) issued by the Governmental Accounting Standards Board (GASB) applicable to governmental entities that use proprietary fund accounting. The financial statements use a flow of economic resources measurement focus to determine financial position and the change in financial position. The accounting principles used are similar to those applicable to businesses in the private sector and are maintained on the accrual basis of accounting. Revenues are recognized when earned, and costs and expenses are recognized when incurred.

The Division follows the provisions set forth in regulatory accounting guidance. In general, regulatory accounting permits an entity with cost-based rates to defer certain costs or income that would otherwise be recognized when incurred to the extent that the rate-regulated entity is recovering or expects to recover such amounts in rates charged to its customers.

The Division accounts are maintained substantially in accordance with the uniform system of accounts prescribed by the Federal Energy Regulatory Commission and the Division of Audits of the State Auditor's Office.

CASH, SPECIAL FUNDS AND EQUITY IN POOLED INVESTMENTS - The Division's fund cash balances are a "deposit" with the City Treasurer's Tacoma Investment Pool (TIP) for the purpose of maximizing interest earnings through pooled investment activities. Cash and equity in pooled investments in the TIP are reported at fair value and changes in unrealized gains and losses are recorded in the Statements of Revenues, Expenses and Changes in Net Position. Interest earned on such pooled investments is allocated daily to the participating funds based on each fund's daily equity in the TIP.

The TIP operates like a demand deposit account in that all City departments, including the Division, have fund balances which are their equity in the TIP. Accordingly, balances are considered to be cash equivalents.

The City of Tacoma Investment Policy permits legal investments as authorized by state law including Certificates of Deposit with qualified public depositories (as defined in Chapter 39.58 of the Revised Code of Washington (RCW)), obligations of the U.S. Treasury, Government Sponsored Agencies and Instrumentalities, bonds issued by Washington State and its Local Governments with an A or better rating, general obligation bonds issued by any State or Local Government with an A or better rating, Bankers' Acceptances, Commercial Paper, Repurchase and Reverse Repurchase agreements, and the Washington State Local Government Investment Pool (LGIP). Daily liquidity requirement to meet the City's daily obligations is maintained by investing a portion of the City's Investment Pool in the LGIP and in certificates of deposit with East West Bank and Opus Bank.

The Division's equity in that portion of the City of Tacoma Investment Pool held in qualified public depositories at December 31, 2016 and 2015 is entirely covered by the Federal Deposit Insurance Corporation (FDIC) and the Washington State Public Deposit Protection Commission (WSPDPC).

Interest rate risk is the risk that changes in market interest rates will adversely affect the fair value of an investment. Generally, longer term investments have greater exposure to changes in market interest rates. The City of Tacoma investment policy allows for authorized investments up to 60 months to maturity. One way the City manages its exposure to interest rate risk is by timing cash flows from maturities so that portions of the portfolio are maturing over time to provide cash flow and liquidity needed for operations.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

Credit risk is generally the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of a rating by a nationally recognized statistical rating organization. Repurchase agreements and commercial paper are protected by the FDIC insurance up to \$250,000.

All deposits not covered by the FDIC are covered by the WSPDPC. The WSPDPC is a statutory authority established under RCW 39.58. It constitutes a fully insured or fully collateralized pool. The WA State Treasures LGIP is authorized by RCW 43.250. The LGIP is operated like a 2A7 fund and is collateralized by short-term legal investments.

SPECIAL FUNDS - In accordance with bond resolutions, agreements and laws, separate restricted funds have been established. These funds consist of cash and investments in pooled investments with restrictions externally imposed and legally enforceable, established by the City Council. Generally, restricted assets include bond construction, reserve and debt service funds and customer deposits.

RECEIVABLES AND UNBILLED REVENUES - Accounts receivable consist of amounts owed by private individuals and organizations for goods delivered or services rendered in the regular course of business operations. Receivables are shown net of allowances for doubtful accounts. The Division accrues an estimated amount for services that have been provided but not billed as of December 31st.

ALLOWANCE FOR DOUBTFUL ACCOUNTS - A reserve has been established for uncollectible accounts receivable based on historical write-off trends and knowledge of specific circumstances that indicate collection of an account may be unlikely. Generally accounts receivable are considered past due after 30 days.

INTERFUND TRANSACTIONS - Unsettled transactions between funds at year end are recorded as due to or due from other funds.

MATERIALS AND SUPPLIES - Materials and supplies consist primarily of items for maintenance and construction of Division assets and are valued at the lower of average cost or fair market value.

BOND PREMIUM AND LOSS ON REFUNDING - Bond premiums are amortized over the life of the bonds using a straight-line basis. Losses on refunding are amortized on a straight-line basis over the applicable bond period.

REGULATORY ASSET CONSERVATION - The Division has deferred conservation costs to be charged to future periods matching the time when the revenues and expenses are included in rates. Conservation assets represent installation of savings measures at the properties of its customers. The deferred balance is reduced as costs are recovered and are amortized as other operating expense on the statements of revenues, expenses and changes in net position.

UTILITY PLANT AND DEPRECIATION - Utility plant is stated at original cost, which includes both direct costs of construction or acquisition and indirect costs. The cost of maintenance and repairs is charged to expense as incurred, while the cost of replacements and betterments is capitalized. Assets are capitalized when costs exceed \$5,000 and the useful life exceeds one year.

Depreciation is recorded using a straight-line composite method based on FERC recommended economic asset lives from 2 to 62 years for related operating assets placed in service at the beginning of the year. The original cost of property together with removal cost, less salvage, is charged to accumulated depreciation at such time as property is retired and removed from service.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

The economic lives for plant in service are as follows:

Intangible Plant	2-37 years
Hydraulic Production Plant	62 years
Transmission Plant	29 years
Distribution Plant	27 years
Regional Transmission	5-27 years
General Plant	19 years
Telecommunications Plant	5-19 years

CONSTRUCTION WORK IN PROGRESS – Capitalizable costs incurred on projects which are not in service or ready for use are held in construction in progress. When the asset is ready for service, related costs are transferred to capital assets. Upon determining that a project will be abandoned, the related costs are charged to expense.

ASSET VALUATION - The Division periodically reviews the carrying amount of its long-lived assets for impairment. An asset is considered impaired when estimated future cash flows are less than the carrying amount of the asset. In the event the carrying amount of such asset is not deemed recoverable, the asset is adjusted to its estimated fair value. Fair value is generally determined based on discounted future cash flows.

ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION (AFUDC) - AFUDC represents the cost of borrowed funds used for the construction of utility plant, net of interest earned on unspent construction funds. Capitalized AFUDC is shown as part of the cost of utility plant and as a reduction of interest income and expense.

INTANGIBLE ASSETS - In accordance with GASB No. 51, "Accounting and Financial Reporting for Intangible Assets", land use rights such as easements and right-of-ways are recorded as intangible assets.

CAPITAL CONTRIBUTIONS - In accordance with GASB No. 33, "Accounting and Financial Reporting for Nonexchange Transactions", capital grants and capital contributions are recorded as capital contributions.

COMPENSATED ABSENCES - The City has two different policies for compensated absences. The City's original policy allows employees to accrue vacation based on the number of years worked with a maximum accrual equal to the amount earned in a two-year period. These employees also accrue one day of sick leave per month without any ceiling on the maximum accrued. The City implemented a new policy in 1998 allowing employees to earn PTO (personal time off) without distinction between vacation and sick leave. Employees who worked for the City prior to the change could choose to stay with the original policy or opt to convert to the new policy. The amount of PTO earned is based on years of service. The maximum accrual for PTO is 960 hours, and upon termination, employees are entitled to compensation for unused PTO at 100%. Vacation pay and PTO are recorded as a liability and expense in the year earned.

Employees in the original policy accumulate sick leave at the rate of one day per month with no maximum accumulation specified. Employees receive 25% of the value at retirement or 10% upon termination for any other reason. In the event of death, beneficiaries receive 25% of the value. Sick leave pay is recorded as a liability and an expense in the year earned.

The accrued liability is computed at 100% vacation and PTO while sick leave is accrued at 10%, which is considered the amount vested or 25% if the employee meets retirement criteria. Based on historical information, 10% of compensated absences are considered short term.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

RATE STABILIZATION ACCOUNT - The Division has established a rate stabilization account to reduce significant year-to-year variations in rates. Amounts deposited into the account are excluded from the statement of revenues, expenses and changes in net position in accordance with regulated operations. Revenue will be recognized in subsequent periods when it is withdrawn in accordance with rate decisions.

OPERATING REVENUE - Service rates are authorized by the Tacoma City Council. Revenues are recognized as earned and include an estimate of revenue earned but not billed to customers as of year-end. Utility revenues are derived primarily from the sale and transmission of electricity. Utility revenue from power sales and power transmission is recognized when power is delivered to and received by the customer.

NON-OPERATING REVENUES AND EXPENSES – These are items that do not qualify as operating defined above.

TAXES – The City charges the Division a Gross Earnings Tax at the rate of 7.5% on electrical revenues and broadband revenues and 8.0% on cable television revenues. On Tacoma cable television revenues only, the City also charges the Division a franchise fee of 5.0% and a Public, Educational and Government access television (P.E.G.) fee of 1.0%. In addition, the Division pays a 3.8734% public utility tax to the State on a certain portion of revenues identified as utility revenues. The Division also pays business and occupation tax to the State at the rate of 1.5% on certain other non-utility revenues including cable television revenues, as well as 0.484% for Wholesaling and Broadcasting and 0.471% for Retailing. The Division is exempt from payment of federal income tax.

NET POSITION – The Statement of Net Position reports all financial and capital resources. The difference between assets and liabilities is net position. There are three components of net position: net investment in capital assets, restricted and unrestricted.

Net investment in capital assets consists of capital assets, less accumulated depreciation, reduced by the outstanding balances of any bonds, loans or other borrowings, less outstanding construction funds, that are attributable to the acquisition, construction, or improvements of those assets.

Net position components are restricted when constraints placed on net position use are either (1) externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments or (2) imposed by law through constitutional provisions or enabling legislation.

Unrestricted net position components are those that are not “net investment in capital assets” or “restricted”.

ARBITRAGE REBATE REQUIREMENT – The Division is subject to the Internal Revenue Code (“IRC”), Section 148(f), related to its tax-exempt revenue bonds. The IRC requires that earnings on gross proceeds of any revenue bonds that are in excess of the amount prescribed will be surrendered to the Internal Revenue Service. As such, the Division would record such a rebate as a liability. The Division had no liability in the current or prior year.

SHARED SERVICES – The Division receives certain services from other departments and agencies of the City, including those normally considered to be general and administrative. The Division is charged for services received from other City departments and agencies.

USE OF ESTIMATES - The preparation of the financial statements in conformity with GAAP in the United States of America requires management to make estimates and assumptions that affect amounts reported in the financial statements and accompanying notes. The Division used estimates in determining reported unbilled revenues, allowance for doubtful accounts, accrued compensated absences, depreciation, Other Post Employment Benefits (OPEB), pension, self-insurance liabilities and other contingencies. Actual results may differ from these estimates.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

FAMILY NEED - The Family Need program is Tacoma Power's low income bill assistance program. Contributions are received from customers, employees and Tacoma Power. The Family Need program is administered by the Metropolitan Development Council and Pierce County Community Services which identify and certify the eligibility of Tacoma Power customers for the program.

SIGNIFICANT RISKS AND UNCERTAINTIES - The Division is subject to certain business risks that could have a material impact on future operations and financial performance.

These risks include, but are not limited to, water conditions, weather and natural disaster-related disruptions, collective bargaining labor disputes, fish and other endangered species act issues, Environmental Protection Agency regulations, federal government regulations or orders concerning the operation, maintenance and/or licensing of facilities.

NOTE 3 INVESTMENTS MEASURED AT FAIR VALUE

The City measures and records its investments within the fair value hierarchy established by generally accepted accounting principles.

The Hierarchy is based on the valuation inputs used to measure the fair value of the asset, where fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. These guidelines recognize a three-tiered fair value hierarchy, as follows:

- **Level 1** - Level 1 inputs are quoted (adjusted) prices in active markets for identical assets or liabilities that the government can access at the measurement date. Observable markets include exchange markets, dealer markets, brokered markets and principal-to-principal markets.
- **Level 2** - Level 2 inputs are other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. These inputs are sourced from pricing vendors using models that are market-based and corroborated by observable market data including: quoted prices; nominal yield spreads; benchmark yield curves; and other corroborated inputs.
- **Level 3** - Level 3 inputs are unobservable inputs for the asset or liability and should only be used when relevant Level 1 or Level 2 inputs are unavailable.

The fair value evaluations are provided by Interactive Data. Interactive Data utilizes evaluated pricing models that vary by asset class and incorporate available trade, bid and other market information and for structured securities, cash flow and, when available, loan performance data. Because many fixed income securities do not trade on a daily basis, Interactive Data's evaluated pricing applications apply available information as applicable through processes such as benchmark curves, benchmarking of like securities, sector groupings, and matrix pricing, to prepare evaluations. In addition, Interactive Data uses model processes, such as the Option Adjusted Spread model to assess interest rate impact and development payment scenarios. Their models and processes take into account market convention. For each asset class, a team of evaluators gathers information from market sources and integrates relevant credit information, perceived market movements and sector news into the evaluated pricing applications and models.

Source: Interactive Data "Summary of Inputs by Asset Class Fixed Income Evaluations, Fair Value Information Service and Valuations of Certain Other Instruments" dated January 2016.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

Cash and cash equivalents include highly liquid investments including short-term investment funds. Cash and cash equivalents are valued at cost and, therefore, excluded from the fair value schedule.

Data regarding the City's investments, valued and categorized according to the above outlined levels, is below:

Debt Securities	As of			
	12/31/2016	Level 1	Level 2	Level 3
U.S. Treasury Securities	\$ 146,824,628	\$ -	\$ 146,824,628	\$ -
U.S. Agency Securities	544,579,831	-	544,579,831	-
Municipal Bonds	61,450,051	-	61,450,051	-
Total	\$ 752,854,510	\$ -	\$ 752,854,510	\$ -

Debt Securities	As of			
	12/31/2015	Level 1	Level 2	Level 3
U.S. Treasury Securities	\$ 108,647,159	\$ -	\$ 108,647,159	\$ -
U.S. Agency Securities	541,730,184	-	541,730,184	-
Municipal Bonds	119,200,942	-	119,200,942	-
Total	\$ 769,578,285	\$ -	\$ 769,578,285	\$ -

Tacoma Power's share of the City investments shown in the table above is 33.84% and 33.19% for 2016 and 2015.

NOTE 4 UTILITY PLANT - A summary of the balances and changes in utility plant for 2016 and 2015 follows:

	Balance December 31, 2015	Additions	Retirements	Transfers & Adjustments	Balance December 31, 2016
Intangible Plant	\$ 41,682,352	\$ 3,797,958	\$ (48,212)	\$ -	\$ 45,432,098
Hydraulic Production Plant	554,637,653	89,259,998	-	-	643,897,651
Transmission Plant	219,918,041	9,721,911	(259,570)	-	229,380,382
Distribution Plant	618,397,975	27,229,473	(3,189,896)	-	642,437,552
Regional Transmission	18,147,561	6,776,297	-	-	24,923,858
General Plant	200,160,423	5,391,442	-	-	205,551,865
Telecommunications Plant	208,198,584	4,382,792	-	-	212,581,376
Total Utility Plant in Service	1,861,142,589	146,559,871	(3,497,678)	-	2,004,204,782
Less Accumulated Depreciation	946,283,353	55,702,297	(3,449,466)	(1,328,559)	997,207,625
	914,859,236	90,857,574	(48,212)	1,328,559	1,006,997,157
Construction Work In Progress	87,951,638	85,011,567	-	(146,551,298)	26,411,907
Net Utility Plant	\$ 1,002,810,874	\$ 175,869,141	\$ (48,212)	\$ (145,222,739)	\$ 1,033,409,064

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

	<u>Balance</u> <u>December 31,</u> <u>2014</u>	<u>Additions</u>	<u>Retirements</u>	<u>Transfers &</u> <u>Adjustments</u>	<u>Balance</u> <u>December 31,</u> <u>2015</u>
Intangible Plant	\$ 40,584,864	\$ 1,287,650	\$ (190,162)	\$ -	\$ 41,682,352
Hydraulic Production Plant	536,424,903	18,212,750	-	-	554,637,653
Transmission Plant	215,039,287	5,495,463	(616,709)	-	219,918,041
Distribution Plant	604,029,355	17,270,360	(2,901,740)	-	618,397,975
Regional Transmission	17,537,662	609,899	-	-	18,147,561
General Plant	197,036,437	3,204,314	-	(80,328)	200,160,423
Telecommunications Plant	207,244,967	953,617	-	-	208,198,584
Total Utility Plant in Service	1,817,897,475	47,034,053	(3,708,611)	(80,328)	1,861,142,589
Less Accumulated Depreciation	893,801,525	57,381,578	(3,518,449)	(1,381,301)	946,283,353
	924,095,950	(10,347,525)	(190,162)	1,300,973	914,859,236
Construction Work In Progress	54,789,325	80,107,465	-	(46,945,152)	87,951,638
Net Utility Plant	\$ 978,885,275	\$ 69,759,940	\$ (190,162)	\$ (45,644,179)	\$ 1,002,810,874

Total Utility Plant in Service includes non-depreciable assets of \$75,780,466 for 2016 and \$75,310,858 for 2015.

The total amount of interest cost incurred and capitalized is \$3,752,735 for 2016 and \$3,407,633 for 2015.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

NOTE 5 LONG-TERM DEBT – Tacoma Power's long-term debt is primarily for capital improvements. Long-term liability activity for the years ended December 31, 2016 and December 31, 2015 was as follows:

	Balance December 31, 2015	Additions	Reductions	Balance December 31, 2016	Due Within One Year
Revenue Bonds	\$ 385,800,000	\$ -	\$ (14,735,000)	\$ 371,065,000	\$ 12,730,000
Plus: Unamortized					
Premium	20,613,130	-	(1,596,404)	19,016,726	-
Net Revenue Bonds	406,413,130	-	(16,331,404)	390,081,726	12,730,000
Line of Credit	50,250,000	30,000,000	-	80,250,000	-
Total Long-Term					
Debt	<u>\$ 456,663,130</u>	<u>\$ 30,000,000</u>	<u>\$ (16,331,404)</u>	<u>\$ 470,331,726</u>	<u>\$ 12,730,000</u>

	Balance December 31, 2014	Additions	Reductions	Balance December 31, 2015	Due Within One Year
Revenue Bonds	\$ 540,050,000	\$ -	\$ (154,250,000)	\$ 385,800,000	\$ 14,735,000
Plus: Unamortized					
Premium	22,645,510	-	(2,032,380)	20,613,130	-
Net Revenue Bonds	562,695,510	-	(156,282,380)	406,413,130	14,735,000
Line of Credit	-	50,250,000	-	50,250,000	-
Total Long-Term					
Debt	<u>\$ 562,695,510</u>	<u>\$ 50,250,000</u>	<u>\$ (156,282,380)</u>	<u>\$ 456,663,130</u>	<u>\$ 14,735,000</u>

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

Tacoma Power's long-term debt at December 31 consists of the following payable from revenues of Tacoma Power:

	<u>2016</u>	<u>2015</u>
2005A Revenue Bonds, with interest rates ranging from 3.5% to 4.3%, due in yearly installments of \$115,000 to \$13,275,000 paid in full in 2016. Original Issue: \$93,480,000	\$ -	\$ 130,000
2010B Revenue Bonds, with interest rates ranging from 5.791% to 5.966%, with a Build America Bond (BAB) rebate ranging from 32.45% to 32.62% of interest, due in yearly installments of \$27,310,000 to \$31,630,000 from 2031 to 2035. Original Issue: \$147,070,000 Current Portion: \$0	147,070,000	147,070,000
2010C Revenue Bonds, with an interest rate of 5.641%, with Clean Renewal Energy Bond rebate at 67% of interest, due in one payment of \$24,185,000 in 2027. Original Issue: \$24,185,000 Current Portion: \$0	24,185,000	24,185,000
2013A Refunding Bonds, with interest rates ranging from 4.0% to 5.0%, due in yearly installments of \$10,095,000 to \$29,165,000 through 2042. Original Issue: \$181,610,000 Current Portion: \$12,730,000	164,190,000	178,795,000
2013B Refunding Bonds, with interest rates ranging from 3.05% to 5.0%, due in yearly installments of \$3,795,000 to \$5,155,000 from 2022 through 2030. Original Issue: \$35,620,000 Current Portion: \$0	35,620,000	35,620,000
	371,065,000	385,800,000
Unamortized premium	19,016,726	20,613,130
Current Portion	(12,730,000)	(14,735,000)
Long-term Portion of Revenue Bond Debt	377,351,726	391,678,130
Revolving Line of Credit	80,250,000	50,250,000
Total Long Term Debt	\$ 457,601,726	\$ 441,928,130

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

In 2015, Tacoma Power entered into a \$100 million line-of-credit agreement with Wells Fargo for working capital. The line matures in May 2018, and each advance will bear interest at the London Interbank Offered Rate (LIBOR) of 1.64344% at December 31, 2016. Each advance is secured by Revenues as set forth in the Note Ordinance. The balance outstanding is \$80.3 million as of December 31, 2016.

Scheduled principal maturities on the bonds and interest payments are as follows:

	<u>Principal</u>	<u>Interest</u>
2017	\$ 12,730,000	\$ 18,707,560
2018	11,575,000	18,157,810
2019	10,095,000	17,698,935
2020	29,165,000	16,792,435
2021	11,970,000	15,839,060
2022-2026	20,885,000	75,475,070
2027-2031	66,230,000	66,152,269
2032-2036	130,750,000	37,344,302
2037-2041	63,355,000	9,659,100
2042	14,310,000	286,200
	<u>\$ 371,065,000</u>	<u>\$ 276,112,740</u>

Tacoma Power's revenue bonds are secured by the net revenue of Tacoma Power and all cash and investments held in the bond and construction funds. The bonds are also subject to certain financial and non-financial covenants. The Division was in compliance with all loan covenants at December 31, 2016.

As of December 31, 2016, the following outstanding bonds were considered defeased:

<u>Issue</u>	<u>Amount</u>
1964 Light & Power Bonds	\$ 1,235,000
1965 Light & Power Bonds	3,360,000
1967 Light & Power Bonds - Series A & B	2,825,000
1969 Light & Power Bonds	2,260,000
1979 Light & Power Bonds	5,475,000
2005 Electric System Revenue Bonds - Series A	230,000
2005 Electric System Revenue Bonds - Series B	27,460,000
2007 Electric System Revenue Refunding Bonds	14,540,000
	<u>\$ 57,385,000</u>

These refunded bonds constitute a contingent liability of Tacoma Power only to the extent that cash and investments presently in the control of the refunding trustees are not sufficient to meet debt service requirements, and are therefore excluded from the financial statements because the likelihood of additional funding requirements is considered remote.

NOTE 6 PURCHASED POWER – Tacoma Power purchased electric power and energy from BPA under a long-term contract that expires on September 30, 2028. The contract consists of a base rate per kWh and certain cost-recovery adjustment clauses can be invoked under particular circumstances.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

On December 1, 2008, the Board authorized the execution of a twenty-year Slice/Block Power Sales and Creditworthiness Agreement with BPA. The agreement allows Tacoma Power to purchase a Slice/Block power product from BPA which began October 1, 2011 and continues through September 30, 2028. In broad terms, the agreement requires Tacoma Power to purchase a firm amount (Block) and proportionate share (Slice) of power based on a number of criteria and calculations. This is a take or pay arrangement which allows Tacoma Power to remarket excess capacity. The related Creditworthiness Agreement provides for BPA to conduct a credit review of Tacoma Power. To determine if a letter of credit or cash deposit would be required, BPA completed this review and determined that as long as Tacoma Power's credit rating remains above BBB-, no Letter of Credit or cash deposit will be required.

The power received under this contract averaged approximately 433,427 and 419,422 kilowatts per hour for 2016 and 2015, respectively. Charges for the BPA purchased power were approximately \$114 million and \$112 million for 2016 and 2015, respectively, and are based on the total amount of energy delivered and the monthly peak power demand.

Tacoma Power entered into an Energy Conservation Agreement (ECA) with BPA in 2009. Under this agreement, funds are collected in wholesale power rates to support regional energy efficiency programs. As utilities implement conservation programs and activities, BPA reimburses these funds per program specifications. For the years 2016 and 2015, Tacoma Power recovered \$7,076,890 and \$763,356 respectively through the ECA.

Under fixed contracts with other power suppliers, Tacoma Power has agreed to purchase portions of the output of certain generating facilities. Although Tacoma Power has no investment in such facilities, these contracts require Tacoma Power to pay minimum amounts (which are based at least in part on the debt service requirements of the supplier) whether or not the facility is operating. The cost of power obtained under the contracts, including payments made when a facility is not operating, is included in operations expense in the Statements of Revenues, Expenses and Changes in Net Position.

Information for the year ended December 31, 2016 pertaining to these contracts is summarized as follows:

<u>Tacoma Power's Current Share of</u>	<u>Grand Coulee Project Hydro Authority</u>	<u>Grant County PUD - Priest Rapids Project</u>
Energy Output	253,625 mWh	26,975 mWh
Megawatt Capacity	-	5 mW
Operating Costs	\$ 2,227,828	\$80,802
Incentive Payments	\$ 3,538,658	-
R & R Repayment	\$ 399,836	-
Contract Expiration Date	5/9/2024	4/1/2052

On April 17, 2008, the FERC issued a new license to the Public Utility District No. 2 of Grant County (Grant PUD) for the continued operation of the Priest Rapids Hydroelectric Project which consists of the Priest Rapids Development and the Wanapum Development. The original license for the Priest Rapids Project was issued on November 4, 1955 and expired on October 31, 2005. Since then, the Project had operated under annual licenses. The renewed license issued by FERC allows Grant PUD a 44-year license for the continued operation of the Project. The term of Tacoma Power's contract with Grant PUD is for the term of the FERC license. Tacoma Power's purchase quantity and costs are tied to the actual costs of the Project.

Total expenses under the above contracts for the years 2016 and 2015 were \$6,412,705 and \$6,395,201, respectively, for Grand Coulee Project Hydro Authority, however, proceeds under the contract exceeded expenses in 2016 and 2015 for Grant County PUD - Priest Rapids resulting in a gain of \$80,802 and \$659,731, respectively.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

In addition, Tacoma Power is required to pay its proportionate share of the variable operating expenses of these projects.

Other Power Transactions - Other power transactions include purchases under short-term agreements and interchanges of secondary power between utilities in response to seasonal resource and demand variations. Fluctuations in annual precipitation levels and other weather conditions materially affect the energy output from Tacoma Power's hydroelectric facilities. Accordingly, the net interchange of secondary power in and out may vary significantly from year to year. Tacoma Power's trading activities are limited to purchasing power to meet native loads, optimizing the value of Tacoma Power's power supply portfolio and selling energy during times of surplus.

Tacoma Power records applicable energy contracts using accrual accounting and recognizes the revenue or expense at the time of contract performance, settlement or termination. As of December 31, 2016 Tacoma Power had forward sales contracts totaling \$28.7 million dollars extending out to September 2018 with a fair market value of \$28.7 million. These contracts meet the normal purchase normal sales scope exception for derivative reporting under GASB 53.

Tacoma Power's net power purchases or sales and interchanged activities are reflected in the Statements of Revenues, Expenses and Changes in Net Position.

A breakdown of the net interchange in kilowatt-hours is as follows:

<u>Interchange Summary</u>	<u>2016</u> (in kWh)	<u>2015</u> (in kWh)
Secondary Sales	(2,731,083,000)	(1,917,685,000)
Portfolio Purchases	263,105,000	293,059,000
Miscellaneous Exchanges	(1,533,000)	(1,441,000)
Other	<u>26,228,000</u>	<u>54,924,000</u>
Net Interchange	<u>(2,443,283,000)</u>	<u>(1,571,144,000)</u>

NOTE 7 FLEET SERVICES FUND - The Department of Public Utilities has established a Fleet Services Fund to perform scheduled maintenance, repair and replacement of Department vehicles and related equipment.

Tacoma Power pays the Fleet Services Fund for its use of the vehicles and equipment to cover fleet operating expenses. Payments made by Tacoma Power in 2016 and 2015 were \$6,733,591 and \$7,212,082, respectively.

Fleet Services' management makes an annual assessment of the capital replacement reserve balance for appropriate funding levels. It is the Fund's policy to maintain the Fund's maximum balance at a level that will provide adequate purchasing power for a three-year cycle. The solvency of the Replacement Fund allowed Fleet Services to return a portion of interest earned on fund investments for the year to their customers. In 2016 and 2015, Fleet Services returned 75% of the interest earned to Tacoma Power's replacement fund. The amount of the refund was \$106,192 and \$107,916 for 2016 and 2015, respectively, which was used to offset the corresponding year's fleet expenses.

NOTE 8 SELF-INSURANCE FUND - The Department of Public Utilities maintains a self-insurance program and insurance policies. The Department has established a Self-Insurance Fund to insure Tacoma Power and other divisions within the Department for certain losses arising from personal and property damage claims by third parties. The major risks to Tacoma Power are flooding, wind damage, chemical spills and earthquakes. Mitigating controls and emergency and business resumption plans are in place. To the extent damage or claims exceed insured values, rates may be impacted.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

Tacoma Power is required to make payments to the Self-Insurance Fund to cover claims incurred by Tacoma Power and administrative expenses of the Fund. Tacoma Power's premium payments totaled \$900,000 in both 2016 and 2015 respectively. Assets in the Self-Insurance Fund total \$7.6 million which exceeds accrued and incurred but not reported liabilities. Equity in the Self-Insurance Fund is transferred to the appropriate operating divisions in accordance with GASB 10. Management believes Tacoma Power's investment in the Self-Insurance Fund is more than adequate to settle all its known or estimated claims.

The City purchased a \$15 million Fiduciary Liability Policy with a \$100,000 deductible that provides for wrongful acts arising out of the administration of the City's employee benefit programs and a Crime policy with a \$1 million limit and \$75,000 deductible for employee dishonesty and for fraudulent or dishonest act by employees against the City for loss of money, securities and property.

Other insurance policies presently in effect include coverage on the Department's buildings and fleet vehicles as well as general liability and public official's liability. The current insurance policies covering the buildings and fleet vehicles have deductibles or self-insured retentions of \$250,000 for buildings and property within buildings and \$10,000 per vehicle. There is a self-insured retention of \$1.5 million for general liability. The public official liability policy has a \$200,000 deductible. The Department's total liability limit is \$60 million any one occurrence and \$60 million annual aggregate.

The general government general liability and public official liability policies provide \$20 million of excess coverage with a \$3 million retention. The City has a policy to cover extraordinary worker's compensation claims with a statutory limit and a self-insured retention of \$1 million per occurrence and an additional \$250,000 for each 12 month policy period.

NOTE 9 TACOMA EMPLOYEES' RETIREMENT SYSTEM FUND (TERS)

The Tacoma Employees' Retirement System (TERS or System), a pension trust fund of the City of Tacoma, issues a publicly available CAFR that includes financial statements and required supplementary information may be obtained by writing to:

Tacoma Employee's Retirement System
3628 South 35th Street
Tacoma, WA 98409

Or the TERS CAFR may be downloaded from the TERS website at www.cityoftacoma.org/retirement.

Administration of The System - The "Tacoma Employees' Retirement System" is a cost-sharing, multiple-employer, defined benefit retirement plan covering substantially all employees of the City of Tacoma, with the exception of police officers, firefighters, and Tacoma Rail employees who are covered by state and federal retirement plans. Employees of the Tacoma-Pierce County Health Department, as well as, certain employees of the Pierce Transit and Law Enforcement Support Agency who established membership in the System when these agencies were still City of Tacoma departments, are also members. The Board of Administration of the Tacoma Employees' Retirement System administers the plan and derives its authority in accordance with Chapter 41.28 RCW and Chapter 1.30 of the Tacoma City Code.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

At the direction of the City Council, the System is administered by the Board of Administration (the Board) consisting of nine regular members and one alternate member. The members of the Board are: the Mayor, who serves as Chair; the Director of Finance; the City Manager (or designee); the Public Utilities Director (or designee); three elected employee representatives; one elected retired representative; and one City resident (not employed by the City) elected by the other eight members. The nine Board members appoint a TERS member, either active or retired, as an alternate Board member. The Board is required by the Tacoma Municipal Code to make annual reports to the City Council on the financial condition of the System. The Board, subject to City Council approval, appoints the Director who is responsible for managing the daily operations of the System.

The breakdown of membership as of December 31, 2015 is as follows:

Retirees and beneficiaries currently receiving benefits	2,234
Terminated vested and other terminated participants	644
Active members:	
City of Tacoma	2,654
South Sound 911	4
Pierce Transit	7
Tacoma-Pierce County Health Department	262
Total active members	2,927
Total membership	5,805

Membership - Substantially all employees of the City of Tacoma are members of the System, with the exception of police officers, firefighter, and Tacoma Rail employees, who are covered by state or federal retirement plans. Other members include employees of the Tacoma-Pierce County Health Department, and certain employees of the Pierce Transit and the South Sound 911 (formerly known as Law Enforcement Support Agency) who established membership in the System when these agencies were still City of Tacoma departments.

Benefits - There are two formulas to calculate the retirement benefits. The benefit paid will be issued on the formula which provides the higher benefit. The most commonly applied formula, "service retirement", is a product of the member's average monthly salary for the highest, consecutive 24-month period, the number of years of membership credit, and a percentage factor (2% maximum) that is based on the member's age and years of service. The other formula is an annuity based on member contributions. There are several options available for the retiree to provide for their beneficiaries. The System also provides death, disability and deferred retirement. Additionally, the System provides cost of living adjustment (COLA) increases up to 2.125% as of July 1st of each year; the actual COLA granted is dependent on the Consumer Price Index (Seattle Area – all items) over the preceding calendar year.

Any active member who has not retired, and has five or more years of service as a member may purchase up to five additional years of service at the time of retirement. Total service including service purchased cannot exceed 30 years.

The System participates in the portability of public retirement benefits in Washington State public retirement. As provided under Chapter 4154 of the RCW, this allows a member to use all years of service with qualified Washington systems to determine retirement eligibility and percentage factor for benefits under the System.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

Contributions - The participating employers are responsible for funding the System at a level sufficient to pay obligations and ensure the actuarial and financial soundness of the System. Contribution rates for the employer and the employee are recommended by the Board of Administration and final approval rests with the Tacoma City Council.

Currently, the required contribution rate for employees is 9.20% of their regular gross pay; the employer contributes 10.80%, for a combined total of 20.00% which is sufficient to amortize the Unfunded Actuarial Accrued Liability (UAAL) of the System if future experience follows all actuarial assumptions. Changes to the contribution rate are subject to Sections 1.30.340 and 1.30.360 of the Tacoma Municipal Code.

Significant Assumptions - The following actuarial methods were used in the funding valuation.

Measurement Date	December 31, 2015
Valuation Date	January 1, 2016
Actuarial Cost Method	Entry Age Normal
	Funding is based on statutory contributions rate.
	This amount is compared to a 30-year amortization for the purposes of calculating the Actuarially Determined Contribution.
	The amortization method for the ADC is as follows:
Amortization Method	<ul style="list-style-type: none">• Level percent• Open periods• 30 year amortization period at 01/01/2016• 4% amortization growth rate
Asset Valuation Method	4 year smoothing period; Corridor - None
Inflation	3%
Salary Increases	4% general wage increase assumption
Investment Rate of Return	7.25%
Cost of Living Adjustment	2.13%
Retirement Age	Varies by age, gender, eligibility
Turnover	Varies by age, gender, eligibility
Mortality	RP-2000 mortality for healthy and disabled annuitants, with age adjustments

Benefit and Assumption Changes - The comparability of the data from year to year can be affected by changes in actuarial assumptions, benefit provisions, accounting policies, and other factors. Between January 1, 2015 and January 1, 2016 no assumptions were changed.

Target Allocations - The long-term expected rate of return is determined by adding expected inflation to expected long-term real returns and reflecting volatility and correlation. The capital market assumptions are per Milliman's (the System's actuary) investment consulting practice as of December 31, 2015. The target asset allocation is based on TERS Investment Policy Statement dated February 2014.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

Asset Class	Target Allocation	Arithmetic Real Rate of Return
Investment Grade Fixed Income	15.0%	2.00%
US Inflation-Indexed Bonds	5.0%	1.41%
High Yield Bonds	9.0%	4.22%
Emerging Market Debt	5.0%	5.06%
Global Equity	41.5%	5.72%
Public Real Estate	2.0%	6.07%
Private Real Estate	2.5%	3.60%
Private Equity	10.0%	9.29%
Master Limited Partnerships	4.0%	3.98%
Timber	2.0%	3.73%
Infrastructure	2.0%	5.14%
Agriculture	2.0%	4.30%
Assumed Inflation - Mean		3.00%
Assumed Inflation - Standard Deviation		1.89%
Portfolio Arithmetic Real Mean Return		4.94%
Portfolio Median Nominal Geometric Return		7.06%
Portfolio Standard Deviation		11.84%
Long-Term Expected Rate of Return, net of investment expenses		7.25%

Sensitivity Analysis - The following presents the net pension liability (asset) of the System, calculated using the discount rate of 7.25%, as well as what the System's net pension liability would be if it were calculated using a discount rate that is 1 percentage point lower (6.25%) or 1 percentage point higher (8.25%) than the current rate

	1% Decrease 6.25%	Current Discount Rate 7.25%	1% Increase 8.25%
Net pension liability (asset)	\$ 105,989,573	\$ 34,177,293	\$ (26,296,701)

As of December 31, 2015, the deferred inflows and outflows of resources are as follows:

	Deferred Inflows of Resources	Deferred Outflows of Resources
Difference Between Expected and Actual Experience	\$ (2,287,552)	\$ -
Net Difference Between Projected and Actual Earnings	-	30,122,690
Changes in Employer Proportion	(431)	24,760
Contributions Made Subsequent to the Measurement Date	-	9,322,004
Total	\$ (2,287,983)	\$ 39,469,454

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

The net amount of deferred inflows and outflows, other than contributions made subsequent to the measurement date, will be recognized as pension expense in each of the next four years.

Amounts will be recognized in pension expense as follows:

2016	\$	6,736,673
2017		6,736,673
2018		6,736,672
2019		7,739,529
2020		(90,080)
	\$	<u>27,859,467</u>

The proportionate share of the Power Division is 39.47% of total System's pension liability. The proportionate share was based on the actual contributions for the year.

NOTE 10 OTHER POST EMPLOYMENT BENEFITS (OPEB)

Plan Description - The City charges some early retirees not yet eligible for Medicare a health premium based on the claims experience of active employees and retirees rather than based on the claims experience of retirees only. This difference is a benefit to the retirees, since health claims costs generally increase with age. GAAP requires that the portion of age-adjusted expected retiree health claims costs that exceed the premium charged to retirees be recognized as a liability for accounting purposes. The actuarial methods and assumptions used include techniques that are designed to reduce short-term volatility in actuarial accrued liabilities and are subject to continual revision as results are compared to past expectation and new estimates are made about the future.

Funding Policy - The City uses pay as you go funding; contributions to a separate trust are not required.

Annual OPEB Cost and Net OPEB Obligation - The Present Value of Benefits (PVB) is the present value of projected benefits discounted at the valuation interest rate (3.75%).

The Actuarial Accrued Liability (AAL) is the portion of the present value of benefits attributed to past service only. The portion attributed to future employee service is excluded. For inactive employees, the AAL is equal to the present value of benefits. For active employees, the actuarial present value of the projected benefits of each individual is allocated as a level percentage of expected salary for each year of employment between entry age (defined as age at hire) and assumed exit (until maximum retirement age). The portion attributed to service between entry age and the valuation date is the actuarial accrued liability.

The Normal Cost is that portion of the City provided benefit attributable to employee service in the current year.

The Annual Required Contribution (ARC) is the amount the City is required to report as an expense for the year. The ARC is equal to the Normal Cost plus an amount to amortize the UAAL on a closed basis of 30 years, beginning January 1, 2007. The amortization period for 2016 is 21 years.

The ARC represents an accounting expense, but the City is not required to contribute the ARC to a separate trust. If the City does not set aside funds equal to the ARC (less current year benefit payments) each year, then the ARC (less benefit payments) will accumulate as a non-current liability (Net OPEB Obligation) on the statements of net position. The City has a Net OPEB Obligation as of December 31, 2016 as the City has not set aside funds for OPEB.

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

Excise Tax For High Cost or “Cadillac” Health Plans in 2018 and Beyond– An excise tax for high cost health coverage or “Cadillac” health plans was included in the Affordable Care Act (ACA) passed into law in March 2010. The provision levies a 40% tax on the value of health plan costs that exceed certain thresholds for single coverage or family coverage. The 2018 annual thresholds are \$10,200 for single coverage and \$27,500 for a family plan. If, between 2010 and 2018, the cost of health care insurance rises more than 55%, the threshold for the excise tax will be adjusted.

The City believes that the current provisions of ACA should be reflected in the projection of benefits and therefore, the value of the excise tax is included in the valuation. It is assumed that there will be no changes to the current law and that there will be no changes in plan design to help mitigate the impact of the tax.

GASB Statement No. 45 indicates that the projection of benefits should include all benefits to be provided to retirees in accordance with the current “substantive” plan. The substantive plan refers to the plan terms as understood by the employer and plan members at the time of the valuation. For this reason, the City believes that the current provisions of PPACA should be reflected in the projection of benefits and therefore, the value of the excise tax is included in this valuation. It is assumed that there will be no changes to the current law and that there will be no changes in plan design to help mitigate the impact of the tax.

Summary of Changes – As of the January 1, 2015 valuation the total AAL was \$208,814,312, for the City, 20% lower than expected primarily due to clarification in spouse benefits, medical costs, demographic experience and a change to the assumption for future medical trends.

The following table is a summary of valuation results with a comparison to the results from the last valuation.

	<u>January 1, 2013</u>	<u>January 1, 2015</u>
Active employees	3,335	3,404
Terminated vested employees	394	442
Retired employees & dependents	846	744
Total	<u>4,575</u>	<u>4,590</u>
Annual Benefit Payments	\$ 9,887,335	\$ 8,963,089
Discount rate	3.75%	3.75%
Present Value of Benefits (PVB)	\$ 326,742,538	\$ 262,184,195
Actuarial Accrued Liability (AAL)	\$ 251,839,846	\$ 208,814,312
Assets	\$ -	\$ -
Unfunded Actuarial Accrued Liability (UAAL)	<u>\$ 251,839,846</u>	<u>\$ 208,814,312</u>
Normal Cost	\$ 5,484,587	\$ 3,832,131
Annual Required Contribution (ARC)	\$ 20,058,760	\$ 16,966,964

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

The following table shows the total value of the benefits provided, the member paid premiums and the City paid benefits as of January 1, 2015.

Value of Subsidy at 3.75% Interest Rate	Total Value of Benefits	Member Paid Premiums	City Paid Benefits
Present Value of Benefits (PVB)	\$ 420,832,932	\$ 158,648,737	\$ 262,184,195
Actuarial Accrued Liability (AAL)	\$ 291,228,295	\$ 82,413,983	\$ 208,814,312
Normal Cost	\$ 9,501,758	\$ 5,669,627	\$ 3,832,131
Annual Benefit Payments	\$ 12,325,369	\$ 3,362,280	\$ 8,963,089

The following table shows the calculation of the Annual Required Contribution and Net OPEB Obligation for the City and for Tacoma Power as of December 31, 2016.

	City	Division
Determination of Annual Required Contribution:		
Normal Cost at Year-end	\$ 3,803,090	\$ 858,656
Amortization of UALL	15,665,117	398,368
Annual Required Contribution (ARC)	\$ 19,468,207	\$ 1,257,024
Determination of NET OPEB Obligation:		
Annual Required Contribution (ARC)	\$ 19,468,207	\$ 1,257,024
Interest on prior year Net OPEB Obligation	2,666,468	377,568
Adjustments to ARC	(3,983,647)	(468,000)
Annual OPEB Cost	18,151,028	1,166,592
Actual benefits paid	(8,539,402)	(344,092)
Increase in Net OPEB Obligation	9,611,626	822,500
Net OPEB Obligation - beginning of year	73,129,502	10,068,490
Net OPEB Obligation - end of year	\$ 82,741,128	\$ 10,890,990

The Division has included the liability in the other long term liabilities on the Statement of Net Position.

Funded Status and Funding Progress -

The following table shows the annual OPEB costs and net OPEB obligation for three years. This table is based upon a 3.75% interest rate.

Year Ended	Annual OPEB Cost		Benefits Paid		Net OPEB Obligation	
	City	Division	City	Division	City	Division
12/31/2014	\$ 19,319,944	\$ 2,084,511	\$ 9,292,539	\$ 692,894	\$ 66,138,206	\$ 9,198,300
12/31/2015	\$ 15,954,387	\$ 1,194,337	\$ 8,963,089	\$ 324,146	\$ 73,129,502	\$ 10,068,491
12/31/2016	\$ 18,151,028	\$ 1,166,592	\$ 8,539,402	\$ 344,092	\$ 82,741,128	\$ 10,890,990

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

Actuarial Methods and Assumptions - The actuarial cost method used for determining the benefit obligations is the Entry Age Normal Cost Method. Under the principles of this method, the actuarial present value of the projected benefits of each individual included in the valuation is allocated as a level percentage of expected salary for each year of employment between entry age (defined as age at hire) and assumed exit (until maximum retirement age).

The portion of actuarial present value allocated to a valuation year is called the normal cost. The portion of this actuarial present value not provided for at a valuation date by the sum of (a) the actuarial value of the assets, and (b) the actuarial present value of future normal costs is called the UAAL. In determining the Annual Required Contribution, the UAAL is amortized as a level percentage of expected payrolls for non-LEOFF 1 groups. For LEOFF 1, the UAAL is amortized as a level dollar amount. The amortization period was 30 years in 2007 and is now 21 years.

Actuarial Methods and Significant Actuarial Assumptions:

Valuation Date:	January 1, 2015
Census Date:	January 1, 2015
Actuarial Cost Method:	Entry Age
Amortization Method:	Combination of level percentage and level dollar amount, see note above.
Remaining Amortization Period:	21 years, closed
Demographic Assumptions:	Demographic assumptions regarding retirement, disability, and turnover are based upon pension valuations for the various pension plans.

Actuarial Assumptions:

Discount Rate:	3.75% for pay-as-you-go funding	
Medical Cost Trend:	2015	6.9%
	2016	6.6%
	2017	5.9%
	2020	5.5%
	2030	5.9%
	2040	5.7%

The medical cost rate is assumed to continue grading downward until achieving the ultimate rate of 4.8% in 2071 and beyond. The first year trend reflects assumed increases based on ACA fees. These trend rates assume that, over time, deductibles and out-of-pocket maximums will be periodically increased as medical trends increase. The trends above do not reflect the increases in costs due to the excise tax.

Economic Assumptions – Discount Rate (Liabilities):	3.75%
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Demographic Assumptions:.....	Eligibility: Disability - Five years of service are required for non-service connected disability.
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Retirement - TERS members are eligible for retiree medical benefits after becoming eligible for service retirement pension benefits (either reduced or full pension benefits):

- Age 55 with 10 years of service
- Age 40 with 20 years of service

TACOMA POWER NOTES TO FINANCIAL STATEMENTS (continued)

NOTE 11 COMMITMENTS AND CONTINGENCIES

Capital Improvements - The financial requirement for Tacoma Power's 2015/2016 biennial Capital Improvement Program is approximately \$182.7 million. At December 31, 2016, the remaining financial requirement was approximately \$12 million. The remaining financial requirement for Capital Improvement Programs relating to prior biennium is approximately \$932,445.

General Legal Matters - Tacoma Power Division has received several other miscellaneous claims that either do not allege significant amounts or that the Legal Department has determined do not pose a risk to liability to the utilities.

REQUIRED SUPPLEMENTARY INFORMATION

Proportionate Share of the Net Pension Liability Last 10 Years*

	Fiscal Year Ended December 31st,	
	2016	2015
Employer's proportion of the net pension liability (asset) as a percentage	39.47%	39.80%
Employer's proportion share of net pension liability (asset)	\$34,177,293	(\$3,823,476)
Employer's covered payroll	\$20,220,795	\$93,063,240
Employer's proportionate share of net pension liability (asset) as a percentage of its covered employee payroll	169.02%	-4.11%
Plan fiduciary net position as a percentage the total pension liability	93.94%	100.71%

Schedule of Contributions Last 10 Fiscal Years

	Fiscal Year Ended December 31st,	
	2016	2015
Contractually required employer contribution	\$9,322,005	\$9,053,341
Contributions in relation to the contractually required employer contribution	(9,322,005)	(9,053,341)
Employer contribution deficiency (excess)	-	-
Employer's covered employee payroll	\$91,704,363	\$93,063,240
Employer contribution as a percentage of covered-employee payroll	10.17%	9.73%

*Fiscal year 2015 was the first year of implementation; therefore, only two years are shown.

**STATISTICAL DATA
(Unaudited)**

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

TEN-YEAR FINANCIAL REVIEW

STATEMENTS OF NET POSITION	2016	2015	2014	2013
ASSETS				
Utility Plant - Net	\$1,033,409,064	\$1,002,810,874	\$978,885,275	\$959,885,269
Special and Other Assets	95,903,332	125,203,792	160,778,160	213,192,582
Current Assets	289,162,319	267,460,091	365,173,352	328,974,357
Deferred Charges	-	-	-	-
Total Assets	<u>1,418,474,715</u>	<u>1,395,474,757</u>	<u>1,504,836,787</u>	<u>1,502,052,208</u>
Deferred Outflows	39,469,454	10,977,517	8,026,229	15,941,231
TOTAL ASSETS AND DEFERRED OUTFLOWS	<u>1,457,944,169</u>	<u>1,406,452,274</u>	<u>1,512,863,016</u>	<u>1,517,993,439</u>
NET POSITION	821,995,693	825,933,297	822,803,061	799,078,660
LIABILITIES				
Long-Term Debt	457,601,726	441,928,130	530,580,510	564,960,765
Current Liabilities	70,165,746	63,906,544	86,776,174	82,905,132
Long-Term Liabilities	57,893,021	22,647,914	24,703,271	23,048,882
Total Liabilities	<u>585,660,493</u>	<u>528,482,588</u>	<u>642,059,955</u>	<u>670,914,779</u>
Deferred Inflows	50,287,983	52,036,389	48,000,000	48,000,000
TOTAL NET POSITION, LIABILITIES, AND DEFERRED INFLOWS	<u>\$1,457,944,169</u>	<u>\$1,406,452,274</u>	<u>\$1,512,863,016</u>	<u>\$1,517,993,439</u>
STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION				
OPERATING REVENUES				
Residential	\$154,091,270	\$149,195,092	\$150,972,050	\$149,662,791
Commercial	27,703,400	26,956,059	26,594,512	25,110,481
General	115,600,650	116,053,999	114,718,365	109,046,936
Contract Industrial	21,462,712	21,356,911	21,150,771	19,804,613
Bulk Power	54,506,535	50,380,147	82,796,740	64,210,259
Unbilled	(840,477)	677,091	(666,187)	1,651,808
Other	1,725,200	1,643,756	1,609,143	1,562,082
Total Electric Revenues	<u>374,249,290</u>	<u>366,263,055</u>	<u>397,175,394</u>	<u>371,048,970</u>
Other Operating Revenue	44,365,098	44,363,160	44,070,713	43,413,115
Total Operating Revenues	<u>418,614,388</u>	<u>410,626,215</u>	<u>441,246,107</u>	<u>414,462,085</u>
OPERATING EXPENSES				
Operation and Maintenance	312,790,388	299,200,704	294,741,044	276,558,723
Taxes	19,727,313	19,993,833	19,276,216	19,562,858
Depreciation	55,702,297	57,381,578	59,156,228	56,397,306
Loss on Asset Impairment	-	-	-	-
Total Operating Expenses	<u>388,219,998</u>	<u>376,576,115</u>	<u>373,173,488</u>	<u>352,518,887</u>
NET OPERATING INCOME	30,394,390	34,050,100	68,072,619	61,943,198
NON-OPERATING REVENUES (EXPENSES)				
Other Income and Expense (Net)	1,555,659	(1,923,329)	(728,908)	(252,363)
Interest Earned on Investments	2,405,144	1,796,071	3,780,834	1,899,829
Interest Charges (Net)	(16,196,734)	(19,428,673)	(27,290,021)	(25,688,219)
Contributions to Family Need ..	(480,000)	(480,000)	(900,000)	(900,000)
Gain on Sale of Utility Plant ..	-	-	-	-
Net Income Before Contributions, Transfers & Extraordinary Items	<u>17,678,459</u>	<u>14,014,169</u>	<u>42,934,524</u>	<u>37,002,445</u>
Total Capital Contributions	8,846,216	9,383,844	7,788,292	8,839,960
Transfers Out	<u>(30,462,279)</u>	<u>(24,969,422)</u>	<u>(26,998,415)</u>	<u>(25,970,230)</u>
CHANGE IN NET POSITION	<u>(\$3,937,604)</u>	<u>(\$1,571,409)</u>	<u>\$23,724,401</u>	<u>\$19,872,175</u>

In accordance with Governmental Accounting Standards Board Statement No.65 both 2012 and 2011 were restated for comparative purposes. Years prior to 2011 are shown as originally reported.

2012	2011	2010	2009	2008	2007
\$954,141,423	\$944,969,878	\$933,796,881	\$900,879,652	\$855,373,200	\$794,683,393
154,745,677	196,860,001	223,057,734	104,606,844	122,629,299	157,462,325
333,694,736	313,457,995	279,967,672	288,083,393	312,006,708	272,409,296
-	-	17,651,421	7,304,736	1,990,596	2,356,842
1,442,581,836	1,455,287,874	1,454,473,708	1,300,874,625	1,291,999,803	1,226,911,856
7,848,910	8,213,239	-	-	-	-
1,450,430,746	1,463,501,113	1,454,473,708	1,300,874,625	1,291,999,803	1,226,911,856
779,206,485	762,944,507	744,735,781	735,593,799	695,305,259	621,817,950
518,251,959	563,718,608	582,930,840	459,202,498	490,528,958	517,834,315
84,070,814	82,861,816	95,884,868	83,385,715	100,219,839	81,446,692
20,901,488	17,976,182	30,922,219	22,692,613	5,945,747	5,812,899
623,224,261	664,556,606	709,737,927	565,280,826	596,694,544	605,093,906
48,000,000	36,000,000	-	-	-	-
\$1,450,430,746	\$1,463,501,113	\$1,454,473,708	\$1,300,874,625	\$1,291,999,803	\$1,226,911,856
\$141,236,063	\$136,944,688	\$127,908,143	\$125,807,518	\$131,188,854	\$127,539,844
23,499,735	22,324,063	21,147,156	21,005,151	22,138,244	22,486,943
103,586,233	99,958,156	96,579,940	90,782,730	100,142,959	101,628,965
18,870,807	18,341,067	16,898,845	14,101,372	15,430,080	15,078,247
53,532,081	48,118,090	69,518,730	67,338,457	98,545,139	98,276,853
4,615,802	369,424	(3,564,337)	(411,080)	1,576,914	49,376
1,558,268	1,373,168	1,472,125	1,190,013	1,387,629	1,359,098
346,898,989	327,428,656	329,960,602	319,814,161	370,409,819	366,419,326
40,983,752	36,895,939	36,892,658	35,691,490	33,998,632	33,739,569
387,882,741	364,324,595	366,853,260	355,505,651	404,408,451	400,158,895
267,457,626	247,409,057	259,366,287	220,849,709	246,856,188	237,383,019
17,494,729	16,970,015	15,553,041	15,187,859	16,075,356	15,558,011
57,842,109	56,555,538	55,717,463	53,049,558	48,377,708	43,705,705
-	-	-	-	-	-
342,794,464	320,934,610	330,636,791	289,087,126	311,309,252	296,646,735
45,088,277	43,389,985	36,216,469	66,418,525	93,099,199	103,512,160
3,055,848	1,226,132	2,202,089	1,322,007	3,255,797	1,754,339
5,835,775	8,444,683	7,786,710	8,721,608	12,539,619	14,127,012
(22,859,967)	(21,917,623)	(22,773,604)	(22,804,261)	(22,420,879)	(22,680,647)
(450,000)	(450,000)	(900,000)	(1,229,676)	(450,000)	(450,000)
-	-	-	-	2,923,465	1,467,378
30,669,933	30,693,177	22,531,664	52,428,203	88,947,201	97,730,242
9,480,111	14,222,934	10,224,518	9,844,736	10,219,425	12,046,164
(23,888,066)	(23,913,077)	(23,614,200)	(21,984,399)	(25,679,317)	(25,258,949)
\$16,261,978	\$21,003,034	\$9,141,982	\$40,288,540	\$73,487,309	\$84,517,457

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

TEN-YEAR POWER SUMMARY

	2016	2015	2014	2013
MWh Available				
Generated				
Nisqually	630,483	511,592	635,121	572,932
Cushman	507,618	272,457	358,509	239,528
Cowlitz	1,989,438	1,630,130	2,111,686	1,792,975
Wynoochee	37,209	12,680	14,272	24,404
Hood Street	2,942	1,889	2,281	3,503
Grant Net Actual	-	-	(2,018)	(3,279)
Tacoma's Share of Priest Rapids	26,975	25,360	22,733	34,846
Tacoma's Share of GCPHA	253,625	258,679	272,846	254,570
Total Generated	3,448,290	2,712,787	3,415,430	2,919,479
Purchased	3,807,370	3,674,140	3,845,666	3,756,763
Interchange - Net	(2,438,369)	(1,569,981)	(2,339,277)	(1,665,811)
Losses - Net	(8,870)	10,340	14,057	7,398
Total System Load	4,808,421	4,827,286	4,935,876	5,017,829
MWh Billed				
Residential and Other.....	1,855,706	1,801,114	1,890,970	1,950,829
Commercial/General/Industrial....	2,771,822	2,786,233	2,838,967	2,855,932
Total Firm MWh Billed	4,627,528	4,587,347	4,729,936	4,806,761
MWh Available Over MWh Billed (Causes: Timing differences, internal use, and losses other than those reflected above.)	180,894	239,939	175,940	211,068
Percent of Power Generated	71.71%	56.20%	69.20%	58.18%
Average Load Factor	60.02%	62.71%	55.31%	54.18%
Average Number of Billings	176,784	174,562	172,531	171,506
Maximum Hourly Energy Load				
MWh	913	877	1,016	980
Date	12/17/16	12/31/15	2/6/14	12/9/13
Time	0900 hr	0900 hr	800 hr	800 hr
Maximum Daily Energy Load				
MWh	19,641	18,675	21,686	21,172
Date	12/17/16	12/31/15	2/6/14	12/09/13
Minimum Hourly Energy Load				
MWh	351	354	348	349
Date	7/5/16	6/21/15	7/6/14	9/8/13
Time	0400 hr	0600 hr	0600 hr	0500 hr
Minimum Daily Energy Load				
MWh	10,110	10,262	10,221	10,379
Date	9/4/16	5/24/15	7/5/14	7/4/13
Average Hourly Energy Load	548	550	562	572

2012	2011	2010	2009	2008	2007
699,104	663,345	586,433	553,062	530,839	515,585
261,735	410,723	393,563	246,898	208,604	381,193
2,322,875	2,157,106	1,725,424	1,677,554	1,736,328	1,590,719
38,149	35,692	36,320	25,298	25,368	35,518
4,029	3,313	4,133	3,243	4,217	3,914
(3,285)	-	-	-	-	-
37,355	34,417	30,705	-	-	-
255,564	237,794	240,845	-	-	-
3,615,526	3,542,390	3,017,423	2,506,055	2,505,356	2,526,929
4,167,263	3,799,037	4,132,049	4,235,019	4,252,681	4,401,097
(2,814,479)	(2,266,720)	(1,993,911)	(1,729,701)	(1,677,704)	(1,918,581)
20,718	(8,112)	10,599	4,210	10,132	12,433
4,989,028	5,066,595	5,166,160	5,015,583	5,090,465	5,021,878
1,935,518	1,997,714	1,925,549	1,994,692	1,979,930	1,922,289
2,812,769	2,838,424	2,794,406	2,829,425	2,866,480	2,889,520
4,748,287	4,836,138	4,719,955	4,824,117	4,846,410	4,811,809
240,741	230,457	446,205	191,466	243,639	210,069
72.47%	69.92%	58.41%	49.97%	49.22%	50.32%
61.47%	58.86%	52.82%	51.69%	56.68%	59.27%
169,012	169,123	169,413	168,207	166,307	165,122
924	931	992	1,062	1,018	960
1/16/12	1/3/11	11/23/10	12/10/09	12/15/08	1/12/07
1800 hr	0800 hr	1800 hr	800 hr	1900 hr	900 hr
19,100	18,788	20,591	21,103	21,237	20,312
1/16/12	1/11/11	11/23/10	12/9/09	12/15/08	1/12/07
340	310	303	295	349	355
9/19/12	7/5/11	9/3/10	7/5/09	7/6/08	9/16/07
0400 hr	0400 hr	0300 hr	0700 hr	0700 hr	0500 hr
10,160	9,171	9,041	9,036	10,235	10,348
9/2/12	7/3/11	9/5/10	8/15/09	8/31/08	9/2/07
566	548	524	549	577	569

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CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

GROSS GENERATION REPORT - December 31, 2016 AND December 31, 2015

	YEAR ENDED		2016 OVER	PERCENT CHANGE
	Dec 31 2016	Dec 31 2015	(UNDER) 2015	
KWH GENERATED, PURCHASED AND INTERCHANGED - Gross				
Generated - LaGrande	378,898,000	319,979,000	58,919,000	18.4%
Generated - Alder	251,585,000	191,613,000	59,972,000	31.3%
TOTAL NISQUALLY	<u>630,483,000</u>	<u>511,592,000</u>	<u>118,891,000</u>	23.2%
Generated - Cushman No. 1	185,318,000	107,411,000	77,907,000	72.5%
Generated - Cushman No. 2	322,300,000	165,046,000	157,254,000	95.3%
TOTAL CUSHMAN	<u>507,618,000</u>	<u>272,457,000</u>	<u>235,161,000</u>	86.3%
Generated - Mossyrock	1,203,631,000	1,007,917,000	195,714,000	19.4%
Generated - Mayfield	785,807,000	622,213,000	163,594,000	26.3%
TOTAL COWLITZ	<u>1,989,438,000</u>	<u>1,630,130,000</u>	<u>359,308,000</u>	22.0%
Generated - Wynoochee	<u>37,209,000</u>	<u>12,680,000</u>	<u>24,529,000</u>	193.4%
Generated - Hood Street	<u>2,942,400</u>	<u>1,889,500</u>	<u>1,052,900</u>	55.7%
Tacoma's Share of Priest Rapids	<u>26,975,000</u>	<u>25,360,000</u>	<u>1,615,000</u>	6.4%
Tacoma's Share of GCPHA	<u>253,625,000</u>	<u>258,679,000</u>	<u>(5,054,000)</u>	-2.0%
TOTAL KWH GENERATED - TACOMA SYSTEM	<u>3,448,290,400</u>	<u>2,712,787,500</u>	<u>735,502,900</u>	27.1%
Purchased Power				
BPA Slice Contract	2,265,823,000	2,080,213,000	185,610,000	8.9%
BPA Block Contract	1,541,547,000	1,593,927,000	(52,380,000)	-3.3%
Interchange Net	<u>(2,438,369,000)</u>	<u>(1,569,981,000)</u>	<u>(868,388,000)</u>	55.3%
TOTAL KWH GENERATED, PURCHASED AND INTERCHANGED ..	<u>4,817,291,400</u>	<u>4,816,946,500</u>	<u>344,900</u>	0.0%
Losses	41,976,966	32,070,742	9,906,224	30.9%
Baldi Replacement	1,864,094	2,645,869	(781,775)	-29.5%
Ketron	262,023	269,163	(7,140)	-2.7%
NT PC Mutuals Schedules.....	(28,498,000)	(28,075,000)	(423,000)	1.5%
PC Mutual Inadvertent	<u>(24,475,004)</u>	<u>3,429,073</u>	<u>(27,904,077)</u>	-813.7%
TACOMA SYSTEM FIRM LOAD	<u>4,808,421,479</u>	<u>4,827,286,347</u>	<u>(18,864,868)</u>	-0.4%
PIERCE COUNTY MUTUAL LOAD	1,435,535,000	1,422,462,000	13,073,000	0.9%
KWH BILLED				
Residential Sales	1,817,931,140	1,764,596,523	53,334,617	3.0%
Commercial Sales	316,085,742	309,650,083	6,435,659	2.1%
General	1,947,062,423	1,969,382,254	(22,319,831)	-1.1%
Contract Industrial	508,673,780	507,200,696	1,473,084	0.3%
Public Street and Highway Lighting	31,555,485	30,545,257	1,010,228	3.3%
Sales to Other Electric Utilities	6,219,000	5,972,400	246,600	4.1%
TOTAL FIRM	<u>4,627,527,570</u>	<u>4,587,347,213</u>	<u>40,180,357</u>	0.9%
Bulk Power Sales	<u>2,731,076,000</u>	<u>1,917,685,000</u>	<u>813,391,000</u>	42.4%
TOTAL KWH BILLED	<u>7,358,603,570</u>	<u>6,505,032,213</u>	<u>853,571,357</u>	13.1%

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

DEBT SERVICE REQUIREMENTS
DECEMBER 31, 2016

<u>YEAR</u>	<u>PRINCIPAL</u>	<u>INTEREST</u>	<u>TOTAL</u>
2017	11,575,000	18,389,310	29,964,310
2018	10,095,000	17,926,310	28,021,310
2019	29,165,000	17,471,560	46,636,560
2020	11,970,000	16,113,310	28,083,310
2021	3,795,000	15,564,810	19,359,810
2022	3,985,000	15,375,060	19,360,060
2023	4,185,000	15,175,810	19,360,810
2024	4,395,000	14,966,560	19,361,560
2025	4,525,000	14,832,512	19,357,512
2026	24,185,000	14,685,450	38,870,450
2027	4,675,000	13,321,174	17,996,174
2028	4,905,000	13,087,424	17,992,424
2029	5,155,000	12,842,174	17,997,174
2030	27,310,000	12,584,424	39,894,424
2031	28,335,000	11,002,902	39,337,902
2032	29,335,000	9,347,016	38,682,016
2033	30,460,000	7,596,889	38,056,889
2034	31,630,000	5,779,646	37,409,646
2035	10,990,000	3,892,600	14,882,600
2036	11,535,000	3,343,100	14,878,100
2037	12,115,000	2,766,350	14,881,350
2038	12,720,000	2,160,600	14,880,600
2039	13,230,000	1,651,800	14,881,800
2040	13,755,000	1,122,600	14,877,600
2041	14,310,000	572,400	14,882,400
	<u>\$358,335,000</u>	<u>\$261,571,791</u>	<u>\$619,906,791</u>

The amounts above reflect debt service requirements, and do not include the portion funded in the current year for \$12,730,000.

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

FUNDS AVAILABLE FOR DEBT SERVICE

	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>
Total Income	\$425,755,909	\$413,680,801	\$447,043,485	\$418,841,237	\$400,235,482
Less: Operating Exp	<u>332,517,701</u>	<u>319,194,537</u>	<u>314,017,260</u>	<u>296,121,581</u>	<u>284,952,355</u>
Income Available for Debt Service	<u>\$93,238,208</u>	<u>\$94,486,264</u>	<u>\$133,026,225</u>	<u>\$122,719,656</u>	<u>\$115,283,127</u>
Bond Redemption	\$12,730,000	\$14,735,000	\$32,115,000	\$28,295,000	\$28,785,000
Bond Interest	<u>19,025,810</u>	<u>22,420,035</u>	<u>26,626,411</u>	<u>24,112,971</u>	<u>27,747,001</u>
Debt Service Payable on All Debt	\$31,755,810	\$37,155,035	\$58,741,411	\$52,407,971	\$56,532,001
Times Debt Service Covered	2.94	2.54	2.26	2.34	2.04

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

RESOURCES
AS OF DECEMBER 31, 2016

GENERATING FACILITIES	GENERATING UNITS	AGGREGATE NAME PLATE RATING (kW)	APPROX. RATED 4-YR. AVERAGE ANNUAL OUTPUT (1,000 kWh)
Hydro:			
Alder	2	50,000	228,355
LaGrande	5	64,000	358,733
Cushman No. 1	2	43,200	130,506
Cushman No. 2	3	81,000	214,011
Mayfield	4	162,000	736,654
Mossyrock	2	300,000	1,144,311
Wynoochee	1	12,800	22,141
Total Hydro		713,000	2,834,711

Tacoma Power and the City of Seattle Light Department have entered into a 40-year purchase power contract with three Eastern Washington irrigation districts that have combined to develop the Grand Coulee Project Hydroelectric Authority. Tacoma Power and the City of Seattle Light Department share equally the output of the project which has a combined capacity of 128,700 kW and an annual energy capability of about 476,000,000 kWh.

CUSTOMERS BY CLASS	AVERAGE NUMBER BILLINGS	AVERAGE HOURLY ENERGY (kW)
Residential	157,540	1.312
Incidental	15,688	2.300
General	2,642	106.376
Public Streets and Highways	914	3.941
Total System	176,784	2.988

Circuit Miles of Transmission Lines

115 kV	307
230 kV	44

Circuit Miles of Distribution Lines

Overhead	1,178
Underground	836

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

TAXES AND EMPLOYEE WELFARE CONTRIBUTIONS
FOR THE YEAR 2016

FEDERAL

Power Social Security (FICA)	\$6,792,585	
Total		\$6,792,585

STATE OF WASHINGTON

Retail Sales and Use Taxes	3,753,474	
Power Utilities and Business Operations Tax	13,070,478	
Power State Employment Security	101,804	
Total		16,925,756

COUNTY

Lewis County - In Lieu of Taxes	1,529,863	
Mason County - In Lieu of Taxes	184,297	
Pierce County School Support - Eatonville	7,000	
White Pass School Support	122,293	
Mossyrock School Support	106,222	
Morton School Support	2,985	
Lewis County Fire Protection District	10,794	
Pierce County Fire Protection District	56,965	
Pierce County Drainage District	17,484	
Thurston County	938	
Total		2,038,841

MUNICIPALITIES

City of Tacoma Power Gross Earnings Tax	28,412,707	
Click!Network Gross Earnings Tax/Franchise Fees	3,304,400	
City of Fife Power Franchise Fee	1,206,459	
City of University Place Power Franchise Fee	1,080,368	
City of Lakewood Power Franchise Fee	824,727	
City of Fircrest Power Franchise Fee	244,641	
City of Steilacoom Power Franchise Fee	4,790	
Total		35,078,092
TOTAL TAXES		<u>\$60,835,274</u>

Taxes as a % of Operating Revenues of \$418,614,388 14.53%

EMPLOYEE WELFARE CONTRIBUTIONS

Power Industrial Insurance and Medical Aid.....	\$2,035,370	
Power City of Tacoma Pension Fund	9,282,983	
Power Medical/Life Insurance	17,386,237	
TOTAL EMPLOYEE WELFARE CONTRIBUTIONS		<u>\$28,704,590</u>

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

2016 ELECTRIC RATES
(Based on 2015 rate schedules)

RATE PER MONTH

Schedule A-1 - Residential Service

Customer Charge	\$10.50 per month
Customer Charge (for collectively metered apartments)	\$8.50 per month
Energy (all energy measured in kilowatt-hours)	\$0.039710 per kWh
Delivery (all energy delivered in kilowatt-hours) .	\$0.034435 per kWh

Schedule A-2 - Low-Income/Elderly/Handicapped Residential Service

Seventy percent (70%) of the monthly bill as calculated under Section 12.06.160 of the official Code of the City of Tacoma, known as RESIDENTIAL SERVICE - SCHEDULE A-1.

Schedule B - Small General Service

Customer Charge	\$19.00 per month
Customer Charge (for unmetered services)	\$14.75 per month
Energy (all energy measured in kilowatt-hours)	\$0.042507 per kWh
Delivery (all energy delivered in kilowatt-hours) ..	\$0.034587 per kWh

Schedule G - General Service

Customer Charge	\$50.00 per month
Energy (all energy measured in kilowatt-hours)	\$0.041192 per kWh
Delivery (all kilowatts of Billing Demand delivered)	\$7.50 per kW

Schedule HVG - High Voltage General Service

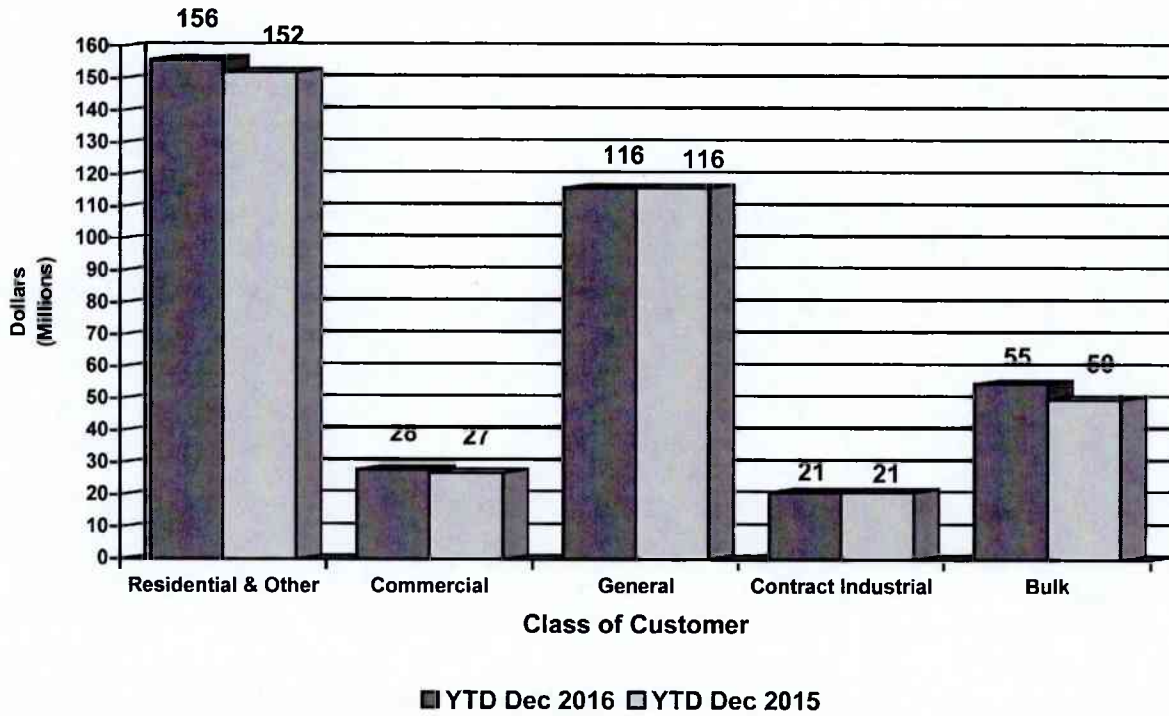
Customer Charge	\$210.00 per month
Energy (all energy measured in kilowatt-hours)	\$0.035175 per kWh
Delivery (all kilowatts of Billing Demand delivered)	\$4.00 per kW

Other schedules also now in effect are:

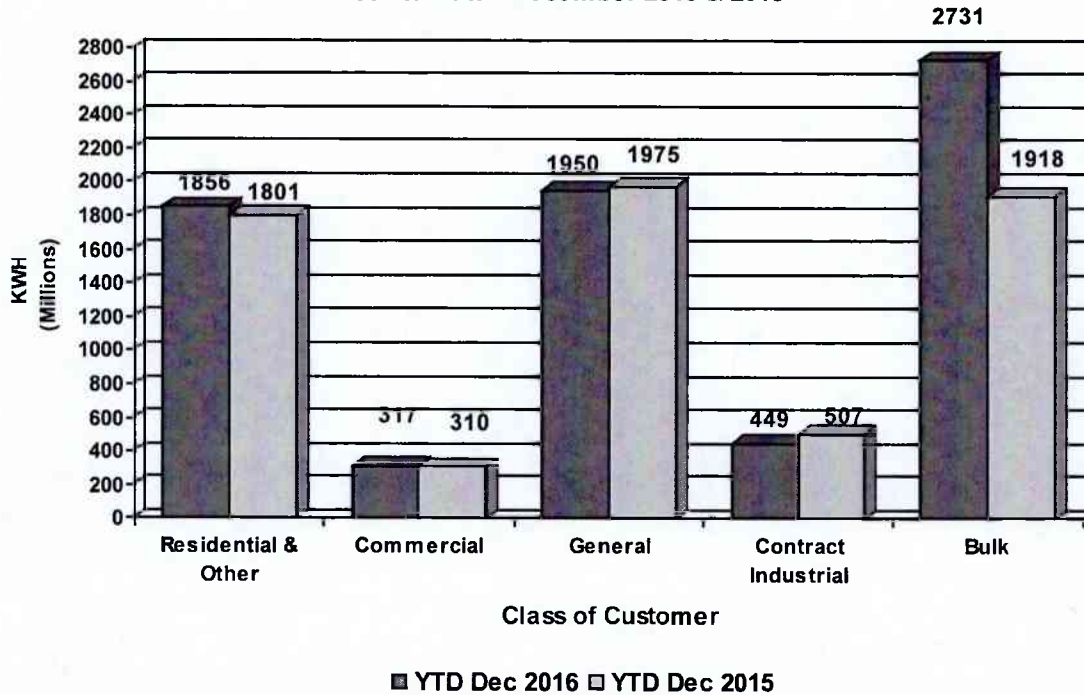
- CP - Contract Industrial Service (major industrial power use - written contract required)
- H-1 - Street Lighting and Traffic Signal Service
- H-2 - Private Off-Street Lighting Service

Electric rates were established by Ordinance No. 28285 passed March 17, 2015 and became effective April 1, 2015.

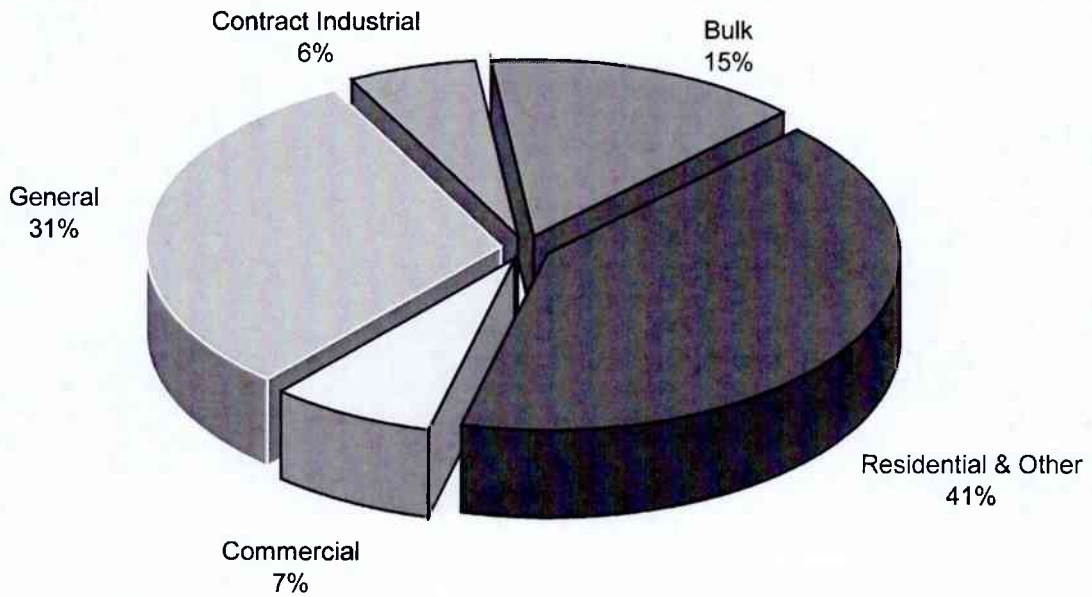
SALES OF ELECTRIC ENERGY
Year to Date - December 2016 & 2015



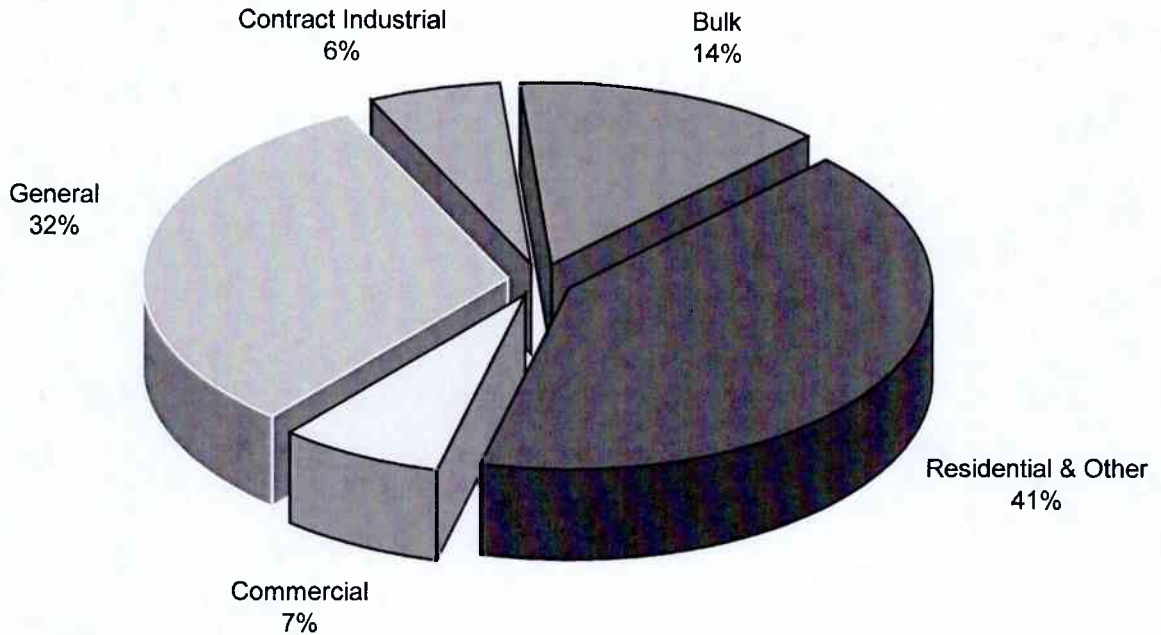
TOTAL POWER BILLED
Year to Date - December 2016 & 2015



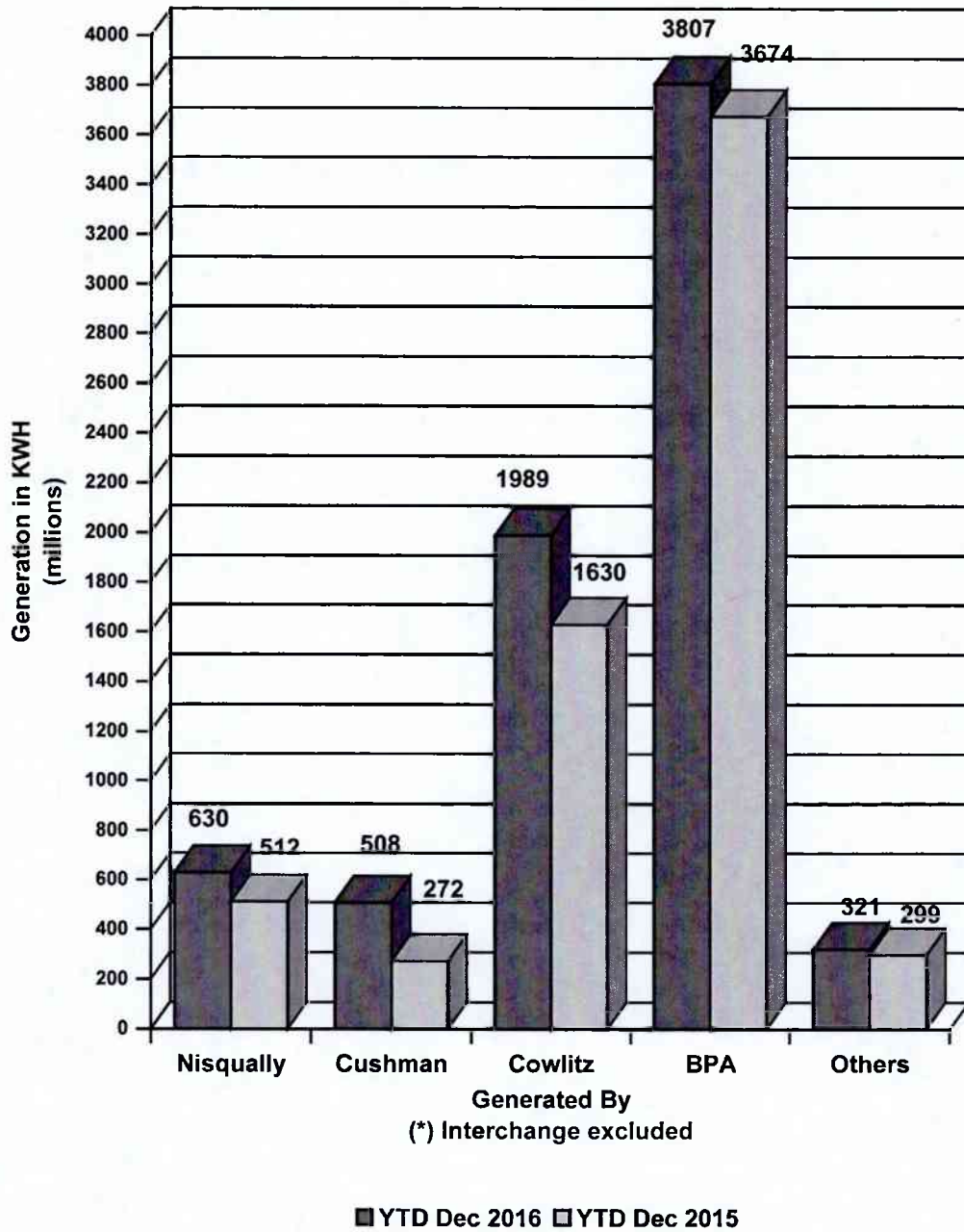
SALES OF ELECTRIC ENERGY
Year to Date - Dec 2016 (\$374,249,290)



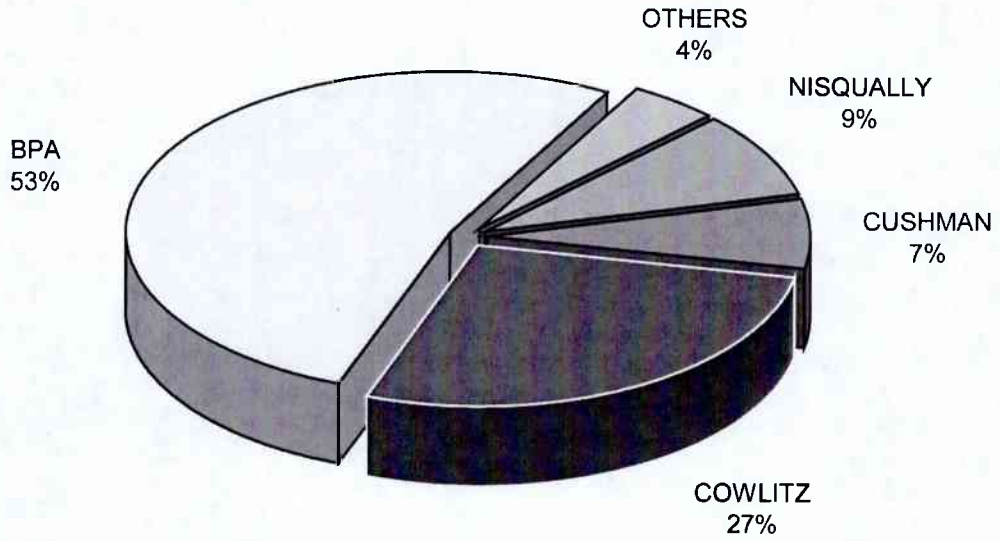
SALES OF ELECTRIC ENERGY
Year to Date - Dec 2015 (\$366,263,055)



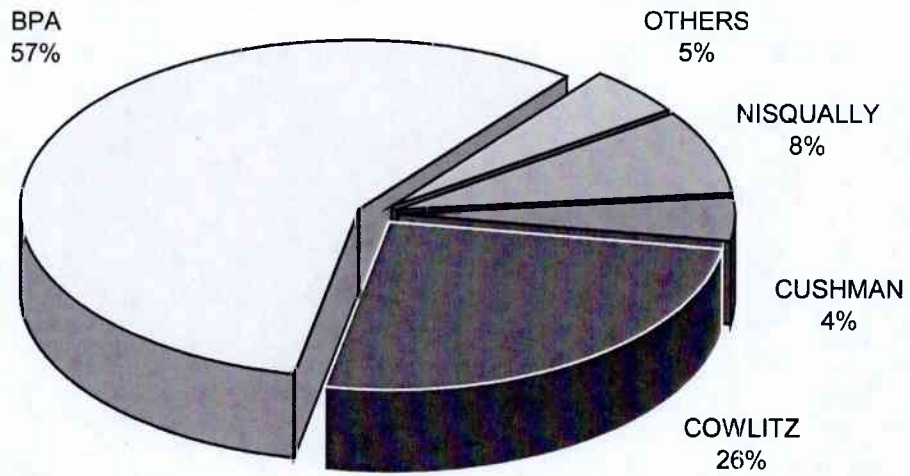
POWER SOURCES (*) Year to Date December 2016 & 2015



POWER SOURCES (*)
Year to Date - December 2016

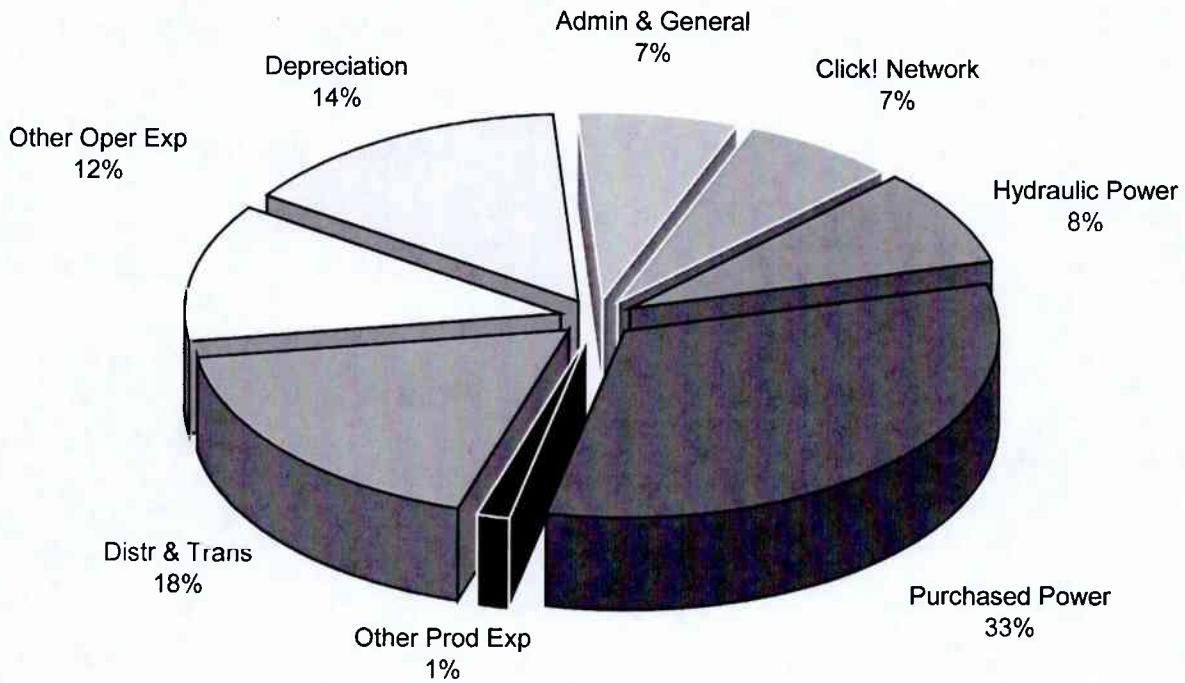


POWER SOURCES (*)
Year to Date - December 2015

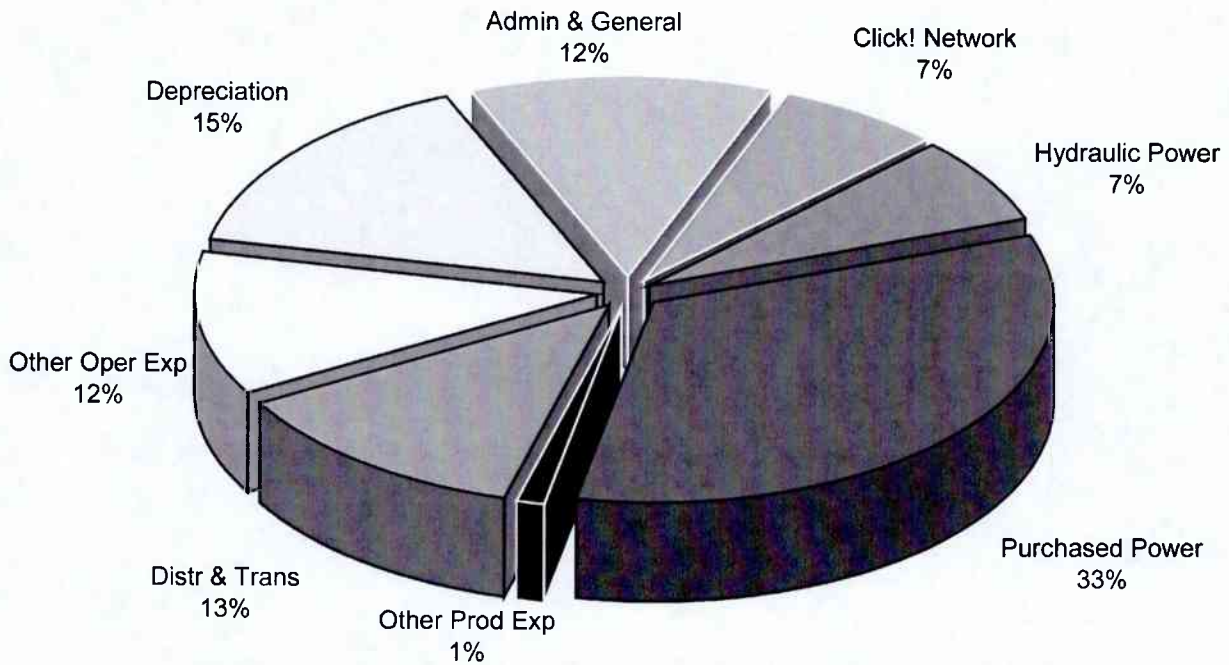


(*) Interchange excluded

TOTAL OPERATING EXPENSES *
Year to Date - Dec 2016 (\$388,219,998)

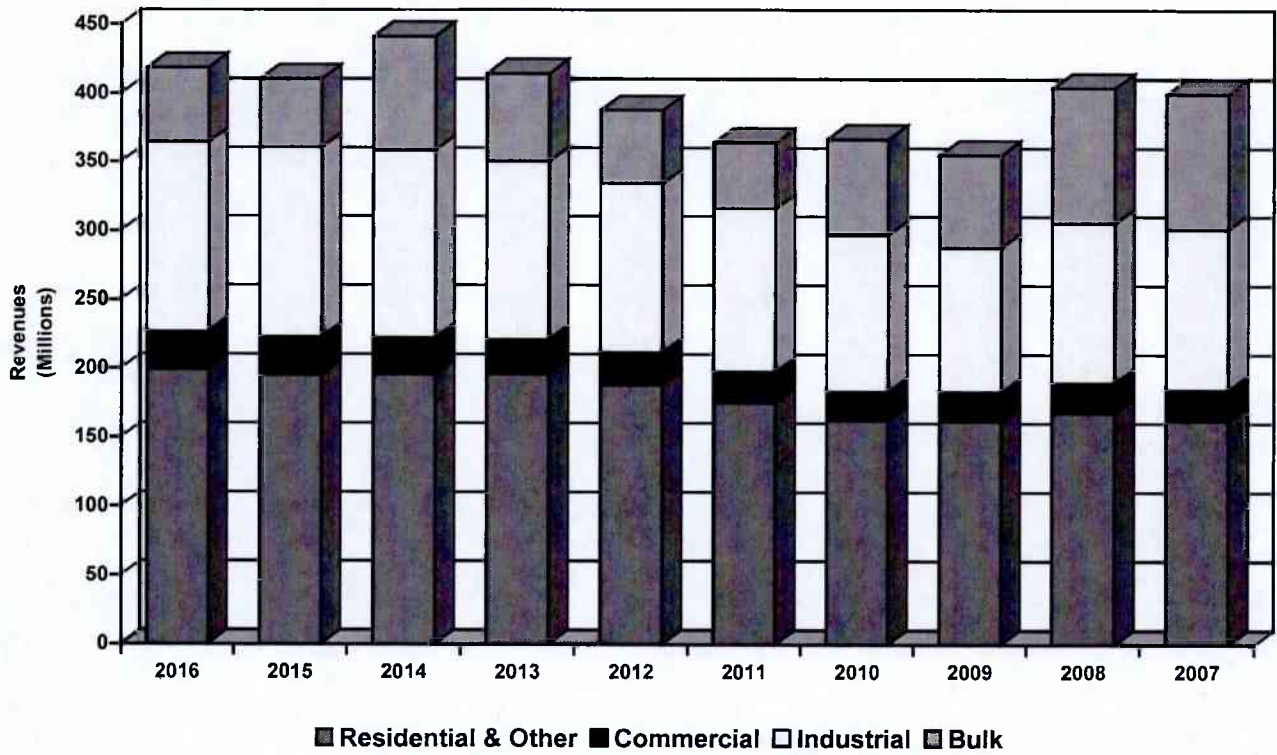


TOTAL OPERATING EXPENSES *
Year to Date - Dec 2015 (\$376,576,115)

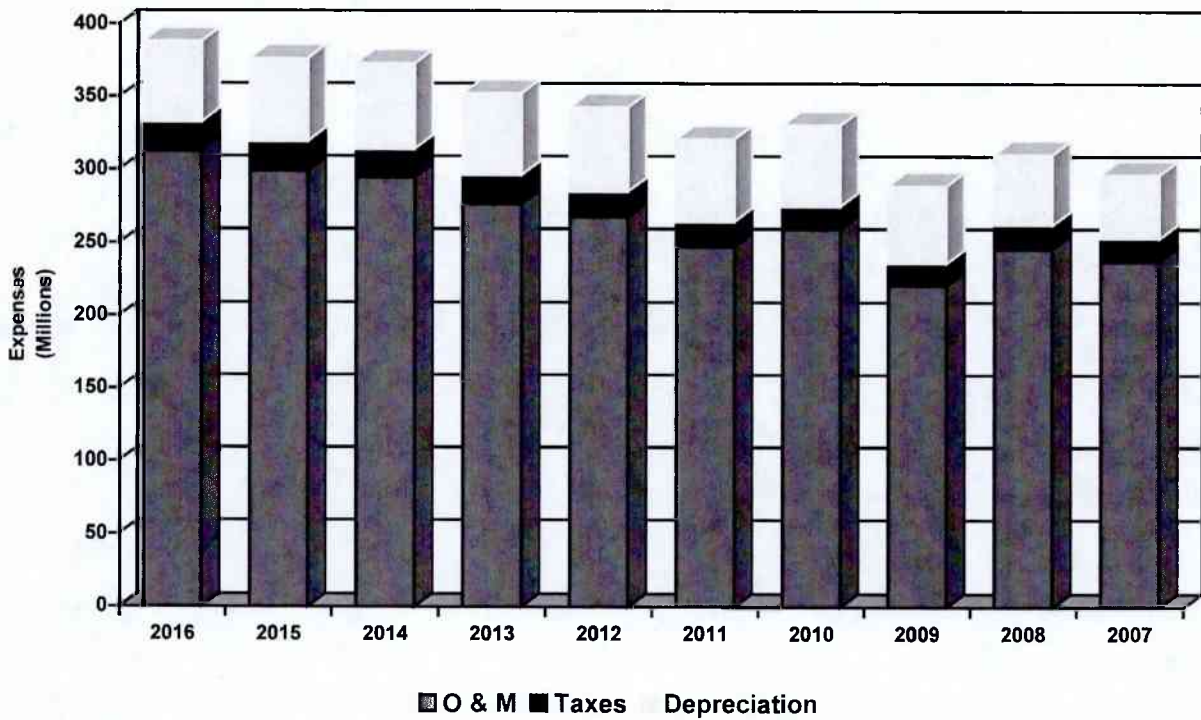


* City Gross Earnings Taxes are not included in Total Operating Expenses.

TEN-YEAR SUMMARY OF OPERATING REVENUES



TEN-YEAR SUMMARY OF OPERATING EXPENSES



2016 SUPERINTENDENT'S REPORT TACOMA POWER

CLICK!

Financial Status

Click! Network commercial revenues declined from \$27.3 million in 2015 to \$26.7 million in 2016. The retail cable TV customer base dropped 4.6 percent ending the year with 17,468 active customers, and the Internet cable modem customers served by the three wholesale Internet Service Providers (ISPs) - Advanced Stream, Net-Venture, Inc., and Rainier Connect, grew by .4 percent ending the year with 23,344 active customers. Click! provided 173 broadband transport circuits to Click!'s wholesale service providers allowing them to provide an array of telecommunication services to many businesses in the service area. Additionally, Click! continued to provide the City of Tacoma I-Net services to approximately 190 sites, keeping the cost of telecommunications low for many government entities, and also provided support for just over 15,000 gateway power meter connections.

Cable TV Rate Adjustments

Because a final policymaker decision regarding Click! Network's long term business plan remained outstanding in 2016, no cable television rate increases were implemented. Although Cable television prices continue to remain under market, the postponement of rate adjustments contributed to the decline in revenues.

Channel Additions

During 2016, Click! Network migrated 10 networks from optional service levels to its Broadcast package and migrated Big Ten Network and Sprout from its Sports & Family package to its Click! ON Digital package. Three networks discontinued operations in 2016, Pivot, UWTV, and MundoMax, but TV Tacoma HD was added, bringing the total to 376 video and 65 audio channels. Click! also added a variety of national and local video on demand content for a total offering of over 12,000 hours of content to make the product more competitive. Additionally, Click! added new networks to its Watch TV Everywhere service. Click!'s cable TV customers can now enjoy watching Click! video content from 84 networks on any of their mobile devices with an internet connection.

Website Improvements

Click! Network launched a new website in June 2016. Improvements included streamlined navigation, responsiveness to mobile device screen sizes, enhanced TV listings, and an online shopping cart. Click! cable television products, along with ISP internet packages, are now prominently displayed, enabling the potential customer to select services and submit a self-service order online.

Customer Satisfaction Survey

Customer Satisfaction survey cards were mailed to all new cable TV customers and to all customers who had a service related issue. Click! customer service and technicians representatives received ratings averaging 3.7 and 3.8 respectively on a scale of 1 – 4. In addition, a Customer Satisfaction Survey conducted on Click! Network's behalf by Washington State University's Social & Economic Sciences Research Center (SESRC) showed a mean average overall customer satisfaction score of 8.08 on a 1-10 scale. The results revealed that customers are very satisfied with the services provided by Click! and in particular, recognized the quality of service provided by our Sales and Service Representatives and Service Technicians.

New Tools

Click! purchased the CPAT Flex Digital Leakage Monitoring System to address concerns about interference from cable leakage in the aeronautical and LTE bands. The CPAT Flex Digital Leakage Monitoring System automates the signal leakage detection process freeing up technicians for other tasks. Since the tool is continuously monitoring the network, signal leakage is quickly detected and repaired.

Click! also purchased the CheetahXD software to replace the former Cheetah Lite version. The CheetahXD software helps Click! network technicians manage the HFC network by providing end-to-end visibility across the HFC operations environment, and enables NOC personnel to proactively isolate network problems, trace root causes, assess potential impacts, and prioritize truck rolls by pinpointing fault and performance issues in real-time. With CheetahXD software, HFC network assurance is simplified, operational costs are reduced, and network performance is improved resulting in enhanced customer satisfaction.

Spectrum Reclamation

In 2015, Click! fully converted its system from analog to digital and freed up nineteen (19) 6 MHz channel slots. Since then, 6 of those freed up channels have been added to the bank of downstream Internet channels to meet the growth in customers and Internet usage. Therefore leaving 13 channels available for use.

Network Bandwidth

During 2016, Click! added NETFLIX cache servers to the local network. The addition of these cache servers has reduced bandwidth utilization by as much as 30%. Click! added an additional 10 Gig connection at Downtown South and Downtown North for a total of 30 Gig potential capacity at each location. The Core routers are being upgraded from the Cisco 7600 platform to the Cisco ASR 9912 platform. This will provide the necessary 10 gig ports and throughput to support current and future network growth. The Cable Modem Termination Systems (CMTS) are also being upgraded. The existing Cisco uBR 10000 series CMTSs are going to be replaced with new Cisco cBR-8 CMTSs. The first set of Cisco cBR-8 CMTSs were purchased during 2016. These will support DOCSIS 3.1 Gigabit services and provide higher port and bandwidth capacity for meeting bandwidth demands and subscriber growth.

Asset Management Program

During 2016, Click! continued to build its asset list and has developed its registries for the Router, HFC Distribution, and Headend Equipment asset classes, and is prepared to participate in the Tacoma Power's Strategic Asset Management program. Click! also developed a Network Maturity Model, to more effectively manage its asset lifecycles and plan future capital expenditures.

Safety and Work Practices

In 2016, Click! continued to make improvements to its safety management practices. Improvements included: (i) Focusing on reviewing past performance; (ii) improvements in the oversight of injured worker claims; and (iii) increased review of leading indicators such as near misses and non-medical injury reports. Additional training was provided on Home Safety and how the employees and their families can be impacted by the activities we engage in outside of our work life. Safety posters and bulletin board messages were utilized to promote safety awareness. Each business unit held monthly safety meetings and the Click! Safety Committee met quarterly to improve safety related communications.

GENERATION

Hydroelectric Projects

Tacoma Power's hydro plants were available 99.83 percent of the time in 2016 except for scheduled maintenance outages.

Cowlitz

Construction is wrapping up on the Cowlitz Falls North Shore Collector for collection of downstream migrating smolts from the upper Cowlitz River. The collector, located at Lewis County Public Utility District Cowlitz Falls Dam, will improve natural fish runs in the Cowlitz River and help Tacoma Power meet its Federal Energy Regulatory Commission (FERC) license obligations. The \$35 million construction project is scheduled for final commissioning and operation in April, 2017. The 70 ton head gate for unit 51 was removed for the first time in 48 years and rehabilitated.

Cushman

Construction on both of the new Cushman fish hatcheries were completed and began operation in 2016. One Cushman unit was modified to allow for synchronous condensing operation which will allow Power Management to supply and sell capacity without consuming water. The 20-year-old exciters for all three generators at Cushman 2 were replaced. Construction of recreation improvements in the Staircase area were completed and opened to the public during 2016.

Nisqually

The 20-year-old exciters were replaced on four units at LaGrande and one governor was upgraded.

Regulatory Compliance and Dam Safety

All dam safety and license compliance requirements were met and submitted to the Federal Energy Regulatory Commission on time. All NERC compliance obligations were met and the 2016 audit resulted in no findings. Several studies were concluded or nearly concluded relating to seismic upgrades to parts of our plants including the Mayfield penstock slope and the spillways at both Mayfield and Mossyrock. Potential seismic loading was recently increased on these projects which will cause us to have to rework some previous studies and explore new alternatives.

Parks

Tacoma Power's parks served over 300,000 customers in 2016. Tacoma Power's park customers continue to compliment the cleanliness, admire the beauty and maintenance, and praise the friendly and helpful staff. Nearly 99 percent of the customers rate the employees as helpful in the 2300 surveys that were completed. A few of the many positive customer comments received include: "The staff is so friendly, gave a warm reception, very welcoming, helpful, warm, kind, congenial, cordial, courteous, amenable and generous!" "Great family camping spot! Well-kept and lots of fun things to do."

Facilities

Chief Imo retired as the Facilities Manager and was replaced by Terry Coggins in 2016. Construction was nearly completed on the 4th floor remodel which will combine Finance and Purchasing functions on the 4th floor and free up space on the Main floor for other pressing facility needs.

POWER MANAGEMENT

2016 was a productive year for Power Management. Highlights (with more detail following) include:

1. Power Management had overall responsibility for developing Tacoma's first community solar projects. The projects were fully subscribed, constructed ahead of schedule and under budget, and received a warm reception from the community.
2. We developed, marketed and executed numerous non-energy products and services in 2016 to mitigate weak wholesale market prices. The effort resulted in \$2.4 million in additional net benefit for our customers.
3. We exceeded the conservation target in 2016 with low resource acquisition costs.
4. Power Management led efforts to create a way to convert City of Tacoma street lights to LED technology without the City borrowing funds.
5. We participated in regional efforts to investigate and influence regional wholesale markets and to investigate the potential benefits of transportation electrification.

6. We renewed contracts with two large industrial customers that required significant negotiation and accommodation in key elements of the agreements.

Conservation Resources Management (CRM)

Tacoma Power acquires energy conservation as a resource to defer its need for future, more costly supply-side resources. Conservation in 2016 cost less than \$21/MWh while other resources we might use to meet future load cost significantly more. CRM completed over 1,000 residential projects and over 200 commercial projects. Conservation also provides a positive touch point for thousands of customers with its popular programs that provide homeowners and businesses technical assistance as well as financial incentives to reduce the cost of their energy efficiency improvements. Additionally, CRM held 30 community events and 33 retailer events to promote efficient retail products.

For the 2016-2017 compliance biennium, Tacoma Power has a target of 9.4 aMW. As the first year of the biennium draws to a close, Conservation Resources Management (CRM) projects a year-end savings of 5.7 aMW and biennial savings of about 10 aMW. Savings in excess of the target would be eligible for use against our targets in the following two biennia subject to stipulations in RCW 19.285.040(c)(i), a Tacoma Power-led amendment to the Energy Independence Act.

In addition to working to meet its conservation goals, CRM developed new programs and tools throughout 2016 to better prepare for the future. CRM has implemented a new central database to house customer, program, and financial transaction information and automate time consuming tasks. Database development projects like this often come in over budget and delayed but this project was completed on time and within budget.

CRM has launched a new community solar program which allows customers to benefit from lucrative State incentives even if they don't own their home or otherwise are not able to install solar energy themselves. The solar array is housed atop the TPU warehouse roof.

Another major project involving CRM was to create a rate whereby the City of Tacoma can convert most of its streetlights to LED fixtures without increasing its budget. CRM will manage the RFP process and oversee installation of the LED streetlights.

CRM also continues to promote the success of its "trade allies" who install energy efficiency measures under its programs. A new database portal will allow trade allies to view information regarding projects with their shared customers.

Energy Resource Planning

Tacoma Power's purchases a significant amount of power and transmission from the Bonneville Power Administration (BPA) at an annual cost of approximately \$120 million and \$18 million respectively. The Planning Unit actively participated in BPA's pre-BP-18 Wholesale Power and Transmission rate case workshops. We vigorously supported a revision to the way BPA allocated transmission costs among NT and PTP customers. However, BPA did not accept our recommendation. Pursuant to the BPA Power contract, on May 1 Tacoma Power had a one-time opportunity to change from a "slice" to a "block" customer. The Planning Unit assessed both products and found remaining a "slice" customer was most beneficial to the utility.

The Planning Unit participated with four other utilities in a study to illustrative of the value of transportation electrification to the region and individual utilities. The study identified electric vehicle adoption rates, wholesale electric prices, fuel prices, generation capacity prices, distribution system costs, and electric vehicle and charger costs as important factors to the economics of transportation electrification. The study suggests significant regional benefits from transportation electrification; however, utility impacts ranged from negative to positive depending on utility specific circumstances.

The Planning Unit worked with other parts of Tacoma Power to complete a report on potential near term strategies to interact with organized wholesale markets. The study considered functional staffing requirements, computer software and equipment costs for three level of CAISO interaction: participate as a Market Entity, pseudo-tie a unit, and bidding in an external resource.

The Planning Unit completed two contracts to acquire an estimated 200,000 RECs per year (unit contingent) for the post-2020 compliance period. Tacoma Power has now secured about 650,000 of the projected 750,000 renewable MWHs/RECs needed to comply with state mandates

The Planning Unit assessed replacing most of the current old metal-halide/sodium vapor street lights in the city of Tacoma with LED lights. The study found positive net benefits. This unit led a cross-utility team to develop a new street light ordinance to allow the instillation of the LED lights. The Tacoma City Council will consider the ordinance in 2017.

The Planning Unit participated in a number of state regulation and policy development efforts including Clean Air Rule (Ecology), amendments to the Energy Independence Act implementing rules (Commerce), fuel mix disclosure requirements (Commerce), and IRP requirements (Rep. Morris).

The Planning Unit worked with Tacoma Power's two CP customers to renew the contracts under which they receive service. The Tacoma Public Utility Board approved the contracts at their September 21, public meeting.

The Planning Unit worked with RPA to assess how potential changes to rates might affect different segments of customers (particularly low income customers) and how any negative impacts might be mitigated. This assessment was well received by internal audiences and at PPC.

The Planning Unit initiated the biennial service area energy conservation potential assessment. The study was about half complete by the end of the year. Presently it indicates about 35 aMW of achievable economic conservation potential over a 10-year period. As part of this work, the Planning Unit established the BPA Block contract power rate as the new avoided cost for the conservation cost-effectiveness test.

Resource Operations and Trading

Wholesale transactions in 2016 were characterized by strong sales volumes and lower wholesale prices compared to the prior year. Net wholesale power sales were 2.5 million MWh, exceeding the budget estimates of 1.2 million MWh. Annual revenue was \$50.1 million compared to budget estimates of \$53.3 million.

In the first quarter of 2016, flows into Tacoma Power's reservoirs were well above normal. These high inflows were due in part to warm temperatures and in part to high precipitation, especially at the Cushman hydroelectric project. The warm temperatures are typical of the strong El Niño conditions that were present in the first part of 2016.

Snowpack in Tacoma's basins was also above normal into the early spring. However, the weather turned much warmer and drier with record high temperatures in April. The result was a rapid spring melt and a much lower than expected runoff. As a consequence, the storage reservoirs at the Cowlitz and Nisqually hydroelectric projects did not reach the normal summertime operating levels. Tacoma was able to make extraordinary efforts to refill Lake Cushman by early June.

To mitigate the impact of the below normal spring and summer flows, Tacoma worked with State, Federal and Tribal Natural Resource Agencies to reduce required flows at the Nisqually hydroelectric project in order to preserve water in storage and protect the downstream environment.

In October, Tacoma's projects received above average precipitation, and record-setting inflows. The high flows continued into November, and allowed Tacoma's reservoirs to recover after the dry spring and summer. In December, after almost an entire year of above-normal temperatures, conditions shifted towards a weak La Nina, and temperatures were well below normal for the month.

Overall for calendar year 2016, stream flows into Tacoma's Cowlitz, Nisqually, and Cushman hydroelectric projects were above their historic levels at 110 percent, 101 percent, and 136 percent, respectively. Flows into the Federal Columbia River Power System, which affect Tacoma's Slice-of-the-System BPA contract, were 99 percent of normal.

In 2016, Tacoma continued to find innovative ways to monetize the flexibility of its power resource portfolio by participating in emerging markets for various ancillary energy products.

Tacoma continued selling energy as a designated Asset Controlling Supplier (ACS), one of only three in the Pacific Northwest. With this designation, any sales made from Tacoma's resource portfolio are deemed "low carbon" and can be sold at a premium. In 2016, ACS sales resulted in additional revenue of almost \$1.5 million.

Tacoma continued to analyze the capabilities of the resource portfolio to determine whether capacity and reserve products could be reliably supplied and to quantify the associated opportunity cost. We responded to several Request for Offers (RFOs) for Imbalance Capacity Products and were awarded two of the RFOs. Sale of these products plus sales made in the Day-Ahead and Real-Time markets provided additional revenue of approximately \$1 million.

Power Management worked together with T&D and Generation to analyze, develop and implement a new Frequency Reserve product. In December, we were awarded a RFO and began delivering this new product which will provide approximately \$200,000 of additional revenue.

RATES, PLANNING, AND ANALYSIS

Retail Rates

Tacoma Power completed a comprehensive update and review of its cost-of-service study working with its rate consultant, Black & Veatch. Staff also completed a rigorous study of impacts of various residential rate designs on Tacoma Power customers. Initial customer class rate adjustments were presented to the Public Utility Board on 12/14/2016.

Energy Risk Management

Tacoma Power staff completed the first generation cash-flow-at-risk model. The model will enable better analysis of risks related to hedging decisions and provide new reports to Tacoma Power executives.

Staff hired a consultant to benchmark wholesale risk management practices against industry standards. The study helped staff to develop a roadmap and begin implementation of new business processes for enhancing credit reporting and risk controls.

Finance

Facing a \$48.6 million reduction in wholesale and retail revenue, Tacoma Power focused on minimizing expense increases in the Operations & Maintenance, Personnel, and Capital budgets. Over 34 unfilled positions were repurposed during the budget process to align with the strategic needs of the utility.

Additionally, the initial Capital budget was reduced by \$29 million through a new review and development process. These cost reductions allowed the utility to hold rate increases to 5.9% each year despite the reduction in wholesale and retail revenue.

In addition, Tacoma Power's credit ratings were confirmed by S&P in 2016 as part of their regular monitoring and review cycle for the utility. Tacoma Power's existing credit ratings of Aa3/AA/AA- by Moody's, Standard & Poor's, and Fitch, respectively, continue to allow Tacoma Power access to low interest rates for future borrowing needs.

Strategy

Tacoma Power completed development of a new Strategic Plan in October 2016. The plan was developed using feedback from customers, employees, and stakeholders throughout the City of Tacoma. It focuses around the strategic principle of Community Value First and can be summarized into four primary focus areas: Employees, Customers, Finances, and Environmental Stewardship. In order to make progress on the plan, strategic initiatives have been developed and will be managed under a comprehensive strategy management program.

TRANSMISSION AND DISTRIBUTION (T&D)

System Reliability

The reliability performance of the transmission and distribution system is based on a six-year average, from January 1, 2011 through December 31, 2016. The average number of customers (ACO) without service per outage was 81 customers. The average outage duration for each customer served (SAIDI) was 58 outage minutes per customer. The average frequency of sustained interruption per customer (SAIFI) was 0.55 interruption averages per customer.

Rolling Average	6-Year	SAIDI	SAIFI	ACO
01/1/11-12/31/16		58.35	0.5509	81.06
2016 Performance Target		≤ 75	≤ 0.95	≤ 150

Three major weather events occurred again in 2016, significantly more than our normal of 0-1 storms/year. These events were on March 1 (wind gusts to 45 mph SW), March 13 (wind gusts to 44 mph S), and October 15 (wind gusts to 53 mph S). Tacoma applies Institute of Electrical and Electronics Engineers (IEEE) approved criteria to establish exclusion criteria for major storm events and continues to include major event data from qualifying events in its normal outage metrics, when widespread impacts are not realized.

The Tacoma native peak load was 906 MW on Thursday, December 8, 2016. The transmission peak occurred on Saturday, December 16, 2016, at 1,257 MW with a Tacoma Native load of 905 MW.

System Planning and Operations

In December, the T&D Horizon Plan update was completed. The plan was last updated in 2011. The Horizon Plan provides additions, expansions, upgrades, replacements, rehabilitation, and improvements to Tacoma Power's electrical infrastructure to mitigate identified future deficiencies. Staff identified 37 projects outlined in the Horizon Plan as those best to support an effective and productive electrical system, through the most economical means. These projects have been disbursed over eight biennial budgets (2017-2018 through 2031-2032) in an attempt to levelize future expenditures.

The average capital expenditure for the next 16 years is approximately \$50,830,000 per biennium, with a total cost of \$406,659,680. Both the average expenditure per biennium and the total cost are about 17% less than the amounts included in the last Horizon Plan.

On October 29, 2016, System Operations began operating with version 6.5 of the Outage Management System (OMS). The upgrade was one of many corrective actions proposed in the TPU sponsored study conducted by Utility Integration Solutions (UISOL) in 2014. The upgrade has provided System Operations with additional user functionality and resulted in a more efficient means of providing outage information to Tacoma Power customers.

In December, Tacoma Power began operating as a member of Area Control Error Diversity Interchange (ADI). Joining ADI was a recommendation of the Market Assessment and Coordination Committee (MC) Phase-3 membership. Tacoma Power is the twelfth Balancing Authority (BA) to join the group and it is anticipated that one more BA, Chelan County PUD, will join in 2017. ADI members share control error, which results in fewer generator dispatch signals and less wear on generator components.

On December 1, 2016, Tacoma Power began a one-year membership in the Northwest Power Pool (NWPP) Frequency Response Sharing Group (FRSG). The group will allow Tacoma Power to pool compliance risk similar to the NWPP Contingency Reserve Sharing Group. Membership to the FRSG has provided additional support to Tacoma Power's decision to sell 2 MW of frequency response. The sale of this newly created market product has enabled Tacoma to receive additional wholesale revenue.

Transmission Service

Tacoma Power has the following transmission service agreements in place with the Bonneville Power Administration (BPA) for delivery of power to the Pierce County Mutuals (PCM). These agreements are pursuant to Tacoma Power's Open Access Transmission Tariff (OATT).

PCM	Service Type	Agreement Term
Alder	Network	Oct 1, 2013 – Oct 1, 2028
Lewis	Network	Oct 1, 2013 – Oct 1, 2028
Lakeview	Network	Oct 1, 2014 – Oct 1, 2028
PenLight	Network	Oct 1, 2014 – Oct 1, 2028
Eatonville and Ohop	Point-To-Point	Oct 1, 2015 – Oct 1, 2018
Elmhurst and Parkland	Point-To-Point	Oct 1, 2015 – Oct 1, 2018
Milton	Point-To-Point	Oct 1, 2015 – Oct 1, 2018
Steilacoom	Point-To-Point	Oct 1, 2015 – Oct 1, 2018

The Point-To-Point agreements will be converted to network service once the arrangements are in place to allow for remote load shedding of PCM load when necessary to mitigate overloaded transmission lines. A technical team, which includes Chad Edinger and Aaron Anderson from Tacoma Power, has been meeting regularly with PCM personnel to develop a workable plan for the load shedding. Although progress has been somewhat slower than hoped, the meetings have been positive. The intention is to implement load shedding before the existing agreements expire in 2018 to allow for the transition to Network service through October 2028.

In addition to the BPA agreements, Tacoma Power provides transmission service to Avangrid Renewables (previously known as Iberdrola Renewables) and Lewis County PUD. Avangrid's contract for 45 MW of Point-To-Point service is for the off-system delivery of power from the WestRock biomass generation project. The agreement term is from August 1, 2009 through July 31, 2021. Lewis County PUD takes service under a pre-OATT agreement. The service is for 70 MW of transmission service to deliver Cowlitz Falls generation over Tacoma Power's facilities to BPA's system. The agreement term is concurrent with Lewis County's Federal Energy Regulatory Commission (FERC) licenses for the hydro project.

The estimated annual revenues received from each of the entities are:

BPA	\$7,000,000
Avangrid	670,000
Lewis County PUD	189,000
TOTAL	\$7,859,000

Asset Management

The T&D Asset Management (AM) program optimizes data for programs such as Pole Replacement, Underground Cable Replacement, Pad and Polemount Transformers, #6 Copper Replacement, Padmount Switchgear, High Voltage (HV) Insulator and Power Transformer Replacement capital projects. With data collected, budgeting champions for these projects were able to calibrate their requested funds while optimizing risk levels to the transmission and distribution system.

Due to a higher than anticipated failure rate, T&D AM has gathered and processed asset class registries for live front padmount switchgear, HV insulators, and fused disconnects and has begun coordinated and targeted replacement. Due to high consequence of failure, and utilizing AM best practices, both HV brown porcelain insulators and 3-phase #6 copper conductors are high priority replacement items. In addition, a six-year maintenance plan was implemented for 12.5kV distribution switches to increase operability and mitigate failures.

Through the Pole Test-and-Treat program, 4,459 poles were tested with 4,312 of those poles eligible for treatment. Poles replaced under the Pole Replacement program totaled 0.76% of plant at 664 for 2016.

Utilizing consequence of failure modeling, the Cable Replacement program saw 0.69% of plant replaced in 2016, which totaled 58,397 feet of underground high voltage cable.

System Improvements

East F Substation has been rehabilitated and constructed in a new, modern configuration addressing reliability improvement and load growth. Due to safety concerns and coordination with systems that had to remain energized to carry load temporarily, Tacoma Power personnel performed all construction. The new East F Substation was energized and placed in service in November 2016.

The Potlatch Switching Station site was selected near Union, WA, within Tacoma Power-owned property along the Potlatch transmission lines. This new switching station, which is scheduled to be completed by July 2017, addresses transmission system reliability and new regulatory requirements.

The Pearl Cushman Upgrade project relaying was replaced at Pearl, Cedar, and Hilltop Substations to support rebuilding and replacing the transmission towers on North 21st Street. This project is under way and anticipated to be completed by 2018.

The Henderson Bay Tower Replacement project is 60% designed, and expected to be constructed in 2018.

A new 15 MVA Mobile Substation was added to Tacoma Power's fleet. This will improve our emergency response time to restore power.

The LaGrande Substation transformer, which serves the Nisqually Hydroelectric Project, was replaced. This included removal of the last 115 kV fuses in Tacoma Power's system.

T&D and Generation personnel coordinated with BPA to implement a generator runback and remedial action scheme at the Cowlitz Project to permit full generation output while mitigating overload conditions on the Chehalis-Mayfield 1 230kV line. In coordination with BPA, relaying was replaced on the Mossyrock-Chehalis 230kV line to modernized aging equipment.

Electrical Services

Transmission & Distribution's Electrical Services workgroup provided 216 service connections requiring construction work performed, on average, within 3.9 days and 1,491 service connections, without construction work performed, on average, within 1.7 days. T&D issued 11,876 electrical permits and performed 21,000 electrical inspections for total permit revenue of \$1,750,195.

Electrical Services completed design, agreements, and work orders for \$1,444,000 in Residential Projects and \$1,328,000 in Commercial Projects.

An Automatic Call Distribution (ACD) for the Electrical Permitting group was adopted this year. Utility Staff Support assisted 4,095 walk-in customers in the lobby and supported 23,487 customer phone calls.

Economic Development was promoted thru involvement on collaborative teams for over 20 large potential developments and pre-application meetings for over 100 smaller developments. Economic Development initiatives progressed this year culminating in four drafted policies and procedures to urge economic development.

Safety and Work Practices

This was a year filled with safety rule changes and work practice improvements as we incorporated the new state and federal electrical safety rules updates into common practice. T&D had previously field-tested and selected products to ensure adherence with these revised rules including wood-pole fall protection, bucket-truck fall protection and arc-resistant face protection. The safety rule change with the greatest impact was the use of 100% fall protection while climbing wooden poles. To facilitate this change all wood-pole climbers were issued new fall protection systems and retrained in their proper use. The change to the 100% requirement has been embraced by the Line Section employees and should help prevent falls in the future.

T&D Safety worked with the Tacoma Police Department to provide High-Voltage Safety Training to all uniformed department personnel.

Employee Resources/Development

T&D completed the thirteenth year of its engineering intern program. T&D hosts four engineering students, for 12-13 weeks each summer. The interns are recruited from local universities including University of Idaho, Washington State University, University of Washington, and Seattle University, with approximately 50% of current T&D engineers coming from the program. T&D continues its recruitment/outreach efforts and attends events targeted to increase diversity in our applicant pools. This includes working with the military and veteran populations and fostering partnerships with schools to ensure we have a pipeline of qualified applicants to fill jobs expected to become vacant through retirements in the next few years.

T&D Training and Development managed three apprenticeship programs, and provided training and work experiences to 37 apprentices and trainees in four areas: line (20); substation (12); advanced meter/relay technician (1); and system dispatcher (4).

UTILITY TECHNOLOGY SERVICES

Utility Technology Strategy & Planning

In 2016, UTS developed a comprehensive business case for a combined Water and Power deployment of Advanced Metering Infrastructure across the service area.

This effort required significant engagement with internal and external stakeholders, senior management, vendors, and other utilities in an effort to determine a direction on AMI for TPU. Over the past 10 years Tacoma Power and Tacoma Water have implemented several advanced metering technologies to meet specific business needs for residential, commercial and industrial metering installations. All of the technologies previously implemented have reached the end of their useful life and are or soon will no longer be supported. In addition, customers are beginning to expect greater products and services which are enabled by AMI. The business case development activities included:

- Identification of AMI technology options available today to Power and Water Utilities
- Recommending the best AMI technology solution to meet TPU's AMI business requirements
- Performing a detailed costs and benefits analysis for each AMI for budget planning
- Formalizing and documenting the agreed upon quantifiable and qualitative benefits for TPU
- Conducting presentations for and gaining approval from Executive Leadership and the Utility Board

This effort also established a roadmap for TPU's AMI implementation and defined a program governance model to support a combined Power and Water deployment.

UTS actively supported the Community Solar Project by providing the data communication infrastructure, and network connectivity needed for Tacoma Power to monitor and report on the amount of power generated by this new renewable energy resource. New business processes were developed to sell Community Solar units via a new web application that enabled the collection of payments from customers. This project was a collaborative effort among Power Management - Conservation, IT/EASD, Treasury, and UTS staff.

Employee Engagement

A labor management agreement addressing the support of operational and business technology systems was completed in 2016. The goal of this agreement was to improve service delivery by promoting workforce efficiencies through utilization of shared resources and improved employee knowledge and certification. As a result, UTS began to partition the private cloud computing infrastructure enabling the deployment and support of additional applications and systems from different Tacoma Power operating units and TPU Stakeholders.

Operational Efficiency

Western Electricity Coordinating Council (WECC) visited Tacoma Power in July of 2016 to conduct a Reliability & Compliance Internal Controls Evaluation (ICE).

This evaluation was used to assess whether the controls and measures Tacoma Power uses to ensure compliance with the North American Electric Reliability Corporation (NERC) Reliability Standards are adequate. The results of the evaluation along with any findings identified during the WECC On-Site Audit conducted early 2016 were then used to establish WECC's Compliance Oversight Plan (COP) for Tacoma Power. Moving forward, WECC will use the COP to determine their audit approach for Tacoma Power and the number of Reliability Standards and Requirements Tacoma Power will be required to Self-Certify on an annual basis. The outcome has already greatly reduced our workload and produced a positive outcome for Tacoma Power.

Manual data gathering and manipulation to generate TPU Fleet operational and financial reports were streamlined through a new interface between SAP and the pool car kiosk systems. This project eliminated manual activities and enabled operational efficiencies to be achieved.

Tacoma Power's Outage Management System and Customer Services' iNovah applications were upgraded to bring the applications, operating systems, and databases current for continued vendor support, increasing reliability and reducing security risks.

After a well-received pilot, the GIS team replaced the internet-enabled tool used by field staff with a new tool that provides for a better user interface, increased functionality and reliability.

Desktop Support deployed approximately 350 computers throughout TPU in 2016 using the newly adopted standards and specifications for desktops and/or laptops. In addition, the Computer Support Technicians (CSTs) sanitized over 200 computers infected by new vulnerabilities. The increase in vulnerabilities led to stronger Cyber Security Controls being applied to new computer deployments across TPU.

Technology Advancements

In 2016, UTS partnered and collaborated with key stakeholders across TPU and the City of Tacoma Information Technology Department to deliver a newly re-designed utility bill for our customers. This effort also implemented a new bill design and production solution that addressed end of life issues with the legacy platform and provide greater flexibility to future changes with the invoice and other customer facing documents. This effort was several years in the making and culminated with the delivery of a successful project that met both customer needs and internal technical support requirements.

The Lobby Queueing system was successfully implemented with new functionality that enables better reporting and real time situational awareness of customer traffic and wait times. This new technology has improved the customers experience while paying their utility bills and provided better tools to Customer Service Representatives, Supervisors and Managers.

The operational private cloud computing infrastructure deployed in 2011 to support Tacoma Power's Energy Trading and Risk Management applications was upgraded in 2016. The project significantly increased the computing capacity and included the implementation of the next generation of storage capability to increase reliability, flexibility, and performance.

In 2016, UTS completed a two year process which led to vendor selection and awarding a contract for a new Energy Management System (EMS). During the last year a rigorous evaluation process involving a Selection Advisory Committee comprised of eighteen (18) subject matter experts from UTS and other Tacoma Power workgroups reviewed and scored vendor responses to over 3,000 system requirements. Vendor finalists were then invited to present their solutions to the Selection Advisory Committee who also conducted site visits to other utilities to learn from their EMS upgrades. The new EMS is expected to come on-line in 2018 and will provide for a modern more-flexible platform supporting enhanced security along with more effective and efficient compliance with NERC CIP and other reliability standards.

A unified backup and recovery solution was deployed allowing TPU to consolidate and centrally manage the performance of system backup and recovery operations that support various operational and industrial control systems.

Prior to this implementation these operations had to be managed individually by the application owners. The new solution utilizes technology to enhance performance improve security and system reliability.

The Communications Tower located within the Pearl Substation was deemed to be structurally insufficient. In partnership with Generation, UTS identified opportunities to reduce loading on the tower and make temporary upgrades to further reduce tower loading until the replacement of the existing tower could occur. Immediate planning began and the replacement project kicked off in the third quarter of 2016. Installation of the new tower and removal of the old is scheduled for some time in first quarter of 2017.

Security

UTS established a Cyber Security group comprised of a five (5) member team to begin developing and enhancing information security operations across all of TPU. This group began by utilizing a nationally recognized cyber security framework and approach to conducting security evaluations on TPU's Industrial Control System Environments. The evaluations have identified several areas where TPU can improve its security resilience.

A new security system was designed and installed at the South Service Center to improve physical security and provide enhanced video surveillance throughout the facility.

Regulatory

Tacoma Power's 2016 Western Electricity Coordinating Council (WECC) audit occurred in March. This audit was the culmination of several hundred hours of work and successful collaborations between the Reliability & Compliance (R&C) Office and Subject Matter Experts (SME) across Tacoma Power who support the Critical Infrastructure Protection (CIP) and Operations & Planning (O&P) NERC Reliability Standards. During the audit, WECC commented that Tacoma Power has a strong culture of compliance and a solid compliance program in place. WECC stated they will point to Tacoma Power's Program as the standard for the industry.

July 1, 2016 was the effective date for a significant revision to the NERC Critical Infrastructure Protection Standards (Version 5 to Version 6), and over 20 new or revised Operation & Planning NERC Reliability Standards. Tacoma Power personnel vetted each of these standards through the new Standard Change Organizational Review and Evaluation (SCORE) process to ensure compliance. The SCORE process takes each new or revised standard and evaluates the impact (low, medium, or high) based on the risk and the resources necessary for implementation. This evaluation also assists in building a work schedule for completing any necessary work and assessing compliance prior to the enforcement date(s).

A cross-functional committee (comprised of subject matter experts from Generation, Transmission & Distribution, and Utility Technology Services) developed a plan for meeting the new CIP Low Impact requirements that become enforceable in 2017 and 2018. The planning included identifying the scope of work and resources required for each facility (people, budget, etc.).

In 2016, over 150 compliance documents went through an annual review and approval and a Cybersecurity Tabletop Exercise was conducted involving responders across Tacoma Power and the City of Tacoma Information Technology Department.

Chris Robinson
Power Superintendent

EXHIBIT C

Memo

To: Chris Robinson

From: Doug Swanson

Re: Information Regarding Click! Accounting Policy and Procedures

Date: March 4th, 2016,

There have been many public statements made regarding the accounting for Click!, many of which have been inaccurate. The following information is an attempt to set the record straight regarding the financial statements of Click! The historical accounting record should not be in doubt.

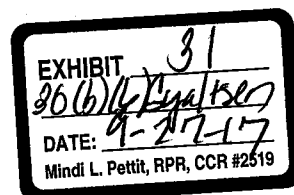
Background

Click! is a sub-fund of the Tacoma Power enterprise fund. This fund structure was established at the time of Click's inception. Formal financial statements are produced at the enterprise fund level. Given that Click! is a sub-fund, formal CLICK! financial statements are not produced (e.g. Statements of Net Position, Statements of Revenue, Expenses and Changes in Net Position or the Statements of Cash Flows). Click! does not have a "Balance Sheet" as assets are booked within the Tacoma Power Statements of Net Position as Communication Equipment. On a monthly basis, an Operational Summary is produced for CLICK! which provides operating information such as revenues, expenses and net operating revenues (expenses)/net income.

All TPU fund financial statements, including the Click! sub-fund is prepared by the City of Tacoma's Finance Department and not TPU Management. The statements are prepared according to Generally Accepted Accounting Principles (GAAP) and follow the pronouncements and guidelines of the Government Accounting Standards Board (GASB). The TPU fund financial statements are audited every year by both Moss Adams, an independent auditing firm, and by the State Auditor's Office. The financial statements have received unmodified opinions ("clean audits") for the last several years from Moss Adams which means that the financial statements of the TPU funds are presented fairly and in accordance with GAAP.

Click! Network Costs:

The Communications Network was initially built at a cost of \$90.6 million with \$24.8 million (27.4%) attributed to Click! as documented in the Virchow Krause & Company review in 2003. The primary driver of this original allocation of build-out costs was to determine if an investment would have been



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made if Tacoma Power was not offering Commercial Services /Click!. If the answer was "no", the investment costs were allocated to Commercial Applications /Click!. For assets capitalized between 2003 and 2005, costs were allocated between Commercial Applications /Click! and Tacoma Power based on the nature of the costs within individual work orders (e.g. Tacoma Power related work or Click! related work). After 2005, assets were capitalized as either 100% Click! or 100% Tacoma Power.

In addition, between 2003-2014, there were subsequent network additions of \$45.9 million for Commercial Services /Click! and the remaining book value of those additions is \$13.8 million. The remaining book value of the original network buildout costs for Commercial Services / Click! is \$1.1 million as of the end of 2014. The total book value for Commercial Services /Click! remaining to be depreciated is \$14.9 million as of 12/31/2014.

Depreciation Expense

Accounting rules dictate that when purchases are made for equipment that will benefit more than one year, the cost is capitalized and the expense is spread out over the estimated useful life of the asset. The intent is to match the cost of the asset with the revenue stream that it generates. Some are arguing that, in a purely economic sense, the original network build-out is a "sunk cost". However, in an accounting sense, the cost of the equipment purchased must be spread out over the multiple accounting periods of its' useful life in accordance with GAAP.

It has been suggested by some that Click! is "making money" if you do not include the Depreciation Expense or if you were to write-off the cost of the network as an "impaired asset ". The classification of an asset as impaired, which would allow for a write off, is very specific under GAAP. The asset must not have any further value in order to write its cost down to zero. This is clearly not the case with Click! as it has current and future value as evidenced by multiple parties willing to offer compensation in order to run the network.

As described above, accounting rules dictate how capital costs should be recorded in accordance with GAAP. If Depreciation expense were to be ignored, then the capital expenditures for Click! must be recognized in the year that they occur. To demonstrate the effects of whether Click! could afford it's capital outlay the following information was reported in Click's Operational Summary report. From 1998-2014, Click! reported \$4.0 million in net operating income. During that same period cumulative Capital Additions of \$70.7M are being reported. Based on the cumulative Operational Summary information Click! would have had a negative cash flow of (\$66.7M), if the capital additions had been recognized in the year they were purchased versus capitalized and depreciated over their useful life.

Allocated Operational & Maintenance costs (O & M)

In the early 2000's TPU Management reviewed the work being performed in all of the cost centers that had elements of both Tacoma Power and Click! operations. The approximate split was 75% to Click! and

25% to Tacoma Power. This cost allocation was reviewed by Virchow Krause & Company and deemed reasonable. Over time the use of the network and the costs associated with it have changed. In 2013, TPU Management reviewed the allocated costs using the same general methodology and their analysis showed that based on the current use of the network a new split of approximately 96% Click! and 4% Power was more appropriate. This study and its' methodology was deemed supportable by Moss Adams in 2015. The Finance Department performed its' own due diligence by interviewing Tacoma Power's Rates & Planning staff, Click! financial and operational staff and Moss Adams personnel. The Finance Department also determined that the allocations were supportable. The new allocation percentages were changed during the August 2015 financials and applied to the entire 2015 year in order to have the updated allocation rates as of the new biennium.

While these factors were deemed supportable, they are not the only factors that could be used. Other, reasonable factors could be employed that attempt to base the allocation on the root cause of the cost. TPU's allocation method used various factors depending on the driver of the specific costs. Some factors included total miles of fiber and coax, fiber count by type, service drops, number of work orders and time allotment by Click! personnel.



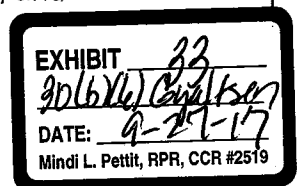
AMENDED RESOLUTION NO. U-10879

1 A RESOLUTION relating to Click! Network; approval of an All-In business and
2 Tacoma Power funding plan to provide retail telecommunication
3 services.

4 #1. WHEREAS the City Council of Tacoma delegated authority to the
5 Public Utility Board and the Department of Public Utilities ("TPU"), Light Division
6 (dba "Tacoma Power"), to implement and manage a broadband
7 telecommunications system ("Click! Network" or "Click!", as authorized through
8 City Council Substitute Resolution No. 33668, approved April 8, 1997, and
9 Public Utility Board Amended Substitute Resolution U-9258, approved April 9,
10 1997), and

11 #2. WHEREAS the 1997 business plan contemplated that the revenues
12 associated with telecommunications services related to city government
13 communications, cabletelevision ("CATV") service, transport of signals to
14 service providers offering telecommunications services, and internet access
15 services would pay for the costs of such services and would provide an
16 additional revenue stream to Tacoma Power to help offset the construction and
17 operations costs associated with the telecommunications system, and

18 #3. WHEREAS many of the functions of the telecommunications system
19 envisioned in the 1997 business plan have been achieved in their entirety since
20 the infrastructure improvements were completed in 1999 including: conventional
21 substation communication functions, distribution automation, city government
22 communications functions, CATV service, and transport of signals for service
23 providers offering telecommunications services (the last three functions are
24 "Click!") and internet access services (through third-party providers), and
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#4. WHEREAS other contemplated functions have been partially achieved for certain electric customers through the Gateway meter program, which include: remote turn on/off for electric customers, automated meter reading (electric), and provision of information to customers that is relevant to their energy purchasing decisions, and

#5. WHEREAS the customers of the fully implemented uses of the telecommunications system (city government communications functions ("I-Net"), CATV service, and transport of signals for service providers offering telecommunications services) have shared in part of the capital costs of constructing the telecommunications system as well as the operation and maintenance of the infrastructure to the benefit of electric customers who would have paid 100% of these costs, and

#6. WHEREAS the telecommunications system continues to provide interconnectivity, advanced control, and power management between electrical substations, which provide safe, reliable, and efficient use of electrical resources for the benefit of all Tacoma Power customers, and

#7. WHEREAS the existing business plan and current cost allocations for Click! functions do not generate sufficient revenues to fund current expenses and capital improvement costs related to these functions, and

#8. WHEREAS, on an ongoing basis, Tacoma Power will continue to use portions of the telecommunications system for conventional substation and other communications, distribution automation, etc., and



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#9. WHEREAS, for a period of time, portions of the telecommunications system will continue to be utilized by Tacoma Power to support the Gateway meter program, which serves over 15,000 Tacoma Power customers, and

#10. WHEREAS future advanced meter infrastructure may use portions of the fiber network facilities of the telecommunications system and may, in part, rely on the hybrid fiber-coaxial ("HFC") infrastructure to fully implement the remaining functions described in the 1997 business plan, and that if and when such future uses occur, Tacoma Power should pay a share of the costs of the telecommunications system related to such uses, and

#11. WHEREAS, following a nine-month review by the Click! Engagement Committee (a committee comprised of representatives of the City, TPU, and citizens appointed by the City), the Engagement Committee described the community benefits of an enhanced Click! telecommunications system and an outline of the features of such a system, and

#12. WHEREAS Tacoma Power has determined, in part as a result of the Click! Engagement Committee work, that to increase revenues, Click!'s retail products must be enhanced to include retail internet services and voice-over internet phone services that can be bundled with the current CATV services (Click! would continue offering wholesale data transport services and city governmental communications functions), and

#13. WHEREAS the studies by the Click! Engagement Committee and Tacoma Power's financial analysis demonstrate that continuing to provide CATV services in support of retail internet services makes the sale of such



1 services a more competitive overall product and improves the financial
2 sustainability of Click!, with estimations that Click! customers cover over 90% of
3 the cost of service, and

4 #14. WHEREAS the studies of the Click! Engagement Committee,
5 Tacoma Power's financial analysis, and industry experts conclude that high-
6 speed internet access of 1 gigabit will be the standard for the next generation.
7 Click! needs to make capital improvements to the current telecommunications
8 system infrastructure to achieve these or greater speeds and to keep the
9 competitiveness of Click! internet services in the community, and

10 #15. WHEREAS all financial models studied by the Click! Engagement
11 Committee and Tacoma Power nonetheless show that the market price that can
12 be charged for these enhanced Click! services and the market penetration that
13 can be achieved will be insufficient to cover all of the costs associated with the
14 operations and maintenance of the telecommunications system and the capital
15 improvements necessary to update the HFC to allow for 1 gigabit service, and

16 #16. WHEREAS the internet-related uses of the current Click!
17 telecommunications system and an enhanced Click! telecommunications
18 system would provide Tacoma Power customers benefits by giving them
19 access to advanced customer services options such as: power use monitoring,
20 outage reporting, scheduling of services, bill paying, and electrical appliance
21 control, and

22 #17. WHEREAS, in planning for an uncertain and unknown future, there
23 may be other potential functions related to the supplying of electricity to
24



1 customers not considered in the existing business plan that might also make
2 use of the telecommunications system infrastructure including: cyber security,
3 electric car charger locations and metering, and enhanced customer information
4 products (power usage by time of day, behavior-based saving programs,
5 outage communications, energy audits, and participation in Evergreen Options),
6 and
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8 #18. WHEREAS the Board has a duty to ensure that Tacoma Power
9 ratepayers pay in their power rates only those costs that are directly and
10 reasonably related to the provision of electric service, and
11

12 #19. WHEREAS the Board has a duty to ensure that Tacoma Power and
13 Click! are in compliance with legal and statutory requirements, and
14

15 #20. WHEREAS Tacoma Power has excess power generation capacity
16 within its service territory. In the past, Tacoma Power has benefited greatly by
17 selling this excess capacity in the wholesale power markets to the benefit of all
18 retail electric customers. Over the past few years, wholesale power prices and
19 sales have dropped substantially. In support of Tacoma Power's strategic
20 business plan, Tacoma Power wants to make up this lost revenue by looking at
21 ways to increase its retail power sales through economic growth in the
22 community. Communities across the nation have benefited economically from
23 competitive access to internet services in their communities. Tacoma Power's
24 continued operation and maintenance of the telecommunications system for
25 internet access purposes assists in making the internet services competitive in
26



1 Tacoma Power's service area, which increases economic growth that leads to
2 greater retail power sales, and

3 #21. WHEREAS, in order to preserve the functionality and value of the
4 telecommunications system for the benefit of Power customers, the Board has
5 determined there should be a supplemental level of funding from Power to the
6 telecommunications system based on direct services reasonably related to the
7 provision of electric services as enumerated herein, and

8
9 #22. WHEREAS the Board nonetheless finds it wasteful and
10 unproductive to abandon or leave unutilized the HFC components, which are
11 currently used to provide Click! functions (including CATV and internet access
12 services) and, in order to preserve the functionality and value of the Click!
13 telecommunications system, the Board determines it prudent to provide a
14 supplemental level of funding from Tacoma Power to the telecommunications
15 system for a limited period of time until a stable source of funding from an
16 alternate source can be secured, and

17
18 #23. WHEREAS the Board has determined that along with enhanced
19 product offerings, the new business plan should also grant Click! management
20 flexibility to change product offerings, prices, and marketing strategies,
21 excluding the leasing of the entire network, without prior Board or Council
22 approval so as to effectively compete with private companies offering similar
23 products and services, and
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1 #24. WHEREAS the Board finds it to be in the best interests of its electric
2 customers and the citizens of Tacoma that a new business plan be approved
3 for Click! functions; Now, therefore,

4 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

5 Sec. 1. Click!'s proposed high-level "All-In" business plan (the "Business
6 Plan"), attached as Exhibit A to this resolution, is approved.

7 Sec. 2. The Clerk of the Board is directed to forward this Resolution and
8 the Business Plan to the City Council for immediate consideration. The Board
9 requests, due to budget timing constraints, that the City Council make its
10 decision in a timely manner. Upon approval of the Business Plan, funding, and
11 other provisions of this resolution by Council, TPU staff is directed to complete
12 the more detailed aspects of the Business Plan and then implement that plan.

13 Sec. 3. TPU's request that Click! management be delegated authority to
14 make changes to products and service offerings, prices (within the limitations
15 set forth in the Click! rates/charges ordinance approved by the Board and
16 Council), and marketing strategies contained within the Business Plan without
17 further approval by the Board and City Council is approved, and the Council is
18 requested to concur in such approval. All significant material changes to the
19 Business Plan that would remove TPU as the primary operator of Click!
20 including, but not limited to, the sale or lease of telecommunications system
21 equipment or capacity, outsourcing of work, permanent discontinuance of
22 products or services, etc. shall be brought to the Board and City Council for
23 approval. Such delegation includes approval of contracts allowing third parties
24 to use surplus portions of the network to supply services to their customers so
25 long as such use does not materially interfere with Click!'s operations of the
26 network or Click!'s ability to implement its Business Plan and achieve its goals
and objectives. Click! shall continue to bring contracts for the purchase of
goods, services, and materials in excess of \$200,000 to the Board for approval.

21 Sec. 4. Tacoma Power's request to transfer an annual amount to the
22 Click! fund from Tacoma Power electric revenues, to appropriately compensate
23 Power's past, current and future beneficial uses of the telecommunications
24 system infrastructure, which shall be used to pay Click! operating, maintenance,
25 taxes, capital costs and debt, is approved. Tacoma Power's transfer from
26 electric revenues under this Section 4 shall be a minimum of \$6 Million
annually, and in the event Click!'s costs exceed \$6 Million for the year, Tacoma
Power is approved to transfer additional funds not to exceed \$10 Million per
year. Click! may use these transferred funds to make capital improvements and



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purchase equipment as necessary to meet the objectives of the All-In Business plan.

Sec. 5. Staff will present, not less than annually, to the Board and Council on Click!'s status relative to its business plan objectives and any changes made to the business plan and business outlook for Click!. In 2020 and 2025, staff will prepare a report to the Board and Council detailing business plan objective achievements and financial status of Click! to determine any adjustments in future funding. Staff reports will describe the past, current, and future expected use of the telecommunications network by Tacoma Power.

Sec. 6. The Board directs staff to identify business efficiencies and savings that can be made through staff reorganization, looking at both represented and non-represented positions. Staff will negotiate with appropriate union representatives to collaboratively identify opportunities for efficiencies and savings.

Approved as to form and legality:

William C. Foster
Chief Deputy City Attorney

Charleen Jacobs
Clerk

Mark Patterson

Chair

Woodward Jones

Secretary

Adopted 9-28-16

Exhibit A

Click! All-In Compete Business Plan

Key Business Plan Elements:

- Click! is expected to provide retail cable modem internet, voice over internet protocol, commercial broadband services, and other advanced telecommunications services in addition to retail cable television service to residential and commercial customers.
- Click! is expected to provide bundled service of cable television, internet and phone services.
- The Click! network is expected to continue operating as an Open Access Network.
- Click! is expected to maintain its existing wholesale relationships with the Internet Service Providers (ISP), including Rainier Connect, Net-Venture and Advanced Stream. No buy out of the ISPs' businesses is assumed. Wholesale internet pricing offered to ISPs will need to be addressed.
- Click! is expected to maintain its existing wholesale relationships with the Master Service Agreement (MSA) holders, including Rainier Connect, Optic Fusion, twtelecom, Integra, CenturyLink, Spectrum Networks and Noel Communications. No buyout of the MSAs' businesses is assumed. Wholesale broadband pricing offered to ISPs will need to be addressed.
- Click! is expected to remain a unit of Tacoma Power within Tacoma Public Utilities and be governed by the Tacoma Public Utilities Board. More independent and flexible governance is a key element of the plan.
- Tacoma Power is expected to pay 6% of the total O&M costs as its proportionate share for utilizing the telecommunications network. Tacoma Power's proportionate share of O&M costs may change over time as its use of the telecommunications network changes.
- Click! is expected to upgrade its hybrid fiber coaxial (HFC) network to 1 Gigahertz, deploy DOCSIS 3.1 technology, and, over time, build new plant extension with fiber-to-the-home (FTTH) technology.
- Click! is expected to offer Gigabit and multi-Gigabit service to residential customers.
- Click! is expected to continue offering Gigabit and multi-Gigabit Metro Ethernet services to commercial customers.
- Click! is expected to continue maintaining and supporting the City's Institutional Network (I-Net).
- Click! is expected to offer discounted residential Cable TV and Phone services to payment challenged customers based on existing Federal poverty guidelines (up to 100% of the income threshold) that have been adopted by Tacoma Public Utilities.
- Click! is expected to offer a \$14.95 internet service for qualified low income customers, of which \$9.25 of the charge is expected to be covered by the new Federal Lifeline program leaving a customer out-of-pocket cost of \$5.70 per month.
- Click! is expected to achieve labor cost and operating savings by negotiating work rule changes, providing employee training and contracting out new and certain existing functions.
- Click! is expected to conduct door-to-door Sales Burst campaigns during the first and third years of the new business plan period, which are expected to generate between 4,000 and 6,000 new customers.

Click! All-In Compete Business Plan

Financial and Customer Summary (Low/High Growth):

Base - Assumptions		Year 2 - 2017	Year 5 - 2020	Year 10 - 2025
Homes Passed		113,950	113,950	113,950
# of Retail Internet Customers	L	10,416	26,215	31,379
	H	10,750	28,919	35,713
# of Wholesale Internet Customers	L	17,333	5,695	3,754
	H	17,333	4,556	3,003
Internet Market share	L	24.4%	28.0%	30.8%
	H	24.6%	29.4%	34.0%
# of Phone Customers	L	1,800	4,566	5,399
	H	2,173	6,058	7,557
Phone Market share	L	1.6%	4.0%	4.7%
	H	1.9%	5.3%	6.6%
# of Cable Customers	L	19,035	18,644	13,831
	H	19,185	19,378	15,136
Cable Market share	L	16.7%	16.3%	12.1%
	H	16.8%	17.0%	13.3%
# of employees	L	89	101	104
	H	91	106	110
Cumulative Capital Investment	L	\$16.0M	\$29.5M	\$49.3M
	H	\$16.1M	\$30.0M	\$50.2M
Annual Cash Flow/Subsidy	L	(\$19.5M)	(\$4.9M)	(\$5.7M)
	H	(\$19.6M)	(\$4.4M)	(\$4.2M)
Cumulative Cash Flow	L	(\$19.5M)	(\$39.5M)	(\$65.6M)
	H	(\$19.6M)	(\$38.6M)	(\$58.7M)
NPV	LH	(\$19.5M)	(\$36.6M)	(\$56.5M)
		(\$19.6M)	(\$35.9M)	(\$51.2M)

- It is anticipated that Click! will continue to operate in a deficit situation for the foreseeable future.
- The viability of this business plan is contingent upon securing external funding.

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

EDWARD E. (TED) COATES, et. al.,

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

No. 17-2-08907-4

DECLARATION OF CHRISTINA
LEINNEWEBER IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PARTIAL SUMMARY JUDGMENT

I, Christina Leinneweber, declare as follows:

1. I am over the age of 18, have personal knowledge of the facts stated herein, and am competent to testify thereto.

2. I am a senior utilities economist in the Rates, Planning, and Analysis unit ("RPA") of Tacoma Power.

3. The original construction and subsequent maintenance of, as well as additions and improvements to, the telecommunications system have been funded through the revenues that come into Tacoma Power from a variety of sources, including but not limited to, rates paid by retail electric customers, transmission charges paid by other utilities using Tacoma Power's transmission assets, wholesale power sales from Tacoma

1 Power's generation assets to other utilities and power marketers, recreation fees for public
2 use of Tacoma Power's recreation assets, and rates paid by the ISPs and Click's cable
3 television customers.

4 4. RPA engages in a forward-looking ratemaking process on a biennial basis.

5 5. This ratemaking process is often referred to as "cost-of-service"
6 ratemaking because the starting point for rate setting is a cost-of-service analysis.

7 Policymakers consider the cost-of-service results when determining the electric rates that
8 will be charged to Tacoma Power's electric customers.

9 6. The results of Tacoma Power's ratemaking process must be approved by
10 the TPU Board and City Council.

11 7. RPA and the City's policymakers develop a "retail revenue requirement"
12 that must be recovered through electric rates. Development of a revenue requirement
13 involves quantifying a myriad of inputs, including non-electric ratepayer revenues coming
14 into the utility and expenses going out. For example, Tacoma Power sells excess
15 generation at wholesale competitive market prices to other utilities and power marketers.
16 Those revenues are considered in the revenue requirement calculation. Similarly, Tacoma
17 Power, through its Click division, sells its excess telecommunications capacity to ISPs and
18 retail cable customers. The revenues from these sales of excess telecommunications
19 capacity are considered when setting the size of the revenue requirement.

20 8. RPA also must consider the expenses attributable to the Power Fund when
21 developing the revenue requirement. For example, the revenue requirement considers
22 operations and maintenance costs for Tacoma Power's generation assets that provide
23 electricity to Tacoma Power's retail ratepayers and to wholesale buyers of Tacoma
24 Power's excess generation. The revenue requirement also considers the expenses Tacoma
25 Power incurs to operate a 24/7 trading desk that manages its sales of excess generation.

1 The revenue requirement considers the expenses for operating and maintaining Tacoma
2 Power's telecommunications system that provides telecommunications service for the
3 efficient operation of Tacoma Power's electric system assets and provides excess
4 capacity, managed by Click, to the ISPs and retail cable customers.

5 9. After considering all of the revenue coming in and expenses charged to the
6 Power Fund, RPA sets a revenue requirement necessary to meet Tacoma Power's
7 financial targets.

8 10. RPA then engages in cost-of-service analysis and the ratemaking process to
9 set the rates charged to its retail electric customers to meet that revenue requirement.
10 Tacoma Power's retail customers are divided into classes (e.g., residential, small general,
11 high-voltage general), and RPA attempts to equitably distribute among these classes the
12 revenue requirement, which Tacoma Power then recovers through retail rates.

13 11. Because analysis of the cost to serve is based on best estimates and
14 averages, there is a margin of error around estimates for the costs to serve each customer
15 class; and there are imperfect cost distributions between customers within a class. For
16 example, there may be years when more of the maintenance on Tacoma Power's
17 distribution and transmission system occurs in the north half of its service territory. That
18 does not mean, however, that only the customers in the north half have to pay rates that
19 recover those maintenance costs that year. Instead, those maintenance costs are
20 recovered, through the establishment of the revenue requirement and the ratemaking
21 process, from all Tacoma Power customers.

22 12. Overall, Tacoma Power, just like all other municipal utilities that engage in
23 cost-of-service ratemaking, must do its best to set a revenue requirement and then recover
24 that revenue requirement from Tacoma Power's electric ratepayers in a way that is
25 equitable, although never perfect.

1 13. Attached as Exhibit A is an accurate and complete copy of a March 18,
2 2013 report prepared by Rates, Planning, and Analysis titled “Click! Asset and Expense
3 Allocations.” The page of the report with the Bates number TAC_PRA_HR_0018100
4 explains that one of the reasons that Tacoma Power developed an allocation formula for
5 the telecommunications asset was because “This cost segregation would better enable
6 policy makers to judge performance of Click!.” The report also states that Tacoma Power
7 developed its first allocation formula for the telecommunications system in 2002.
8

9 I declare under penalty of perjury that the foregoing is true and correct:
10

11 EXECUTED this 6th day of February, 2018, in Tacoma, Washington.
12

13 

14 Christina Leinneweber
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EXHIBIT A

Click! Asset and Expense Allocations

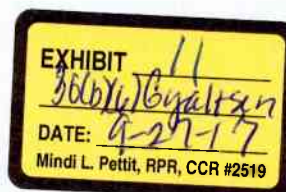
3/18/13

DRAFT

Summary

Rates, Planning & Analysis (RPA) along with staff members of Click! and Utility Technology Services (UTS) performed a study of the assets and expense allocations shared between Tacoma Power and Click!. The underlying need for the study was determined by the outdated allocations developed over 10 years ago when the Gateway program was being ramped up and a full Automated Metering Infrastructure (AMI) roll-out was expected in the near-term. The Click! and AMI landscape has changed significantly from that time resulting in a fundamental change in how assets and expenses should be allocated between Click! and Tacoma Power going forward. This comes at a critical point in Click!'s business lifecycle as a new strategy for this operating unit of Tacoma Power is being developed. Solid, baseline financials are needed in order to make prudent future business decisions. Below is a summary of our findings and recommendations:

- Tacoma Power should "own" all of the Hybrid Fiber Coaxial (HFC) plant shared between Tacoma Power and Click! up to the customer meter. Assets on the customer side of the meter used to deliver Click! service should be owned and funded by Click!. Although technically this is not a change from current practice, this philosophy of asset ownership should be clearly understood and communicated internally and externally. Click! should be considered a "user" of the HFC assets and be charged a usage fee accordingly (see next recommendation.)
- Click! should be charged a usage fee similar to a lease or rent for use of the HFC network. We recommend the "usage fee" be based on re-designing the Operating Expense allocation factors for three Cost Centers that directly support and maintain the HFC network. The split would be based on usage rather than the arbitrary 50%/50% or 100% splits as used currently. This includes Cost Center 555300 within Click! and Cost Centers 562700 and 562800 within the T&D Section of Tacoma Power. Further, we should move cost center 555300 inside of Tacoma Power to be consistent with 562700 and 562800. This recommendation is analogous to charging rent based on the maintenance cost to keep the asset operational. The impact to the 2013/2014 budget would be an increase in Click! O&M by \$2.9 million or \$1.45 million per year.
- Click! should bear the full cost of other O&M Expenses supporting the delivery of Click! services. The methodology used to determine the updated allocations of existing cost centers was based on contribution of labor to Tacoma Power or Click! applications. Many of the Cost Centers that are currently split 50%/50% or 100% Power are almost entirely functioning to support Click!



TAC_PRA_HF_0018098

Service. The impact to the 2013/2014 budget would be an increase in Click! O&M of \$9.8 million or \$4.9 million per year.

How is
HFC capital
currently being
treated?

- Tacoma Power continues to fund the HFC capital asset expansion for the sole reason of supplying Click! service. Although this practice fits into the Tacoma Power asset "ownership" paradigm, the business case for expansion of the coaxial cable and Click! Fiber portion of the HFC network should be fully transparent, i.e. that the only return is derived from Click! revenue. There is no near term plan to build out a larger scale AMI system that would leverage the HFC network.
- Click! should not include depreciation expense on any of the HFC Network, all HFC depreciation should be accounted for by Tacoma Power. Click! should only track depreciation on assets such as set-top boxes, testing equipment, Hub Electronics, and other assets used solely for serving Click! customers. The impact to this recommendation is unknown at this point. Follow-up work is needed to determine the impact to retail rates if any.
- Additional work is needed to determine the Power retail rate impacts of changing the asset allocation between Click! and Power. Increasing the Power asset by the historical base cost of the HFC network that is currently considered Click! asset base would most likely shift a higher percentage of the rates to be paid by the Residential customer class since it would be considered Distribution.
- Tacoma Power should review the future need for Data Conduit Requirements that are included in the Customer Requirements for Commercial Secondary Service. Data Requirements state that the data conduit system shall be installed wherever electrical power conduits are being installed. The data conduit requirements were established when a full AMI roll-out to the service territory was expected.

Summary of Financial Impact to Click! If Recommendations Were Implemented

as of 11/30/2012				Current Methodology		Recommended	
All \$'s in 1000's	2012 Budget	2012 Actual	2012 Diff.	2013	2014	2013	2014
Commercial Operating Revenue							
CATV	\$19,846	\$16,053	(\$3,792)	\$19,403	\$19,540	\$19,403	\$19,540
ISP	4,743	4,970	227	5,592	6,890	5,592	6,890
Broadband	941	1,379	439	1,297	1,444	1,297	1,444
Other	666	2,326	1,661	690	634	690	634
Total Commercial Operating Revenue	\$26,195	\$24,729	(\$1,466)	\$26,982	\$28,508	\$26,982	\$28,508
Total Commercial Operating Expenses	\$19,553	\$18,305	(\$1,248)	\$19,217	\$19,421	\$25,708	\$25,589
Earnings before Int., Taxes, Dep., & Amort. (EBITDA)	\$6,642	\$6,424	(\$218)	\$7,765	\$9,087	\$1,274	\$2,919
Taxes	\$3,576	\$3,557	(\$19)	\$3,724	\$3,843	\$3,724	\$3,843
Depreciation and Amortization*	5,847	5,847	(6,933)	5,945	5,945	5,945	5,945
Net Income (no interest allocated)	(\$2,781)	(\$2,980)	\$6,734	(\$1,904)	(\$700)	(\$8,395)	(\$6,868)
<i>*Note more work is needed on the assets to determine recommended Depreciation</i>							
Cash Flow Reconciliation							
plus Depreciation and Amortization	\$5,847	\$5,847	\$0	\$5,945	\$5,945	\$5,945	\$5,945
less Commercial Capital Paid from Current Fund	4,094	3,219	(875)	2,200	2,200	2,200	2,200
Net Cash Flow - Commercial	(\$1,029)	(\$352)	(\$875)	\$1,841	\$3,044	(\$4,650)	(\$3,124)

Background

RPA was asked to investigate and document Tacoma Power's methodology for allocating assets and expenses between Click! and Tacoma Power and recommend changes based on its findings. Although Click! is an operating unit of Tacoma Power and its financial statements are shown on a consolidated basis, Click! needs to be understood and managed as a stand-alone business. This determination is very complex given that the genesis of the Click! business model was to utilize Tacoma Power infrastructure originally put in place to support future Tacoma Power AMI. The decision to sell Cable TV and Internet services was based on bringing in additional revenues. The additional infrastructure needed to sell Cable TV and Internet services was minimal and it was assumed this additional infrastructure would be paid off quickly with the additional anticipated Click! revenues.

A brief History of Click!/Tacoma Power Allocations

In April 2000, PriceWaterhouseCoopers, an external consulting firm, performed a review of Click! Network's financial performance¹. One of the recommendations that emerged from the review was that Click! separate its capital and operating costs into Commercial (i.e. Click!) and Power (i.e. Tacoma Power) service categories. This cost segregation would better enable policy makers to judge performance of Click!.

On August 26, 2002, Dana Toulson, Tacoma Power Telecommunications Manager, responded in an email to the Tacoma Power Audit Team with the results of an effort to address the allocation concern and outlined a methodology to determine Capital Investments and Allocations of Operating Expenses².

¹ Click! Network Financial Performance Review, PriceWaterhouseCoopers, April 24 2000

² See Email dated August 26, 2002 from Dana Toulson, Telecommunications Manager, to Tacoma Power Audit Team

"To allocate total capital investment and estimate depreciation for the two business categories, each of the thirty-two Telecommunications Project work orders were evaluated to determine their commercial and power related portions. The team asked itself "Would these investments have been made if Tacoma Power was not offering Cable TV, Internet or other commercial broadband services?" If the answer was no, the investment costs were allocated to Commercial Applications."

Based on this test, the team determined that approximately 27.4%/72.6% of the total \$85.8 million initial investment in Click!/Power Telecomm assets should be allocated to Click!/Power respectively. This is the split that determined depreciation expense on the initial investment for Click! and Power.

Further, starting in the 2001/2002 Biennium, all work orders were designated either Commercial or Power under the framework that Power owned all assets up to the Customer Meter, and Click! owned all assets on the customer side of the meter (and set-top boxes and other obvious capital equipment). **This is still the asset allocation methodology used today.**

In the same email from Dana Toulson, the results of the Operating Expense Allocation were provided. The team performed the same test on the "Org" (i.e. 5511, 5532, etc) to determine the split. Orgs were split either 100% or 50%/50% between Click! and Tacoma Power. It was recognized at the time that the methodology would not always be perfect but it was reasonably reflective of Commercial and Power costs and had the advantage of being easy to administer and track.

In 2003, Click! hired external consulting firm Virchow Krause & Company to assess the reasonableness of the Capital and Operating Expense Allocations³. Virchow Krause applied a Net Present Value of AMI costs and benefits attributable to the HFC network to determine the asset allocation scheme. In general, the hybrid fiber (Fiber) portion of the network and the 97% of the coaxial cable (Coax) portion of the network costs were determined to be Power's assets. Overall, the report supports the existing asset allocation split (26%/74%) and also supports the Operating Expense split.

In summary, what is left is a general split of the initial investment from 1997-2000 being 27.4% Click! and 72.6% Power for purposes of calculating depreciation. Further, starting in 2001 until present, all assets that were purchased or developed up to the customer meter are considered Power's and considered Click!'s if they are on the customer side of the meter (or clearly belong to Click! like Set to Boxes, etc.). Further, the Operating Expense allocation is the same scheme as developed in 2002, Orgs are either 100% or split 50%/50% between Power and Click! based on their work function at that time.

- ① Initial Capital 27.4% Click 72.6% Power (97-2000)
- ② Operating Expense 100% or 50%/50% (which comes to 75/25)
- ③ Capital (2001-present) Power - all assets up to meter
Click - customer side of meter

³ See "Review of Cost Allocations For Click! Network Tacoma Power", Virchow Krause & Company July 23, 2003

Asset Study

The main purpose of the asset study was to help inform the recommended expense allocations. We have not completed a comprehensive review of the assets at this time to determine whether they should be a Click! or a Power asset. This is an important next step as it would have a material effect on how the power rates are allocated across the customer classes. Adding HFC Asset Base to Tacoma Power's rate model would most likely increase the proportion of rates paid by the Residential customer class since it would be considered Distribution.

The first step in this exercise was to obtain a full listing of the Fiber/Coax system infrastructure and understand how it is currently split between Click! and Tacoma Power. The data was separated into understandable categories in order to facilitate discussion. There are some issues with the data and accounting classifications have changed over time, but overall it was deemed sufficient for this exercise. Below is the breakout that was used:

Row Labels	Historical Cost - Comm.	Historical Cost Pwr.	Book Value - Comm.	Book Value Pwr.
Coax	14,781,385	87,373,426	3,667,421	43,171,879
Fiber	1,995,061	7,458,972	560,397	3,026,195
HTU/Converter-Descrambler_HTU/Converter-Descrambler	17,728,326	1,752,854	4,536,495	-
Capital Connect	5,732,630	5,776,209	3,864,838	2,648,467
Sonet Equipment	5,081,400	2,064,760	1,809,290	523,121
Sonet Construction	3,004,760	4,713,587	1,503,851	2,051,205
MDU	1,460,282	5,267,545	457,035	1,973,418
Head End Equipment	3,557,380	826,517	1,952,574	577,117
Land and Structures_Hub Electronics	5,746,817	6,197,580	1,178,652	930,850
Land and Structures_Hub Labor/Assembly	1,922,189	1,218,434	1,602,467	989,303
Immaterial	7,068,627	9,625,484	1,499,917	1,299,457
Grand Total	68,078,857	132,275,367	22,632,938	57,191,012

Note that overall, there is approximately \$200 million in historical cost and approximately \$80 million in book value of the Fiber/Coax system today. The initial capitalization date was around 1999 and certain parts of the system are still being added today. The "immaterial" classification includes several asset classes, mostly capitalized in the late 1990's or early 2000's.

A more detailed description of the assets by year of capitalization are as follows:

Row Labels	Historical Cost		Book Value	
	Comm	Pwr	Comm	Pwr
Coax				
1999	13,502,992	35,778,001	3,069,398	8,132,784
2001	250	662	84	223
2003	49,478	1,888,021	23,090	882,548
2004	1,228,665	16,748,029	574,849	8,691,174
2006	-	3,425,492	-	2,283,965
2007	-	20,159,527	-	14,850,820
2008	-	6,393,079	-	5,043,078
2009	-	2,018,391	-	1,749,272
2010	-	962,224	-	898,076
2011	-	-	-	639,938
Fiber				
1999	1,708,702	4,527,438	430,870	1,141,648
2000	1,237	3,278	342	905
2001	547	1,448	184	489
2003	(45,443)	106,103	(28,341)	30,774
2004	330,018	1,141,538	157,342	590,850
2007	-	1,227,042	-	899,831
2008	-	452,124	-	361,699
HTU/Converter-Descrambler_HTU/Converter-Descrambler				
1999	604,108	1,600,665	-	-
2003	5,222,363	-	-	-
2004	265,912	152,189	-	-
2007	7,984,405	-	1,596,681	-
2009	469,217	-	281,530	-
2010	3,182,321	-	2,545,925	-
2011	-	-	112,158	-
Capital Connect				
1999	833,619	2,208,787	225,710	598,048
2003	936,842	936,842	495,721	495,721
2004	546,570	851,826	255,981	399,004
2005	1,023,257	1,091,440	607,409	650,665
2007	953,649	687,315	703,933	505,030
2008	5,868	-	4,695	-
2009	879,997	-	762,664	-
2010	552,829	-	515,973	-
2011	-	-	292,753	-
Sonet Equipment				
1999	589,892	1,562,968	148,096	392,401
2000	144,134	381,903	41,040	108,742
2002	466	1,234	191	507
2003	1,162,721	111,314	7,195	19,064
2004	2,571,798	7,311	1,200,731	2,406
2006	222,445	-	0	-
2008	6,428	-	2,571	-
2009	234,656	-	140,794	-
2010	148,861	-	119,089	-
2011	-	-	149,583	-
Sonet Construction				
1999	488,730	1,294,956	205,605	544,778
2000	73,411	194,512	27,420	72,653
2001	7,291	19,319	2,599	6,885
2002	544,966	1,443,960	223,786	592,950
2003	34,645	1,167,384	16,168	544,779
2004	1,151,856	593,455	554,164	269,159
2006	667,344	-	444,896	-
2008	36,518	-	29,214	-
MDU				
1999	998,368	2,645,311	261,766	693,583
2000	163,631	433,562	48,184	127,696
2001	9,046	23,967	2,701	7,156
2003	5,277	606,760	2,463	283,155
2004	283,961	978,211	141,913	463,631
2006	-	403,576	-	269,051
2007	-	176,158	-	129,147
2008	-	-	-	-
Head End Equipment				
2004	15,062	-	-	-
2008	1,168,640	459,640	388,687	262,651
2009	1,536,004	-	847,145	-
2010	837,674	366,877	716,742	314,466
Land and Structures_Hub Electronics				
1999	1,572,954	4,167,755	-	-
2003	839,211	324,050	1,099	2,913
2004	1,423,963	356,653	-	-
2007	-	521,414	-	193,504
2008	999,478	17,832	399,790	7,133
2009	493,881	249,475	296,328	149,685
2010	417,332	560,402	416,794	448,322
2011	-	-	64,640	129,294
Land and Structures_Hub Labor/Assembly				
1999	55,105	146,007	-	-
2003	322,798	239,797	171,125	126,488
2004	1,862	3,307	990	1,523
2007	-	334,221	-	62,113
2008	817,752	-	654,202	-
2009	405,629	153,249	351,545	132,816
2010	319,044	341,853	394,523	319,063
2011	-	-	30,083	347,301
Immaterial				
1999	2,233,231	6,032,018	238,007	630,631
2001	5,284	14,028	-	-
2003	1,206	104,019	352	933
2004	784,773	263,866	(19,879)	1,106
2005	707,926	-	74,071	-
2006	1,093,615	1,555,577	23,018	0
2007	1,115,350	171,606	232,617	35,431
2008	421,698	1,396,838	185,528	578,389
2009	213,311	85,292	179,251	51,176
2010	492,223	2,239	456,525	1,791
2011	-	-	130,427	-
Grand Total	68,078,857	132,276,367	22,632,938	57,191,012

200M

Coaxial Cable

The coaxial cable infrastructure is the bulk of the cost of the HFC network. The Coax runs from the Click! node. The Click! node, is connected to the Fiber Ring with coax extended from the node by amplification and splitting to the service "Tap" where coaxial cable (coax) drops extend the system to individual residences and businesses. Coax is necessary for Click! CATV and High-Speed Internet Services. It is also necessary for backhaul of meter data for AMI. Currently, Tacoma Power owns and pays for all Coax infrastructure maintenance and capital investment for replacements, and for new services. Click! Commercial has not been allocated any Coax since the initial overall 27/73 split was applied to all assets in the early 2000's. Note also that the Coax build-out has slowed considerably in the last few years as can be seen in the chart above.

All Coax
to PWR
Since
early 2000s

It is important to understand that there are only 18,000 two-way meters in the Gateway program that are actively using the Coax assets to transmit meter data. However, since it is understood that Tacoma Power will be installing two-way meters throughout its service territory at some point in the future, Power continues to pay for all capital costs up to the meter, and O&M costs to support the asset which is 100% of the capital and maintenance cost of the Coax asset. This issue is particularly acute when new customers request Click! services where there is not currently Coax to the house. Power pays for all the trenching and other costs to enable Click! service to the house, even though there is no intention of using the Coax for meter data any time in the near future.

Although the Coax build-out has slowed in recent years, there has been about \$30 million spent and capitalized as Coax within the last 5 years, and about \$50 million since 2004. O&M costs and Personnel expenses related to supporting the Coax is recognized in Cost Center (555300) for Click!, and two cost centers located in the T&D Section (562700 & 562800). Please see the Expense Study Section of this paper for the recommendation to change the allocation.

Capitalization
to PWR

Fiber

The Fiber ring that runs from the Headend ties all of the substations together, and connects all the Click! Distribution Hubs, is currently considered Power's asset and all maintenance/replacement costs of the Fiber ring is allocated to Tacoma Power. Power is using this asset currently for many Distribution/SCADA operations and will continue to do so in the future. There are unused Fiber strands and then there are Fiber networks such as the PCON, I-Net, HFC, SONET, and Carrier Ethernet.

Fiber is considered a "passive" asset and does not require proactive maintenance and is thus relatively inexpensive to maintain. Currently two cost centers located in the T&D Section (562700 and 562800) support the Fiber and Coax asset, as well as other infrastructure such as service drops and vaults. Please see the Expense Study Section of this paper for the recommendation to change the allocation.

Capital Connect

This asset class is comprised mostly of capitalized labor of all related installation services of Click! to the home. The installation costs include the wires and capitalized labor included in connecting the house

wires to the "demarcation" point where the "inside" meets the "outside" of the meter. Based on the data above, it appears that Capital Connect costs are being correctly allocated to the Click! asset base. However, on the expense side to support this effort, Cost Center 553500, Service Installation, which is comprised of approximately 24 Click! employees is being allocated 50% to Power and 50% to Click!. The reason this was originally split in this way was the Installation Group was installing Gateway meters as well as Click! service. Now there are very few Gateway installations given the program is not being expanded. Please see the Expense Study Section of this paper for the recommendation to change the allocation.

SONET Equipment

SONET Equipment is for the sole purpose of transporting Click! data across the Fiber. For that reason, all SONET Equipment should be capitalized as a Click! asset and all maintenance/support costs for this equipment should be allocated to Click!. Note also that there is an Asset class called "Sonet" above. Per discussion with Click! engineers, this is most likely more representative of Fiber. In the early stages of building the infrastructure, the accounting classifications were most likely not appropriate and attempted to be too granular. Most of the "Sonet" asset was trenching in order to lay the Fiber in the ground (for which the SONET equipment would leverage). All SONET Equipment and SONET has been allocated to Click! since 2004, which appears reasonable.

SONET Construction

Per discussion with Click! this cost accounting does not appear to be used anymore. It is thought that the costs that used to map to this activity are now captured in the Fiber asset. No further work was done on this asset class.

Multiple Dwelling Units (MDU)

Per discussion with Click! this cost accounting does not appear to be used anymore. It is thought that the costs that used to map to this activity are now captured in the Fiber asset. No further work was done on this asset class.

Headend Equipment

Most of the equipment in the Headend is used for Click! video content for Commercial operations. The data center houses applications to monitor and troubleshoot the HFC Network and Commercial Services offered by Click!. Cost Center 555500, Click! Network Engineering, supports this work and is currently allocated 100% to Power. Please see the Expense Study Section of this paper for the recommendation to change the allocation.

Land and Structures_Hub Electronics

This represents Hub buildings: Northwest, Northeast, Southwest, Southeast, Downtown North and Downtown South. The equipment in the hubs is used to deliver CATV, High Speed internet, Ethernet and SONET services and is primarily used for Commercial operations. Cost Center 555300, Network

Operations and cost center 555400, Broadband Services supports the work performed in these six hub buildings. Please see the Expense Study Section of this paper for the recommendation to change the allocation.

Land and Structures_Hub Labor/Assembly

This breakout represents labor to install the equipment at the hub buildings: Northwest, Northeast, Southwest, Southeast, Downtown North and Downtown South.

Expense Study

After the team obtained an understanding of the asset base the O&M cost centers were studied. The purpose of this exercise was to determine a "usage" fee for the Cost Centers that support and maintain the HFC network and to ascertain the true cost to run the Click! business by examining the remaining Cost Centers.

Cost Center	Description	Allocation Factor Summary		Projected 2013/2014 Expenses							
		Old	New	Old Allocation		New Allocation		Difference			
		Comm.	Pwr.	Comm.	Pwr.	Comm.	Pwr.	Comm.	Pwr.		
HFC Network Support											
555300	Click Network Oper	0%	100%	56%	44%	\$ -	\$ 2,965,634	\$ 1,673,646	\$ 1,291,988	\$ 1,673,646	\$ (1,673,646)
562700	PwrT&D HFC NtwrkCnst	0%	100%	56%	44%	\$ -	\$ 1,607,885	\$ 907,405	\$ 700,480	\$ 907,405	\$ (907,405)
562800	PwrT&D HFC Ntwrk Eng	0%	100%	56%	44%	\$ -	\$ 516,393	\$ 291,424	\$ 224,968	\$ 291,424	\$ (291,424)
Customer Installation Support											
553500	Click Svc Install	50%	50%	100%	0%	\$ 2,769,997	\$ 2,769,997	\$ 5,539,994	\$ -	\$ 2,769,997	\$ (2,769,997)
553200	Click Tech Op Admin	50%	50%	86%	14%	\$ 343,805	\$ 343,805	\$ 590,753	\$ 96,857	\$ 246,948	\$ (246,948)
553600	Click Dispatch	100%	0%	100%	0%	\$ 983,500	\$ -	\$ 983,500	\$ -	\$ -	\$ -
Network Services											
555400	Click Broadband Svcs	50%	50%	99%	1%	\$ 1,222,868	\$ 1,222,868	\$ 2,421,278	\$ 24,457	\$ 1,198,410	\$ (1,198,410)
555500	Click Ntwrk Engineering	0%	100%	95%	5%	\$ -	\$ 1,350,400	\$ 1,282,880	\$ 67,520	\$ 1,282,880	\$ (1,282,880)
555600	Click Net Svc Assur	0%	100%	95%	5%	\$ -	\$ 1,899,167	\$ 1,804,208	\$ 94,958	\$ 1,804,208	\$ (1,804,208)
Admin/IT Cost											
551100	Click Admin	50%	50%	95%	5%	\$ 1,409,103	\$ 1,739,328	\$ 3,005,113	\$ 143,317	\$ 1,596,010	\$ (1,596,010)
552200	Click Mkt Admin	100%	0%	100%	0%	\$ 2,433,826	\$ -	\$ 2,433,826	\$ -	\$ -	\$ -
552100	Click MrktBusOpsAdm	100%	0%	100%	0%	\$ 399,491	\$ -	\$ 399,491	\$ -	\$ -	\$ -
552600	Click Busns Sys	50%	50%	100%	0%	\$ 888,323	\$ 888,323	\$ 1,776,647	\$ -	\$ 888,323	\$ (888,323)
Other (Unchanged)											
552300	Click Marketing Svc	100%	0%	100%	0%	\$ 31,466,262	\$ -	\$ 31,466,262	\$ -	\$ -	\$ -
552400	Click ISP Adv	100%	0%	100%	0%	\$ 524,000	\$ -	\$ 524,000	\$ -	\$ -	\$ -
552500	Click Cust Sales	100%	0%	100%	0%	\$ 2,850,440	\$ -	\$ 2,850,440	\$ -	\$ -	\$ -
553700	Click Converter Inv	100%	0%	100%	0%	\$ 913,340	\$ -	\$ 913,340	\$ -	\$ -	\$ -
Total		75%	25%	96%	4%	\$ 46,204,956	\$ 15,303,799	\$ 58,864,208	\$ 2,644,547	\$ 12,659,252	\$ (12,659,252)

Need Data - Talk to MATT

Activity Meters from MATT

712.7 M shift for 13/14 bionium.

A description of the Cost Centers and support for the recommended changes are as follows:

HFC Support (555300, 562700, 562800) – All three of these cost centers support and maintain the HFC plant. It is unclear why Cost Center 562800 (HFC Engineering and Design) and 562700 (HFC Construction and Maintenance) were positioned inside of the T&D Group and 555300 (HFC system performance maintenance and testing) was positioned under Click! (and allocated 50% to Power). However, the purpose of each cost center is similar in that they maintain the operations of the HFC plant which includes engineering, design, conversion work, safety equipment, repairs, Operating supplies, etc to keep both the Fiber and Coax assets running as intended.

As discussed in the summary of this paper, it was agreed that the ownership structure for the HFC plant is that Power is considered to "own" all of the assets and Click! is a user of those assets to deliver its service. The usage "fee" that we propose is equivalent to Click!'s portion of the maintenance of the asset based on a set of allocators. In order to determine this "fee" we first allocated the cost of the Fiber portion based on the Fiber count of Click! and Power applications and then allocated the cost of the Coax portion based on customer count of Click! and Power (Gateway). In order to put this overall

allocation scheme into context, it is analogous to a homeowner charging rent to tenants based on maintenance cost of the house only. Note all expenses used for this allocation were based on 2012 actual amounts.

Fiber Allocation

The methodology used to recalculate the allocations was to first separate the costs for the Fiber portion and Coax portion of the assets based on miles of each.

	Miles	% of Total
Miles_Fiber	527	27%
Miles_Coax	1,400	73%
Total	1,927	100%

Each respective percentage was then multiplied by the base 2012 total cost of the three cost centers to assign a total cost to maintain the Fiber and Coax asset respectively.

2012 Total Cost 562700, 562800, 555300	\$ 2,643,601
Cost Allocated to Fiber (x 27%)	\$ 723,047
Cost Allocated to Coax (x 73%)	<u>\$ 1,920,554</u>
2012 Total Cost 562700, 562800, 555300	\$ 2,643,601

The next step was to allocate the Fiber and Coax to Power and Click respectively. For the Fiber portion of the cost, the Fiber Count for all of the Plant was used. For Click! the portion of the Fiber used was based on the Broadband Services (BBS), and for the Click! Network, the remainder of the Fiber was assumed to be for Power (Dark, City-Net, PASS, AMR-Gateway).

The Fiber count is broken out as follows:

	Fiber Count	% of Total
BBS	307	10%
Click! Network	547	19%
Total Click Fiber	854	23%
Dark	1,904	65%
City-Net	594	20%
PASS	396	14%
AMR/Gateway	38	1%
Total Power Fiber	2,932	77%
Total Fiber Count	3,786	100%

When aggregated into the Click! and Power Fiber as described above, the allocation to Click! and Power applied to the 2012, Cost Allocated to Fiber is as follows:

Click! Fiber Allocation (%)	23%	\$	162,838
Power Fiber Allocation (%)	77%	\$	560,209
Total	100%	\$	723,047

Coax Allocation

For the Coax asset, the allocation was based on customer count of Click! and Gateway users as shown in the table below.

	Customer Count	%
Cable Customers	22,983	39%
ISP Customers	17,753	30%
Click! Total	40,736	69%
Gateway Customers	18,129	30.8%

When applied to the 2012 Cost Allocated to Coax, the Coax cost is allocated to Click! and Power as shown in the table below. :

	%	\$
Click! Coax Allocation	69%	\$ 1,329,069
Power Coax Allocation	31%	\$ 591,484
Total	100%	\$ 1,920,554

In total, the sum of the Click! costs for Fiber and Coax results in an allocation that is 56% Click! and 44% Power across the three cost centers as shown in the table below.

	\$	%
Click Total Fiber/Coax	\$ 1,491,908	56%
Power Total Fiber/Coax	\$ 1,151,693	44%
Total	\$ 2,643,601	100%

Customer Installation Support

553500 Click Svcs Install – The Service Install cost center is primarily the labor and supplies needed to physically hook the customer up to the meter for Click! services. When Gateway was being expanded some installs were for Gateway meters and some were for Click! services, and is most likely the cause for the original 50%/50% split. As the Gateway population is now almost static, all of this group’s time and resources are for Click! services and supports a change to allocate 100% of this Cost Center to Click!.

553200 Click Tech Op Admin – The Click! Tech Op Admin cost center is primarily service technician management labor and support staff. Very little time from this group of employees is spent on projects that benefit Power only, however, it was difficult to ascertain the amount that may be spent on Power applications. As such, the methodology we used to determine the allocation was to use the total

overall average of the operational cost center re-calculated allocation. The operational cost centers were determined to be all cost centers except for the Administration. A straight average was used.

Network Services

555400 – Click Broadband Svcs - Based on interviews with Click! staff, two employees in this cost center work in the ISP team that configures, provisions and maintains the cable modem termination systems (CMTS). They estimate they spend less than 2% of their time working on support of the Gateway cable modems. Duties include Gateway cable modem priorities, Pay as you Go and support of approximately 25 Tacoma Power Commercial accounts and the incidental work being performed on maintaining and upgrading the Click! internet product. Other work consists of confirming that DNS entries are correct, supporting questions from UTS regarding Gateway modems, and supporting installation of new Tacoma Power Commercial account cable modems. As this cost center is made up of seven employees, and given the fact that two of the employees within this cost center spend less than 2% of their time on Gateway applications, the overall time spent supporting Tacoma Power was estimated to be 1% overall for this cost center.

555500 – Click!Ntwrk Engineering – Based on interviews with employees in the Cost Center, very little of their time is spent Engineering the network for the benefit of Tacoma Power or Gateway. One of the three Engineers, the Internetworking Engineer is responsible for the design, performance and capacity requirements of the ISP routed network which includes the CMTS, a small amount of time of which supports the Gateway program. The other two engineers, Video and Broadband Services Engineer spend all their time planning, designing and maintaining their networks to support the commercial CATV and Broadband Services products.

555600 – Click Net Svcs Assurance – Based on interviews employees in this cost center it is estimated they spend less than 5% of their time working on support of the Gateway Cable Modems. It is estimated that 40% of the NSA's (Network Service Assurance) time is spent on monitoring CATV, high speed internet, Ethernet and SONET services. A portion of that 40% is dedicated to monitoring and support of the Gateway cable modems. Monitoring includes the incidental monitoring of the Gateway cable modems along with the monitoring of Click retail cable modems. A system cable modem outage would affect the Gateway cable modems and as part of the reporting process would include an email sent to UTS notifying them of the outage event. The NSA sends out network status updates and planned maintenance notifications as well, which the UTS receives. The NSA indirectly monitors the physical infrastructure, Fiber and Coax which Tacoma Power owns. The devices monitored which are connected to the Fiber and Coax are lasers, receivers, nodes, amplifiers, HFC power supplies, cable modems, Ethernet switches and SONET multiplexers.

Admin/IT Cost

551100 Click Admin – The Click! Admin cost center is primarily the Section Manager and support staff and office supplies for Click!. Very little time from this group of employees is spent on non-Click! projects that benefit Power only. The methodology used to determine the allocation was the total recalculated Click! allocation from all of the cost centers above.

552600 Click Busns Sys – This cost center consists of the financial and IT group within Click! comprised of approximately 4 FTEs. Based on discussions and interviews with the manager of this group, very little time is spent on matters pertaining to Power only. For this reason, it was determined that 100% allocation to Click! was more appropriate than an arbitrary 50%/50% split between Click! and Power. When the Gateway program was being developed and the 50%/50% split was created, these employees were more involved in integrating 2-way metering data and financial planning for an AMI type environment.

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

EDWARD E. (TED) COATES, et. al.,

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

No. 17-2-08907-4

DECLARATION OF GARY
SALEBA IN SUPPORT OF
DEFENDANT’S OPPOSITION TO
PARTIAL SUMMARY JUDGMENT

I, Gary Saleba, declare as follows:

1. I am over the age of 18, have personal knowledge of the facts stated herein, and am competent to testify thereto.

2. I am the principal and owner of EES Consulting, Inc. My firm frequently is hired by municipal utilities to do cost-of-service analysis for utility ratemaking, rate design, financial analysis and planning, management evaluation studies, bond financing analysis, and overall utility operations analysis. I have presented expert testimony in numerous regulatory and judicial proceedings on utility economics, ratemaking, strategic planning, finance, utility operations and requests for proposals (“RFPs”). I have supervised several integrated resource planning studies, average embedded and marginal

1 cost of service studies, RFPs, technical assessments, and financial planning studies for
2 electric, water, gas and wastewater utility clients. Attached as Exhibit A is an accurate
3 and complete copy of my resume. I was hired by the attorneys for the City of Tacoma in
4 this litigation to provide expert testimony on operations, powers, finances, ratemaking,
5 accounting, purpose, and asset management of utilities and Tacoma Public Utilities
6 specifically.

7 3. In the mid-1990s, the electric utility industry was responding to significant
8 telecommunications advances that would enable utilities like Tacoma Power to improve
9 the operations of their generation, distribution, and transmission assets. A SCADA
10 system is a key component in monitoring and controlling an electric utility's generation,
11 transmission and distribution systems. The advent of fiber optics provided the
12 opportunity for faster and more reliable communications for the SCADA system, which
13 could improve the response time of the utility for managing and maintaining its various
14 facilities.

15 4. During the mid-1990s, there also was nationwide interest in the
16 introduction of retail competition that would allow customers of electric utilities to choose
17 their electricity suppliers. FERC regulations were enacted that allowed for open access to
18 transmission, which in turn opened up competition in the wholesale market for electricity.
19 That open access and competition made it possible for retail access to occur in the electric
20 industry. Generally, the concept behind retail access is that retail electric utility customers
21 would be allowed to choose a company other than their local electric utility to supply their
22 electricity, while their local utility continued to provide the delivery of that power through
23 its distribution system. Under retail access, metering of electric use is still provided by the
24 local electric utility and the measurement of the electric usage by customer becomes more
25 complex and more critical.

1 5. In addition to providing important data for tracking and billing electricity
2 consumption if retail competition was adopted, smart meters would provide immediate
3 benefits to Tacoma Power's customers by allowing remote meter reading, remote
4 connection and disconnection, and pay-as-you-go electricity consumption programs.
5 These immediate benefits would create cost savings for the utility as well as providing
6 improved customer service. Smart metering would also allow Tacoma Power to offer
7 several different types of rate structures, including real time pricing and time of use
8 pricing. Both rate structures can provide better price signals to customers and provide
9 better equity among customers. Real time pricing is more often used by industrial
10 customers where decisions on fuel source and production level can be made to potentially
11 reduce consumptions when market electric prices are highest. Time of use pricing is more
12 often used by residential and commercial customers and provides different prices during
13 on-peak and off-peak periods. This type of pricing can encourage customers to shift
14 power to off-peak periods, where possible, to save money for the utility and the customer.
15 Further, if retail competition had been adopted, smart meters would have been critical to
16 providing the data necessary for hourly load following and balancing. Because the price
17 of power changes on an hourly basis, it is important that alternative suppliers under retail
18 competition provide power for the specific hourly shape of its customers. If this was not
19 tracked properly, Tacoma Power could have been at risk to receive insufficient power
20 from alternative suppliers in the highest priced periods. Smart meters would have made it
21 possible for Tacoma Power to charge alternative suppliers for load balancing to true-up
22 the costs between the hourly power sent to the Tacoma Power system with the hourly
23 amounts taken by their customers.

24 6. It is my opinion that the City and Tacoma Power made a prudent
25 investment decision to build Tacoma Power's telecommunications system starting in 1997

1 to connect Tacoma Power's distribution and transmission assets, allowing for efficient and
2 remote operation of those assets, including outage tracking and detection, automatic
3 substation control, and monitoring for preventative maintenance through SCADA data.
4 The system also made it possible for Tacoma Power to install smart meters for automated
5 meter reading and billing, distribution automation, and remote turn on/turn off for electric
6 customers. In the late 1990s, it was prudent for utilities like Tacoma Power to prepare for
7 the infrastructure and technology they would need to facilitate and support retail
8 competition for their retail customers, and a telecommunications system that could
9 support smart meters was critical to this preparation. I also believe it was prudent for
10 Tacoma Power to sell the excess capacity on the telecommunications system for internet
11 and cable television services as the use of the telecommunications system for the electric
12 applications evolved.

13 7. Tacoma Power's Rates, Planning, and Analysis unit ("RPA") engages in a
14 forward-looking ratemaking process on a biennial basis.

15 8. Tacoma Power's ratemaking process is often referred to as "cost-of-
16 service" ratemaking because the starting point for rate setting is a cost-of-service analysis.
17 Policymakers consider the cost-of-service results when determining the electric rates that
18 will be charged to Tacoma Power's electric customers. Cost-of-service analysis for
19 ratemaking purposes is a technique employed by most municipal utilities in Washington
20 and around the country. Cost-of-service analysis follows the principal of cost causation,
21 i.e. those customers that caused the costs to incur should pay for those costs. Costs are
22 typically split among the various customer classes of the utility, including residential,
23 commercial and industrial classes. Because facilities and their associated costs are often
24 used by many different customer classes, costs must be allocated among the various
25 customer classes. In the case of municipal utilities that provide multiple types of utility

1 service, some shared costs must also be split between the various utility types. In the case
2 of Tacoma, this includes a split between Tacoma Power, Tacoma Water and Tacoma Rail.

3 9. As part of the cost-of-service analysis and ratemaking, a municipal utility
4 must first develop a “retail revenue requirement” that will be recovered through electric
5 rates. Development of a revenue requirement involves quantifying a myriad of inputs,
6 including ratepayer and non-electric ratepayer revenues coming into the utility and
7 expenses going out. For example, when a municipal utility sells its excess generation at
8 wholesale competitive market prices to other utilities and power marketers, that revenue is
9 included in the calculation of the retail revenue requirement. Municipal utilities also must
10 consider the expenses attributable to the utility when developing the revenue requirement.
11 For example, the revenue requirement considers operations and maintenance costs for a
12 municipal utility’s generation assets that provide electricity to the utility’s retail ratepayers
13 and to wholesale buyers of the utility’s excess generation. The revenue requirement also
14 considers the expenses that a municipal utility might incur if it decided to operate a 24/7
15 trading desk to manage its sales of excess generation. Because the net revenue
16 requirement is the basis for the cost-of-service analysis that is used for setting retail
17 electric rates, it must only include the net amount that needs to be collected from electric
18 rates. All of the costs for the electric utility must be included in the revenue requirement,
19 including direct operational costs, debt service payments and a share of any overhead
20 costs. Those costs need to be offset by any revenues that are not collected in retail electric
21 rates. Offsetting revenue includes revenue from the sale of excess generation, revenue
22 from pole attachment fees and interest income. In the case of Tacoma Power, it
23 appropriately uses the offsetting revenues from sales to ISPs and Click! customers along
24 with other offsetting revenues when developing the net revenue requirement. After
25 considering all of the revenue coming in and expenses charged to the utility, the municipal

1 utility must set rates to meet the revenue requirement while at the same time meeting all
2 of its necessary financial targets.

3 10. After the retail revenue requirement is set, the municipal utility then
4 engages in cost-of-service analysis and the ratemaking process to set the rates charged to
5 its retail electric customers to meet that revenue requirement. The cost-of-service analysis
6 takes the net revenue requirement and allocates each line item among the customer classes
7 using various allocation methods. This results in a revenue requirement assigned to each
8 customer class. Rates are then set for each customer class such that the revenues under
9 those rates collect the appropriate revenue requirements for the class.

10 11. Because analysis of the cost to serve is based on best estimates and
11 averages, there is a margin of error around estimates for the costs to serve each customer
12 class, and within a class the rates for any individual customer are an imperfect match with
13 the cost to serve that individual customer.

14 12. One example of how an imperfect cost distribution can manifest itself in
15 municipal utility ratemaking is through the employment of a postage stamp rate. Tacoma
16 Power, and most other electric utilities, use postage stamp rates whereby customers pay
17 the same rate for the utility's distribution and transmission system regardless of where
18 they live in the utility's service territory. While the cost-of-service analysis is designed to
19 reflect the costs associated with each customer class, it does not attempt to measure the
20 costs associated with individual customers within a specific customer class based on
21 location or any other factor. There may be years when more of the maintenance on a
22 utility's distribution and transmission system occurs in the north half of its service
23 territory. That does not mean, however, that only the customers in the north half should
24 pay rates that recover those maintenance costs that year. Instead, those maintenance costs
25 are recovered, through the postage stamp rate, from all utility customers.

1 13. Overall, municipal utilities must do their best to set a revenue requirement
2 and then recover that revenue requirement from their electric ratepayers in a way that is
3 equitable. The cost-of-service analysis is the key component when looking at whether or
4 not rates are equitable among classes. While this approach reflects standard practice, by
5 its nature the costs per customer cannot be known with certainty as most facilities are
6 shared among many customers and therefore costs must be split based on measurable
7 factors, such as annual energy sales or the number of customers. The allocation of costs
8 within a cost-of-service study can be based on different methods and often reflect
9 imprecise information. For that reason, the results of a cost-of-service analysis have an
10 inherent margin of error in the results, despite the approach reflecting best practice by the
11 utility.

12 14. Shortly after Tacoma Power's telecommunications system was constructed,
13 Tacoma Power and the rest of the electric utility industry was sent into a financial tailspin
14 by the California Electricity Crisis in 2000-01. Manipulation of the competitive wholesale
15 market by Enron and others led to a shortage of power and subsequent blackouts in
16 California. Because the Pacific Northwest is interconnected to California and power is
17 traded among the regions, the Crisis had an impact throughout the West Coast. These
18 issue led to a change in state regulations in California limiting competition and retail
19 access. Other states, including Washington, followed suit and the net result was that retail
20 access never fully materialized in Washington as expected. While planning for retail
21 access by Tacoma Power and others was appropriate prior to the Crisis, changes in
22 circumstances beyond the control of the utility delayed the need for the infrastructure
23 needed to meet retail access requirements. While Tacoma Power continued to benefit
24 from certain aspects of its telecommunications system, the portion of the benefits related
25 to retail access could not be realized at that time.

1 15. Between the California Electricity Crisis and the 2008-2010 period, the
2 electric utility industry began to recognize that wireless telecommunications technology
3 would begin to take the place of wired telecommunications systems with respect to smart
4 meter applications.

5 16. During my decades of working for municipal utilities, I have encountered
6 situations where one of the municipal utility's assets has become surplus and the utility
7 must care for the surplus property while it decides how and when to dispose of it. Often
8 the best choice for the municipal utility is not to immediately sell or dispose of its surplus
9 utility property. The utility must be deliberate and consider market conditions and other
10 issues when making the decision on how and when to dispose of surplus utility property.

11 17. Based on my experience in the utility industry, I believe that although the
12 telecommunications system has not reached its full anticipated usage, the
13 telecommunications system still has very significant value. I have followed developments
14 with smart meter technology, and I understand that Tacoma Power's telecommunications
15 system may still be valuable for back-haul capacity even when wireless smart meters are
16 installed in Tacoma Power's service territory. I also understand that the
17 telecommunications system is valuable to internet service providers and cable television
18 providers, which is evidenced by the lease proposal that Tacoma Power received from
19 WAVE Broadband in 2015.

20 18. It is not uncommon for certain assets of electric utilities to become what
21 the industry refers to as "stranded assets." For example, a utility may have purchased land
22 to build a new substation to serve a region that was expected to see significant growth. If
23 the growth does not materialize the electric utility no longer has a use for that land. It
24 becomes a stranded asset of the utility. Even though that land is not being used by any of
25 the utility's customers, the remaining customers of the utility still must pay whatever

1 ongoing costs are associated with that land through their rates. In the case of a stranded
2 asset, it is standard practice to either hold that asset for future use by the utility, sell or
3 lease the asset to another entity, or hold the asset until such time that the value of the asset
4 increases in value and then sell or lease the asset. However, the cost causation related
5 with a stranded asset still falls to the customers of the utility because it was built to benefit
6 them and was prudent at the time it was built, regardless of whether or not it is currently
7 used by customers.

8
9 I declare under penalty of perjury that the foregoing is true and correct:

10
11 EXECUTED this 7th day of February, 2018, in Kirkland, Washington.

12
13 
14 _____
15 Gary Saleba

EXHIBIT A

PROFESSIONAL EXPERIENCE AND BACKGROUND OF

GARY S. SALEBA

EDUCATION

MBA, Finance
Butler University
Indianapolis, Indiana

BA, Economics and Mathematics
Franklin College
Franklin, Indiana

EMPLOYMENT

October 1978 to Present EES Consulting, Inc.
570 Kirkland Way, Suite 100
Kirkland, Washington 98033
Registered Professional Engineering and Management
Consulting Firm

Position: Principal/Owner

Responsibilities: Overall supervision for all of EES Consulting's electric, water, wastewater and natural gas engagements in the areas of strategic planning, financial analysis, cost of service, valuations, mergers and acquisitions, rate design, engineering, load forecasting, load research, management evaluation studies, bond financing, integrated resource planning and overall utility operations. Overall responsibility for firm's quality assurance/quality control.

Activities: Numerous testimony presentations before regulatory bodies on utility economics, strategic planning, finance, utility operations and requests for proposals. Supervised several integrated resource planning studies, average embedded and marginal cost of service studies, RFPs, technical assessments and financial planning studies for electric, water, gas and wastewater utility clients. Participated in comprehensive resource acquisition, strategic planning and demand side management analyses. Developed and verified interclass usage data. Conceptualized and implemented compliance programs for the Public Utility Regulatory Policies Act and the Energy Policy Act of 1992. Contract negotiation and energy conservation assessments. Presentation of management audit, forecasting, cost of service, integrated resource planning, financial management, and rate design seminars for the American Public Power Association, Electricity Distributors Association of Ontario,

American Water Works Association, and Northwest Public Power Association. Past Board member of Northwest Public Power Association and ENERconnect, Ltd. Past Chairman of Financial Management Committee and Management Division of the American Water Works Association. Project manager for construction of 248 MW gas turbine, and acquisition of over \$1 billion of utility service territory and equipment. Supervised engineer's report for over \$5 billion in revenue bonds.

October 1977 to
October 1978

National Management Consulting Firm

Position: Supervising Economist

Responsibilities: Analyzed various energy related topics to determine economic impacts. Reviewed utility financial activities.

Activities: Participated in several utility rate/financial regulatory proceedings. Provided clients with critique of issues, position papers and expert testimony on the topics of cost of service, rate design, utility finance, automatic adjustment factors, sales perspectives and class load characteristics. Conceptualized load forecasting models and assisted in economic and environmental impact analyses.

June 1972 to
October 1977

Indianapolis Power & Light Company
P.O. Box 1595 B
Indianapolis, Indiana 46206
Investor-owned Utility

Position: Economist, Department of Rates and Regulatory Affairs

Responsibilities: Provided general economic and rate expertise in Rates, Regulatory Affairs, Customer Service and Engineering Design Departments.

Activities: Calculated retail and wholesale electric and steam class revenue requirements and rates. Prepared expert testimony and exhibits for state and federal agencies regarding rate design theory, application of rates and revenues generated from rates. Determined long range revenue and peak demand projections. Supervised comprehensive load research program. Supported thermal plant Environmental Impact Statements. Provided industrial liaison.

**PARTIAL LIST OF CLIENTS FOR WHOM FINANCIAL, OPERATIONAL AND STRATEGIC
PLANNING PROJECTS
HAVE BEEN DIRECTED BY GARY S. SALEBA**

UNITED STATES OF AMERICA

Alabama

City of Birmingham Water and Wastewater

Alaska

City of Barrow
City of Wrangell
*Alaska Public Service Commission
*Municipal Light and Power
Alaska Village Electric Cooperative

Arizona

*Tucson Electric Power
City of Dodge
City of Page
Navopache Electric Cooperative

Arkansas

City of North Little Rock

California

City of Indian Wells
City of Palm Desert
City of Moreno Valley
City of Corona
City of Redding
Sacramento Municipal Utilities Board
City of Burbank
*State of California - Department of Water Resources
Turlock Irrigation District
City of Palo Alto
City of Anaheim
El Dorado Irrigation District
City of Glendale
City of Pasadena
City of Roseville
Yucaipa Valley Water District
*Los Angeles Department of Water and Power
Nor-Cal Electric Authority
Jefferson JPA
City of San Marcos
City of Cerritos
Coachella Valley Association of Governments

California (cont'd)

California Power Authority
Santa Clara Valley Water District
Los Angeles County Community Choice Aggregation
San Bernardino County Community Choice Aggregation
West Riverside County Community Choice Aggregation
San Jose Clean Energy Choice Aggregation
East Bay Community Energy
Los Angeles County

Colorado

*CFI Steel
*Moon Lake Electric Association
City of Denver - Wastewater
*Denver Water Board

Connecticut

City of Groton

Florida

City of Pompano Beach
Florida Public Service Commission
Dade County Water and Wastewater Utilities

Idaho

Kootenai Electric
*Northern Lights
Salmon River Cooperative
Prairie Power and Light
*Department of Energy
City of Moscow
Fall River Cooperative
Lower Valley Power & Light
*Industrial Customers of Idaho Power
Clearwater Power & Light
City of Heyburn
City of Bonners Ferry

Illinois

City of Highland
City of Collinsville
City of Peru
City of Winnetka

Indiana

*Indianapolis Power & Light Company

Iowa

*City of Iowa City

Kentucky

*Kentucky-American Water Company

Minnesota

Polk-Burnett Electric Coop

Missouri

*General Motor, Inc.

Montana

Beartooth Electric Cooperative
*PPL Montana
Montana Associated Cooperatives
Sun River Electric Cooperative
*Montana Power Company
Colstrip Community Center
Flathead Electric Cooperative
Glacier Electric Cooperative
Vigilante Electric Cooperative
Montana Electric Cooperative Association
Western Montana G&T
*Northwestern Energy, Inc.
Yellowstone Valley Electric Cooperative

North Dakota

City of Watford City
Garrison Diversion Conservancy District

Oregon

*Emerald PUD
Clackamas Water District
Central Lincoln PUD
Springfield Utility Board
Tri-Cities Service District
City of Portland
City of Klamath Falls
City of Millersburg
City of Gladstone
City of West Linn
City of Oregon City
*Public Power Council
Central Electric Cooperative
Warm Springs Energy Cooperative
Northern Wasco PUD
West Oregon Cooperative

South Dakota

Black Hills Electric Cooperative

Texas

City of League City
City of Brownsville
City of Lubbock
Pedernales Electric Cooperative
City of San Antonio
*Texas Municipal Power Agency

Utah

*Moon Lake Electric Association
Utah Association of Municipal Power Systems

Washington

*Western Public Agencies Group
TrendWest Resorts
Weyerhaeuser Corporation
Costco
*Pend Oreille County PUD
City of Richland
Industrial Customers of Grant County
Benton REA
Seattle City Light
*Clark Public Utilities
City of Blaine
*Snohomish County PUD
*City of Port Angeles
*Clallam County PUD
Chelan County PUD
*City of Tacoma Electric, Water and Rail Utilities
*Mason County PUD No. 3
*Peninsula Light Company
Washington Utilities and Transportation Commission
*Grays Harbor County PUD
*Pacific County PUD
City of Gig Harbor
Ferry County PUD
*City of Ellensburg
City of Redmond
Grant County PUD
*Klickitat County PUD
Cascade Natural Gas
City of Kennewick
Daishowa Corporation
Seattle Water Department
*Building Management Owners Association
City of Bellingham
*US Ecology, Inc.
*Avista Corporation
*Cowlitz County PUD
*City of Cheney

Washington (cont'd)

- *City of Yakima
- City of Bellevue
- City of Shoreline
- Douglas County PUD
- AT&T
- WorldCom
- City of Toppenish
- City of Shoreline
- Microsoft

Wisconsin

- *Wisconsin Manufacturing Association
- Polk-Burnett Cooperative

Wyoming

- *Lower Valley Power and Light

CANADA

Alberta

- *University of Alberta
- *City of Lethbridge
- *City of Red Deer
- City of Medicine Hat
- Ocelot Chemicals
- Aqualta
- City of Calgary—Water and Wastewater Utilities

British Columbia

- *Fortis, BC
- Alcan, Ltd.
- *Princeton Power & Light
- *West Kootenay Power
- *Ministry of Fisheries
- Crows Nest Resources
- Highland Valley Cooperative
- *Council of Forest Industries
- Crestbrook Industries
- Royal Oak Mines
- UtiliCorp Canada
- *Joint Industrial Electric Steering Committee
- *British Columbia Transmission Corporation
- *Terasen Gas

Manitoba

- *Manitoba Legal Aid

Northwest Territories

- *Northwest Territories Power Corporation

Ontario

ENERconnect, Inc.
Ontario Hydro
*Municipal Electric Association
North York Hydro
Toronto Hydro
*Ottawa Hydro
Electricity Distributors Association
*Ontario Energy Board
*Association of Major Power Companies (AMPCO)

OTHERS

American Public Power Association
American Water Works Association
California Municipal Utilities Association
Northwest Public Power Association

*Prepared Expert Testimony

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

EDWARD E. (TED) COATES, et. al.,

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

No. 17-2-08907-4

DECLARATION OF KARI
VANDER STOEP IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PARTIAL SUMMARY JUDGMENT

I, Kari Vander Stoep, declare as follows:

- 1. I am over the age of 18, have personal knowledge of the facts stated herein, and am competent to testify thereto.
- 2. I am a partner at K&L Gates LLP. K&L Gates is counsel for City of Tacoma in this litigation.
- 3. Attached as Exhibit A is an accurate copy of excerpts from the deposition of Steven J. Klein.
- 4. Attached as Exhibit B is an accurate copy of excerpts from the deposition of Andy Cherullo.

1 5. Attached as Exhibit C is an accurate copy of excerpts from the deposition
2 of Chris Robinson.

3 6. Attached as Exhibit D is an accurate and complete copy of City of
4 Tacoma's Complaint for Declaratory Judgment filed in Pierce County Superior Court on
5 July 24, 1996, Case No. 96-2-09938-0.

6 7. Attached as Exhibit E is accurate and complete copies of (a) City of
7 Tacoma's Motion to Appoint Taxpayer and Ratepayer Representative and to Allow Fees
8 and Costs filed on July 24, 1996, (b) Memorandum in Support of City of Tacoma's
9 Motion to Appoint Taxpayer and Ratepayer Representative and to Allow Fees and Costs
10 filed on July 24, 1996, and (c) Declaration of Mark Bubenik in Support of Appointment
11 of Taxpayer and Ratepayer Representative filed on July 24, 1996, all filed in Pierce
12 County Superior Court Case No. 96-2-09938-0.

13 8. Attached as Exhibit F is accurate and complete copies of (a) City of
14 Tacoma's Motion for Certification of Class Action and for Appointment of Class
15 Representative filed on August 16, 1996, (b) Memorandum in Support of City of
16 Tacoma's Motion for Certification of Class Action and Appointment of Class
17 Representative filed on August 16, 1996, and (c) Agreed Order Granting Certification of
18 Action as Class Action and Appointment of Class Representative entered on August 16,
19 1996, all filed in Pierce County Superior Court Case No. 96-2-09938-0.

20 9. Attached as Exhibit G is an accurate and complete copy of Memorandum
21 in Support of City of Tacoma's Motion for Summary Judgment filed in Pierce County
22 Superior Court on November 6, 1996, Case No. 96-2-09938-0.

23 10. Attached as Exhibit H is an accurate and complete copy of Declaration of
24 Jon Athow in Support of Motion for Summary Judgment filed in Pierce County Superior
25 Court on November 6, 1996, Case No. 96-2-09938-0.

1 11. Attached as Exhibit I is an accurate and complete copy of Defendants'
2 Responsive Memorandum in Opposition to City of Tacoma's Motion for Summary
3 Judgment.

4 12. Attached as Exhibit J is an accurate and complete copy of Order Granting
5 City of Tacoma's Motion for Summary Judgment, dated December 13, 1996, in Pierce
6 County Superior Court Case No. 96-2-09938-0.

7 13. Attached as Exhibit K is an accurate and complete copy of Memorandum
8 in Support of City of Tacoma's Motion for Summary Judgment filed on April 14, 1997, in
9 Pierce County Superior Court Case No. 96-2-09938-0.

10 14. Attached as Exhibit L is an accurate and complete copy of the Second
11 Declaration of Jon Athow in Support of Motion for Summary Judgment filed on April 14,
12 1997, in Pierce County Superior Court Case No. 96-2-09938-0, including Substitute
13 Resolutions Nos. U-9258, 33668, and Amended U-9258 as attached to the original
14 declaration.

15 15. Attached as Exhibit M is an accurate and complete copy of Defendants'
16 Responsive Memorandum in Opposition to City of Tacoma's Motion for Summary
17 Judgment filed on April 29, 1997, in Pierce County Superior Court Case No. 96-2-09938-
18 0.

19 16. Attached as Exhibit N is an accurate and complete copy of City of
20 Tacoma's Reply Brief filed on May 5, 1997, in Pierce County Superior Court Case No.
21 96-2-09938-0.

22 17. Attached as Exhibit O is an accurate and complete copy of the Declaration
23 of Steven J. Klein in Support of City's Reply filed on May 5, 1997, in Pierce County
24 Superior Court Case No. 96-2-09938-0.

EXHIBIT A

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SUPERIOR COURT OF WASHINGTON, PIERCE COUNTY

EDWARD E. (TED) COATES, et)
 al.,)
)
 Plaintiff(s),)
)
 vs.) 17-2-08907-4
)
 CITY OF TACOMA,)
)
 Defendant(s).)

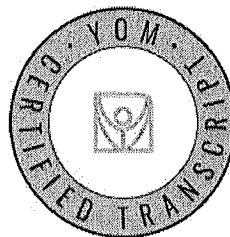
30(b)(6) Deposition Upon Oral Examination of
 CITY OF TACOMA
 STEVEN J. KLEIN

9:56 a.m.

September 26, 2017

1001 Fourth Avenue, Suite 4200

Seattle, Washington



REPORTED BY: Mindi L. Pettit, RPR, CCR #2519



1 you're thinking of this or perhaps you're thinking of
2 another document called the complaint. This is just a
3 notice of deposition that describes various topics.
4 And I'm going to ask you about the topics that you're
5 here to talk about. You're not sure -- I mean, do I
6 take --

7 A. The topics look familiar --

8 Q. Okay. All right.

9 A. -- but I -- I don't remember specifically this
10 document.

11 Q. Okay. I understand from counsel for the City
12 that you are designated to testify today on two
13 subjects that are listed here. One is Topic 1, up
14 through the 2006 time period --

15 A. Okay.

16 Q. -- and the other is Topic 7. Do you -- is --
17 is it your understanding that you are designated by the
18 City --

19 A. Yes.

20 Q. -- to testify about those two subjects?

21 A. Yeah.

22 Q. Okay. Now, maybe the easiest way to begin is
23 to just -- can you describe, again, in a general way,
24 how did the idea of forming the Click Network come
25 about?



1 A. It was an evolutionary process. And one of
2 the triggering things for it was the passage of the
3 Energy Policy Act of 1992 by Herbert Walker Bush in
4 October of 1992. I became the superintendent in July
5 of '93. And that was a very big deal. We had all seen
6 what happened in the banking and trucking industries
7 and deregulation, how it opened up competition and
8 basically changed the way in which those industries
9 competed and existed.

10 So here we were a monopoly and, on top of
11 that, a government monopoly. And there was just all
12 kinds of concerns and fears about what the potential of
13 that was. And I'm coming in the door as the head of
14 Tacoma Power, and I'm certainly familiar, as most of
15 the Tacoma Power people are, with the proud history of
16 Tacoma Power and all the people before us that had made
17 some pretty amazing decisions to build major hydro
18 projects and such that were tremendous assets and
19 valuable to the citizens of Tacoma.

20 And so I'm coming into that office, and I want
21 to make sure that I do the right thing and that we
22 react appropriately to what's on the horizon for change
23 in our industry. So I got together with the leadership
24 of the various departments in Tacoma Power. And we
25 started a strategic planning process where we went



1 through the strengths and weaknesses, analyzed our
2 competition -- I mean, even to the point where we're
3 presuming that Costco and the Catholic church will be
4 selling power, and we'll have to wheel it on our
5 system. And how would we be able to compete with them,
6 or should we even attempt to compete? Should we focus
7 on some other aspect and be the best at that and just
8 presume we're going to lose that -- that side of it?
9 But this is a somewhat long story. I'll try to --

10 Q. No, that's --

11 A. -- be patient. But a major theme that came
12 out of all of this was the fact that the electrical
13 systems virtually everywhere -- Tacoma Power wasn't
14 unique -- were not a whole lot different infrastructure
15 and equipmentwise than what had been in place for a
16 hundred years.

17 And the joke was that Thomas Edison could walk
18 into a substation and he would be able to point out the
19 oil circuit breaker and the transformer. And he would
20 know everything that was in there. So not a whole lot
21 of new and sophisticated equipment.

22 But you were beginning to see microprocessors
23 coming into play, and you begin to see the potential of
24 that. So, instead of mechanical relays -- which
25 interestingly, engineers would often visit substations



1 A. So then John starts to put together
2 preliminary plans for a telecommunication system, and
3 we begin to formulate all of the ideas that later are
4 documented in a lot of the going forward documents --
5 the kind of value streams and the benefits and
6 efficiencies and so forth. So it gets to the point in
7 '95, where so far I'm getting thumbs up -- and I'm
8 skipping a lot of the things we changed in Tacoma
9 Power, but I need to digress just to tell you one
10 thing.

11 And I was in charge of this for many years.
12 Scheduling power -- and this is the same for Puget or
13 Seattle City Light, Tacoma Power -- when you have
14 generation in a hydro-based system, sometimes you have
15 more than you need. Now, with wind, that's also the
16 case and then solar too. You have more than you need
17 when you don't need it and then not enough when you
18 don't. And so you're basically transacting in the
19 wholesale power markets. And even back then, it was
20 mainly bilateral, but there was still a market where
21 you would call amongst parties and trade and sell
22 energy.

23 And the way it was structured in my career
24 coming in until I became the superintendent is it was
25 scheduled day ahead, and the schedule for Friday,



1 Saturday, and Sunday and Monday was done on Thursday.
2 And so the person that's getting the phone calls about
3 my power's out or a car hit a thing, he's the same guy
4 that's following these instructions. So imagine if
5 he's in a hurry, if it says, you know, if you have any
6 extras, sell it -- anybody he can find that will buy
7 it, you know, great. You know, sold it and he's done
8 with it and doesn't have to worry about it the whole
9 rest of the weekend.

10 What we decided was that sort of thing was not
11 sufficient. We weren't optimizing the value of that.
12 So one of the things we did in this same time frame --
13 so I'm trying to tell you, it wasn't all just
14 telecom -- was we went to a 24 hour, seven day a week
15 power trading operation, with full-time, 12-hour shift
16 traders. That's -- that's all they did. And we
17 virtually produced hundreds of millions of dollars in
18 value. And that's actually where the source of the
19 cash came from that paid for the -- for the initial
20 build-out of the Click -- Click Network.

21 Q. This power trading that you just described --

22 A. Yeah.

23 Q. -- that was under the aegis of the power
24 management --

25 A. Yeah.



1 banking and trucking and all of these sorts of things,
2 I recognized that you don't want to be seers and try to
3 do too many things and lose sight of who you are.

4 But on the other hand, the banks recognized
5 the more relationships they had with you, the less
6 likely you were to switch for a six pack of Coke, so if
7 you had your vacation account, your charge card, your,
8 you know, investments there -- so that was also in the
9 mind at the time -- loyalty, multiple relationships
10 with customers, but don't try to do so many things that
11 you lose focus of why -- why you're there.

12 Q. Um-hum.

13 A. So I wasn't enamored initially with the
14 telecommunication side of it -- anything that required
15 a call center related to telecommunications. And so
16 initially if anybody was reticent about the telecom
17 things, doing them commercially -- I had nothing
18 against selling the capacity -- the excess capacity to
19 generate additional revenue, but I wasn't that enthused
20 initially about going into them.

21 But during that same time period, as we're
22 also briefing the city council, they're having a heck
23 of a problem with the cable -- the incumbent cable
24 provider who still has the crummy system, refuses to
25 upgrade it. And they don't come to the table to



1 negotiate the franchise agreement. They can just tell
2 the -- the city government to jump in the lake. And if
3 you don't like it, we'll just shut it -- we'll shut it
4 down.

5 And so, when the Stanford Research Institute
6 came back and said, you know, you're beloved by this
7 community; crappy service is provided; you're going to
8 have excess capacity because once you stick the pipe up
9 there -- put a little bit bigger pipe is very small
10 incremental costs and you have the opportunity --
11 because it's going to take a number of years for this
12 digital world that you want on the electric side to
13 actually come to be. Why not generate some revenue on
14 that in the interim? So that report comes out in '96.

15 I have to digress a little and say that the
16 deregulation of the electric utility industry and now
17 law in '92, finally got traction in the four western
18 states of Washington, Oregon, Idaho, and Montana, with
19 the four governors calling together in 1995 a special
20 comprehensive review with people in the energy
21 industry -- people from all facets, environmentalists,
22 tribes -- you know, the whole nine yards to come
23 together for a comprehensive review of what direction
24 should the Northwest take.

25 And what's interesting at -- at this -- in



1 December of '96, the comprehensive review was
2 published, and it said that utilities in the Northwest
3 should all provide retail choice no later than July of
4 1999.

5 Q. But that -- they were talking about retail
6 choice for electricity?

7 A. Electricity, yeah.

8 Q. Yeah.

9 A. But understand, if you have this dumb system I
10 talked about, how is the Catholic church power going to
11 go through, go to the customer, it's going to be
12 accounted for, if they suddenly in the middle of the
13 month switch to somebody -- somebody else, how is all
14 of this transacted?

15 Those meters on the side of the house are just
16 spinning plates. The only data you get from them, it
17 just went a little bit farther from the last time you
18 read it. In order to differentiate all of these
19 things, you needed telecommunications and those kind of
20 digital technologies.

21 So that immediately put even more pressure on
22 all of us to say we need to move on this because we
23 don't want to be in a situation where the governor is
24 demanding we're in, you know, retail wheeling and we're
25 looking like, you know, industry that won't step aside



1 and, you know, what happens if you don't go with the
2 flow or you don't get out of the way?

3 Q. Yeah.

4 A. So -- so then John is assigned -- John Athow
5 is assigned, and he names it the Athena. He was really
6 enamored with the Greek goddess Athena and the story of
7 her and her strengths and powers and that sort of
8 thing. So he puts a group together under my direction
9 and guidance.

10 And the idea is to take the SRI
11 recommendations, turn it into a business plan that can
12 be adopted by the board and the city council, which
13 they did. The board adopted in March of '97 and the
14 city council in April of '97. And that was the
15 go-ahead.

16 Now, I left out, in '95, we went for authority
17 in the superior court to verify we had the authority to
18 do it. And that was decided by Judge Grant Anderson, I
19 think --

20 Q. Yeah, I think that's right.

21 A. -- in '96. And so that -- and I'm sorry I
22 went through all that, but it kind of puts all those
23 early pieces -- a lot of stuff was going, but there was
24 a momentum that wasn't fixated on cable television,
25 although cable television, once it was a part of the



1 it unless their condo had a contract --

2 Q. Understood.

3 A. -- in a way, so --

4 Q. Yeah.

5 A. And then -- and I might be forgetting a couple
6 others, but generally what you said is true. And
7 what -- the key point was while we were going down the
8 street and installing it, that was a good time to be --
9 so we were offering incentives to people to sign up
10 then because it was advantageous to get the most number
11 of people connected at that time while we were already
12 disrupting the neighborhood.

13 Because to come back later again, you know,
14 for one person, you know, we would do it and still -- I
15 assume they would do it today, but it was easier to
16 just try to get as many as you could while you were
17 going down the street.

18 Q. And, again, as of April '06 when you left TPU,
19 can you give me an estimate of about what percentage of
20 cable TV customers within the city of Tacoma were Click
21 customers as opposed to customers of some other cable
22 TV service.

23 A. Well, what I can tell you were the number of
24 cable TV customers was around 22, 23, 24 thousand. And
25 that -- if -- early on -- well, it gets complicated



1 because you can judge that in terms of a home passed
2 because not everybody takes cable television. And so
3 are they a customer or are they not if they would
4 intend to never have it, whereas -- so I -- I'm not
5 remembering exactly the percentage. I would say that I
6 think at that point, probably TCI was still dominant,
7 but we had sufficient customer base that our revenues
8 exceeded our expenses at the time I left.

9 Q. Okay. Let me . . .

10 A. Now, that is a question that, you know,
11 documents could refresh my memory, I'm sure.

12 Q. Sure, sure. And I don't mean to be testing
13 your memory on this.

14 A. Yeah.

15 Q. I'm just -- sort of general background is
16 really helpful to understand the documents and -- so I
17 appreciate that.

18 MR. JURCA: I'm going to ask for this to
19 be marked as Exhibit 2 and -- wait a minute. Do I
20 have . . .

21 (Discussion off the record.)

22 (Deposition Exhibit 2 was marked for
23 identification.)

24 Q. (By Mr. Jurca) Do you recognize Exhibit 2 as
25 a copy of City of Tacoma Ordinance No. 25930? It's



1 what was asked here, in a government situation, to make
2 all of this work, but we tried to do the best we could.

3 Q. Do you recall, did the -- the team that was
4 established to -- following this recommendation, even
5 though you don't remember who was on the team or who
6 headed it, do you recall, did it include people who
7 were outside of TPU, as well as some who were in --

8 A. I'm assuming it would have been Alex Gebhard
9 and Dana Toulson and their respective staffs.

10 Q. Who is Alex Gebhard?

11 A. Alex worked in the finance department and was
12 assigned to the utilities.

13 Q. Okay. Do you know where Dana Toulson is now?

14 A. Yeah, she's in Montana.

15 Q. Okay. How about Alex Gebhard?

16 A. No, I -- he was still working for T -- the
17 City when I left, but I -- since then, he's retired.

18 Q. Okay. And, again, I'm looking at the language
19 here in that paragraph, on page 11, the phrase that's
20 used there, "to segregate the total capital cost and
21 operating budget into Tacoma Power and Click Network
22 costs" -- and, again, I'm recognizing that Click is
23 part of Tacoma Power. What did you understand their
24 recommendation to mean when they were talking about
25 segregating the capital costs and operating budget



1 between Tacoma Power and Click Network?

2 A. I understood it to be what I have already
3 mentioned. It would help us better resolve the
4 challenge of its subsidization and so on, so forth --

5 Q. Okay.

6 A. -- as well as it would allow us to more
7 clearly track -- and I think what they recognize is
8 that Dana tracked it anyway. That's -- that's her
9 nature. She was tracking -- she wanted to make sure
10 they were meeting their goals and that kind of thing.
11 And so they're more or less saying take that
12 information and make it readily available so people can
13 feel comfortable and see that you're doing it.

14 But I have to caveat that again with the
15 clarification, everything I say -- you can put them in
16 any spreadsheet you want. You can segregate them. You
17 can categorize them. Under the ordinance and the
18 legislation that created it, every cost of Click that
19 Click cannot cover through its revenues is the
20 responsibility of the light division.

21 Q. Yeah, I understand. Okay. You've already
22 answered some of my other questions on this document.
23 So let's go on to the next.

24 MR. JURCA: Let me just -- Mark, I --
25 I'm going to have a question about a page or two --



1 A. Right.

2 Q. But not all electric utility customers
3 subscribe to the telecommunication services --

4 A. Right.

5 Q. -- that is, the retail television and other --
6 cable TV and the other telecommunication services
7 provided by Click, correct?

8 A. (Nodding.)

9 Q. So would you agree that as a matter of rate
10 setting principle, Tacoma Power attempted to, while you
11 were superintendent, see to it that electric customers
12 who were not Click customers would not have to bear,
13 through their electric rates, Click expenses? Is that
14 a fair concept?

15 A. It's a fair question, but it's too
16 simplistic --

17 Q. Okay.

18 A. -- and ignores the underlying basis for the
19 authorization to proceed with Click. And that was --
20 and I don't want to bore you with too much, but it was
21 envisioned that this telecom network was necessary for
22 the utility to survive and thrive, but it was going to
23 take a while to utilize all of that capacity because of
24 the -- on the electric side, hundreds of millions of
25 dollars for all of the equipment in order to automate



1 and bring the SCADA system up.

2 If you could have some additional capacity and
3 generate some revenue in the interim, delight your
4 customers like the banks do and develop relationships,
5 generate economic development in a community that was a
6 second or third tier city, particularly when it came to
7 telecom, and retain large customers that provided
8 revenue to Tacoma on the electric side -- and the list
9 goes on and on and on -- these were all of the values
10 that the Click Network brought to all electric
11 ratepayers that you can't take out of -- out of
12 context.

13 Q. For the benefit of our reporter, you used the
14 term "SCADA." I think that -- that's an acronym,
15 S-C-A-D-A --

16 A. Supervisory control and data acquisition.

17 Q. Okay. You've already explained at
18 considerable length -- and explained very well, I
19 thought -- how the telecommunication -- how the Click
20 infrastructure was intended to and was beneficial to
21 the electric utility?

22 A. (Nodding.)

23 Q. And we've talked a little bit about the Price
24 Coopers recommendation to make an attempt to segregate
25 Tacoma Power capital and operating costs from Click



1 discussed -- I take it, you're familiar with this
2 report.

3 A. Yeah, yeah.

4 Q. Was the allocation method that is discussed in
5 this report -- was that the allocation method that
6 remained in place, subject to a little bit of variation
7 as you just referred, from the time of this report up
8 through the time you left in --

9 A. I believe so.

10 Q. -- mid '06? Okay. And I take it, the
11 description of the -- the overview of allocation method
12 that's set forth in paragraph 1.1 on the page numbered
13 1 in the document, that's -- you would agree that that
14 is an accurate description of the overview of the
15 allocation method that was in place while you were TPU
16 superintendent?

17 A. Yes.

18 Q. Okay. Under paragraph 1.2, the second
19 sentence says, "This approach uses the present value of
20 the projected customer automation benefits." First of
21 all, can you tell me what you understood that phrase to
22 mean -- "the present value of the projected customer
23 automation benefits."

24 A. Dana and her folks did an analysis -- because
25 we were trying to -- to move forward after the energy



1 crisis put us in a bit of a delay due to the hit to a
2 lot of utilities during that period of time and get the
3 business activity up and running and did a updated
4 analysis of the savings associated with a number of the
5 technologies that we would put in on the power side
6 that would utilize the Click Network. You know, you
7 get to outages quicker, and that's less loss of
8 production. You connect and disconnect homes remote --
9 automatically without having to roll a truck.

10 And so she did analysis on what that would be
11 in a particular year's dollars, like in 2003 dollars.
12 That is, if we had this in place, it would be so many
13 million dollars. And so then you can project that out
14 and then bring it back in present value.

15 So you can say that stream of value over 20
16 years -- and I'm just making something up -- is worth
17 \$200 million to -- bringing it back to today and it
18 cost a hundred million today to go out and buy the
19 equipment.

20 Then you say, hey, we go out and buy the
21 equipment for a hundred million because it's going to
22 basically pay for itself and then some. So what we're
23 talking about is projecting out those benefits and then
24 present valuing them back in today's dollars.

25 Q. Would it be correct that the -- the fiber



1 form of your question. I'm just thinking about there
2 is much more than the old -- we were envisioning much
3 more than the old model of just delivering the
4 electricity. There were other potential diversifying
5 things that you would get that would still involve the
6 sale of electricity. It just wouldn't be in the same
7 way.

8 So, for example, a person puts a solar on
9 their roof and basically doesn't want your electricity,
10 but they want you to take it into your network and sell
11 it for them. Is that selling electricity or not? It's
12 not our electricity, but in order for them to get it --
13 what do you need in a situation like that? You need a
14 telecommunications system.

15 And it's about selling power; it's just not
16 selling our power. That's why I hesitated on your
17 question. Although 99 percent of your question is
18 correct. Just there is a part of it that -- that we
19 did envision potential other diversifications beyond
20 that -- that would involve electrons other than telecom
21 ones.

22 Q. Okay. All right. Page 6, as I was reading,
23 as I had some trouble understanding it, and it -- if
24 you're able to describe it -- to explain it to me, you
25 know, without taking the time to pore over this in



1 cost allocation. We've already talked a little bit
2 about the -- you know, the 75-25 figure, but under the
3 heading -- well, the first bullet point there refers to
4 the, "2000 PricewaterhouseCoopers recommended that
5 telecommunication costs be allocated between Click
6 services and electric services." And that's the same
7 as what we referred to --

8 A. Yeah.

9 Q. -- as power or commercial, right?

10 A. Yeah.

11 Q. And then the next bullet point says 2002 to
12 2003, "Staff determined that allocation should be
13 approximately 75-25 between Click and electric."
14 You've already mentioned those figures?

15 A. Yes.

16 Q. And I guess what -- I want to get as clear an
17 understanding as I can. How was that allocation used?
18 I mean, what -- so staff determined that the allocation
19 should be 75-25. How was that allocation used?

20 A. Well, because it was paid for in cash and
21 because it was the light division's responsibility,
22 whether the side things were successful or not, you
23 still had the issue of depreciation, as we talked. So
24 finance is saying how do we allocate the depreciation?
25 And so that was a preliminary driver.



1 Then as a part of Dana coming in and the
2 Pricewaterhouse, both -- instead of the focus being on
3 building it and getting it built on time and on
4 schedule, now it was we need to track things and make
5 sure that we're doing all we can to make sure that
6 we're optimizing the business.

7 And that's when an allocation allowed them to
8 segregate out to have a better look so that they were
9 looking and tracking metrics for the operation. So
10 they tried to link set top boxes, programming costs,
11 portion of the head end to how many customers they were
12 adding. And during that period of time, revenue was
13 equaling or exceeding expenses. And that's the primary
14 reason for doing that.

15 Q. The reason I ask is we've seen -- and we can
16 pull out these documents again if we need to --

17 A. Right.

18 Q. -- but remember, on one of the documents there
19 was a list of items and the things -- things were
20 allocated like either 1 percent to --

21 A. Yeah.

22 Q. -- one side or the other or 99 percent or --

23 A. Yeah.

24 Q. And then it looks as though that list of
25 things sort of added up, and then the roughly 75-25



EXHIBIT B

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SUPERIOR COURT OF WASHINGTON, PIERCE COUNTY

EDWARD E. (TED) COATES, et)
 al.,)
)
 Plaintiff(s),)
)
 vs.) 17-2-08907-4
)
 CITY OF TACOMA,)
)
 Defendant(s).)

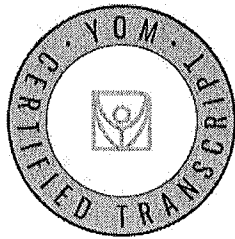
30(b)(6) Deposition Upon Oral Examination of
 CITY OF TACOMA
 ANDREW CHERULLO

9:59 a.m.

October 11, 2017

1001 Fourth Avenue, Suite 4200

Seattle, Washington



REPORTED BY: Mindi L. Pettit, RPR, CCR #2519



1 MS. VANDER STOEP: Object to form.

2 A. So, from my perspective, power is the fund.

3 Q. (By Mr. Jurca) Um-hum.

4 A. And that's -- when we look at our accounting,
5 we roll up to the fund level.

6 Q. Is the Click Network -- and for purposes of
7 this deposition, I'll refer to "Click" for short,
8 meaning, the Click Network -- is that a business unit
9 within Tacoma Power?

10 MS. VANDER STOEP: Object to form.

11 A. We refer to it as a subfund.

12 Q. (By Mr. Jurca) You also refer to it as a
13 business unit, do you not?

14 A. We refer to it in our accounting world as a
15 subfund of the power fund.

16 Q. Well, in your official financial reports, you
17 refer to it as a business unit, do you not --

18 MS. VANDER STOEP: Object to form.

19 Q. (By Mr. Jurca) -- that are authored and
20 approved by you?

21 MS. VANDER STOEP: Object to form.

22 A. Do you have an example of one --

23 Q. (By Mr. Jurca) Sure. We'll come --

24 A. -- an operating summary?

25 Q. We'll come to several examples. Would you



1 describe -- maybe the easiest way to do it -- you said
2 that you saw this Exhibit 5 in the context of
3 considering new -- a new method of -- or changing the
4 allocation -- some allocation method for power, right?

5 A. (Nodding.)

6 Q. Can you tell me what was going on. What
7 was -- what was your understanding of why somebody was
8 considering changing the allocation method?

9 MS. VANDER STOEP: Object to form.

10 A. I don't know why someone was considering
11 changing it. I just know that the RPA folks were
12 starting a study of allocations within power. And this
13 came up as to how -- what was the basis for how we
14 currently are allocating costs. And this was --

15 Q. (By Mr. Jurca) Okay.

16 A. -- the original . . .

17 Q. Did you eventually come to learn that a new
18 allocation method would be adopted?

19 MS. VANDER STOEP: Object to form.

20 A. I know that the RPA folks, again, came wanting
21 to change how allocations within the power fund were
22 going -- they would like to see.

23 Q. (By Mr. Jurca) And -- and that -- and did you
24 end up agreeing with that change?

25 A. Again, when you talk allocations, you look for



1 a reasonable methodology. And then you need to follow
2 that reasonable methodology.

3 Q. And my question to you, Mr. Cherullo, was did
4 you end up agreeing with the proposed change that was
5 recommended by rates, planning and analysis?

6 MS. VANDER STOEP: Object to form and
7 scope.

8 A. Again, it's not an agreement from me. Is it
9 reasonable?

10 Q. (By Mr. Jurca) Well, did you end up using the
11 new allocation method that they had proposed in
12 preparation of the financial reports that you prepared
13 or that were prepared under your supervision?

14 A. The allocation methodology did change.

15 Q. That wasn't so hard to say, was it?

16 A. That wasn't the question you asked.

17 Q. Okay. Take a look at Exhibit 4. That's an
18 excerpt from an official statement issued by the City
19 in connection with an offering of some municipal bonds.
20 You're generally familiar with official statements and
21 what they're for, right?

22 A. Yes.

23 Q. And would you agree that it's important for a
24 City that's issuing municipal bonds to do everything
25 that it can to make sure that every statement contained



1 A. Yeah, but Click rolls into power.

2 Q. Right.

3 A. So, again, from a perspective of it being an
4 incomplete document, the financial statement's
5 incomplete because it doesn't show how it rolls up into
6 power.

7 Q. Well, let me -- I guess I'm going to ask you
8 about that. Click is a -- is a unit of power, right?

9 MS. VANDER STOEP: Object to form.

10 A. It's a subfund --

11 Q. (By Mr. Jurca) You regard it --

12 A. -- in my view.

13 Q. -- as a subfund. Okay. And does your
14 department, the finance department, prepare monthly
15 operational summaries for Click?

16 A. We do.

17 Q. And are the first two pages of Exhibit 13 the
18 monthly operational summary for Click for the month of
19 January 2014?

20 A. Again, being incomplete -- I'm used to seeing
21 these in the context of the power financial statements.
22 So, looking at this portion of a document, it does look
23 like January's statements.

24 Q. Do you see -- can you think of anything that's
25 missing from the Click monthly operational summary?



1 A. Yeah, the rest of the power financials.

2 Q. Well, that's -- that's a -- that's a financial
3 for power, not regarding Click specifically, isn't it?

4 MS. VANDER STOEP: Object to form and
5 scope.

6 A. Click is a subfund of the fund. Power is the
7 fund. So they all go together.

8 Q. (By Mr. Jurca) Let me ask you this. Based on
9 the records of the -- of the City of Tacoma that you're
10 responsible -- you were responsible for as City finance
11 director, were the Click Network commercial operations
12 telecommunications revenue for the month of January
13 2014 -- was the total operating revenue for that month
14 \$2,199,478?

15 A. Yeah. Yes, according to the financial
16 statement here.

17 Q. Did the finance department prepare each of the
18 excerpts that are contained within Exhibit 13?

19 A. Again, I'm used to seeing them in the context
20 of the entire power thing, so -- I'm used to seeing
21 them in the context of the entire power financial
22 statement. So I can look through them.

23 Q. Okay. Let's . . . Does the -- and I've got
24 copies, which we'll come to later. I can show you now,
25 if you like. The annual financial reports for Tacoma



1 people, and the third being reading about it in a
2 document. So do you recall either of those three kinds
3 of things?

4 MS. VANDER STOEP: Object to form and
5 scope.

6 A. And the "HFC plant," are you using that as,
7 again, a term of art, or am I broadening that to Click
8 in general and allocations with Click? If you're
9 asking me if there were -- if I read a memo about Click
10 allocations, yes, I've read memos with Click
11 allocations.

12 Q. (By Mr. Jurca) Okay.

13 A. If you're asking me if I've had discussions
14 with people about Click allocations, I have had
15 discussions with people about Click allocations.

16 Q. Okay. Have any of those discussions included
17 discussion about allocating expenses or depreciation --

18 A. They mostly related to it doesn't really make
19 sense to have any allocation between Click and power
20 because Click is a subfund of power.

21 Q. And who -- who was advocating that position?
22 The consultants weren't -- were any consultants that
23 were -- any independent --

24 A. Nobody advocated that position. I just said
25 it doesn't make sense.



EXHIBIT C

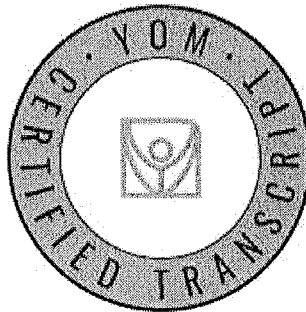
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SUPERIOR COURT OF WASHINGTON, PIERCE COUNTY

EDWARD E. (TED) COATES, et)
 al.,)
 Plaintiff(s),)
 vs.) 17-2-08907-4
 CITY OF TACOMA,)
 Defendant(s).)

30(b)(6) Deposition Upon Oral Examination of
 CITY OF TACOMA
 CHRIS ROBINSON

10:10 a.m.
 September 29, 2017
 1001 Fourth Avenue, Suite 4200
 Seattle, Washington



REPORTED BY: Mindi L. Pettit, RPR, CCR #2519



1 Q. (By Mr. Jurca) Would electric power rates, in
2 your opinion, be less if the commercial side of Click
3 had been leased to Wave as had been proposed in the
4 2015 to 2016 time frame?

5 MR. FILIPINI: I'll object to the form,
6 to the scope, and I would for this just like to take a
7 minute and look at -- because we're getting into the
8 witness in his personal capacity as opposed to
9 30(b)(6). So I just -- if I could have a minute to
10 look at the topics.

11 MR. JURCA: You bet.

12 MR. FILIPINI: Could you read back the
13 question.

14 (Reporter read back as requested.)

15 MR. FILIPINI: Yeah, I will object and
16 direct the witness not to answer this. You're
17 certainly free to call him back --

18 MR. JURCA: You sure you want to direct
19 him? Because you know that's improper and, in fact, I
20 am absolutely entitled to ask questions outside the
21 scope of the 30(b)(6). And if you want any law on it,
22 I'll be happy to give you some law that you can look at
23 very quickly. This is . . . Take a -- let's go off
24 the record for a few minute and take a look at that.

25 (Pause in proceedings.)



1 (Reporter read back as requested.)

2 MR. FILIPINI: And I'll have the same

3 objections and also just, you know, note for the record

4 that to the extent the witness -- this witness and

5 others have been venturing into their personal

6 knowledge, that, you know, should they be later noted

7 up for depositions, it will be an issue we'll have to

8 work out with counsel as to whether or not you've had

9 the opportunity already.

10 A. So you're referring to the electric rates --

11 the retail rates that we charge to our customers?

12 Q. (By Mr. Jurca) Yes.

13 A. And you're referring to what time period? Are

14 you referring to current rates?

15 Q. Sure. If -- if Click had -- if the commercial

16 side of Click had been leased to Wave -- you're

17 familiar with that proposal, right?

18 A. Yes.

19 Q. If that had gone forward, isn't it true that,

20 in your opinion, electric rates either wouldn't have

21 been raised as much as they have been raised or would

22 be about 2 to 3 percent less than -- than they are now?

23 MR. FILIPINI: And I'll object to form,

24 scope, and to the extent it calls for a legal

25 conclusion.



1 A. Yeah, no, I couldn't say that. It's -- it's
2 more complicated than that. Rates are -- in part,
3 rates are set as -- as part of your revenue requirement
4 which is essentially related to your budget. And
5 the -- the Click plan -- the -- that's -- is in the
6 budget.

7 But that doesn't necessarily mean the rates
8 are -- it's just more complicated. Rates are driven by
9 things like debt service requirements and -- so it's
10 very difficult to just say that rates would be lower if
11 we had done something different than what we're doing
12 now.

13 Q. (By Mr. Jurca) Isn't one of the things that
14 drives the rates the need to make up a shortfall --

15 A. Yes.

16 Q. -- in commercial --

17 A. Yes, it is.

18 Q. All right.

19 A. But I can't honestly say that the rates would
20 be different.

21 Q. Well, would you agree that there would be less
22 driver -- less reasons to increase rates if the
23 electric ratepayers didn't have to make up the
24 shortfall in Click commercial operations?

25 MR. FILIPINI: And I'll object to form



1 and scope.

2 A. Well, to go back to what you were saying
3 earlier, if we had leased the -- the network, we would
4 not have had to incorporate the -- the -- a budget for
5 Click expenses that we did. So the revenue requirement
6 would have been different.

7 Q. (By Mr. Jurca) Did -- did Tacoma Power
8 management, including yourself, make a recommendation
9 to the utility board about the lease proposal?

10 A. Yes, we did.

11 Q. And what was your recommendation?

12 MR. FILIPINI: I'll object to scope.

13 Go ahead.

14 A. The recommendation was to -- was to lease
15 the -- the -- the Click Network, which is the physical
16 assets, to Wave Broadband.

17 Q. (By Mr. Jurca) And what were your reasons for
18 making that recommendation?

19 MR. FILIPINI: Again, object to scope.

20 Go ahead.

21 A. The reasons for making that recommendation
22 were primarily to -- the reasons for making that
23 recommendation were primarily to improve the economics
24 of the operation and to minimize legal risk, as we
25 understood it, and to provide services to our



1 someone, like for example, Bill Berry?

2 A. Yeah, I think -- exactly. I was making a note
3 to myself to ask and to get clarity on how the
4 so-called imputed debt service was calculated.

5 Q. Okay. And I see there's a circle around the
6 phrase "operating statement" up above and an arrow that
7 then says, "Chris." Is that sort of a message from
8 Bill Gaines to you or -- or is that the way you
9 understood that note?

10 A. I honestly don't know.

11 Q. Okay. Fair enough.

12 A. I don't recall.

13 Q. Okay. Okay. All right. Would you take a
14 look at Exhibit 16, please. That document is entitled
15 "Inquiries from March 31 Joint Council/Public
16 Utility" -- "PUB," which I assume that stands for
17 "public utility board" -- "Study Session"?

18 A. That's correct.

19 Q. I've come to learn that there was such a study
20 session on March 31, 2015. From the context of this
21 document, is that -- you understand that that's what
22 this document refers to?

23 A. Yes. This is questions that were asked by
24 city council people at that study session --

25 Q. Okay.



1 A. -- and it appears our responses --

2 Q. Okay.

3 A. -- to those questions.

4 Q. And is that your handwriting that appears on
5 the right-hand side of the first --

6 A. That appears to be my handwriting, yes.

7 Q. Okay. And does that say, "What did these
8 funds buy"?

9 A. That's what it says.

10 Q. Okay. And then on the second page of the
11 exhibit, the page that has the Bates number 18179,
12 under the last bullet point, the question apparently
13 raised by Councilmember Lonergan is, "What are the
14 power rate impacts moving forward if we leased? What
15 would the decrease be now and in the long run?"

16 And someone provided the answer. The impact
17 on Tacoma Power rates would be between 2 to 3 percent.
18 This decrease would be cumulative in the long run. And
19 is that your note then written down there where you
20 have a question mark, and then saying, "Not sure about
21 this?"

22 A. Yes.

23 MR. FILIPINI: Object to the scope.

24 A. Sorry. Yeah, that is my handwriting.

25 Q. (By Mr. Jurca) Okay. Is it -- do you know



1 who provided that answer where it says the impact on
2 Tacoma Power rates would be between 2 to 3 percent?
3 Was that information that would have come from the
4 RPA --

5 A. Yes.

6 Q. -- section?

7 A. Yes.

8 Q. Okay.

9 MR. FILIPINI: Same objection to the
10 scope.

11 Q. (By Mr. Jurca) And then the next statement,
12 "This decrease would be cumulative in the long run."
13 Is that the statement you were questioning by saying,
14 "Not sure about this?"

15 MR. FILIPINI: And objection to scope.

16 A. Well, given the fact that I circled
17 "cumulative in the long run," I would say that's
18 probably what I was making a note to inquire about or
19 question.

20 Q. (By Mr. Jurca) Okay. Are you able to tell us
21 what -- what that meant? First of all, what that
22 statement -- the decrease would be cumulative in the
23 long run -- meant and why you had some question about
24 it?

25 MR. FILIPINI: Object to form and scope.



1 A. Because it's very difficult to provide a
2 single number -- or even a small range of a rate change
3 over a long period of time if you're going to do one
4 thing versus the other.

5 Q. (By Mr. Jurca) Okay.

6 A. And we're very careful about giving our
7 policymakers the most accurate information we can. So
8 it's a note -- really it's a note to myself to have a
9 conversation with this analyst --

10 Q. Okay.

11 A. -- so that I fully understand what the analyst
12 means and just probably look at the analysis they did
13 to come up with that.

14 Q. Okay. Do you recall whether you subsequently
15 had such a discussion?

16 A. I --

17 MR. FILIPINI: I'll object to scope.

18 A. I do not recall, but typically I will follow
19 up on these things, but I don't recall the discussion
20 or the result.

21 Q. (By Mr. Jurca) Okay. Thank you. All right.
22 We're going to -- marching through these documents.

23 A. Okay.

24 Q. The next one is Exhibit 17. And this has been
25 identified as a copy of a slide presentation entitled



EXHIBIT D

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IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,
Plaintiff,
v.
THE TAXPAYERS AND RATEPAYERS OF
THE CITY OF TACOMA,
Defendants.

No. 96 2 09938 0
COMPLAINT FOR DECLARATORY
JUDGMENT

The plaintiff, City of Tacoma, Washington ("City"), alleges the following in support of its complaint for declaratory judgment:

INTRODUCTION

1. The City plans to issue bonds in part for the purposes of constructing and operating a telecommunications system consisting of a hybrid fiber coaxial network (the "Telecommunications System"). The Telecommunications System will enhance and augment electrical utility service that the City provides to customers through the Light Division of its Department of Public Utilities. The City may utilize the Telecommunications System to provide cable television service to customers in the Light Division service area. The City may also lease Telecommunications System facilities or capacity to providers of telecommunications services.

1 and other applicable provisions of law, to construct a Telecommunications System for the purpose of
2 furnishing electric service to customers in the Light Division service area and controlling the use,
3 distribution and price of such service.

4 16. The City is authorized by RCW 35.41.030, 35.92.100, and 35.92.105 to finance such a
5 Telecommunications System by the issuance of the Revenue Bonds.

6 17. The City is authorized by law, including without limitation RCW 35.22.570 and
7 35.22.900, and *Issaquah v. TelePrompter Corp.*, 93 Wn. 2d 567 (1980), to utilize such a system for
8 the provision of cable television service and/or to lease facilities and capacity to telecommunications
9 providers.

10 18. The City is further authorized to provide telecommunications services by the
11 Telecommunications Act of 1996, Pub. L. No. 104-104, § 253, 110 Stat. 70 (1996), through the
12 Act's preemption of any legal requirement that has the effect of preventing any entity from providing
13 any interstate or intrastate telecommunications services.

14 **REQUEST FOR RELIEF**

15 The City requests the following relief:

16 1. An order determining that this action may be maintained as a class action pursuant to
17 CR 23(b)(2) and certifying the creation of a defendant class comprised of all ratepayers of the Light
18 Division.

19 2. Appointment of Harold E. Nielsen, Jr., as the representative of all City taxpayers and
20 Light Division ratepayers, except any taxpayers and ratepayers who intervene in this action.

21 3. Allowance of a reasonable attorney's fees and costs in this action to the attorney who
22 shall represent Nielsen.

23 4. Prescription of the form of notice to be given to Taxpayers and Ratepayers of the
24 pendency of this action and of their right to intervene, and the manner of giving such notice.


25 5. A judgment declaring that:
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- a. The Court has jurisdiction over the subject matter and parties in this action.
- b. The Bond Ordinance was properly enacted.
- c. The City has authority under the laws of the State of Washington and the United States to utilize the Telecommunications System to provide cable television service in the Light Division service area.
- d. The City has authority under the laws of the State of Washington and the United States to lease Telecommunications System facilities and capacity to telecommunications providers.
- e. The City has authority under the laws of the State of Washington and the United States to issue the Bonds for the purposes set for in paragraphs (c) and (d) above and in the manner set forth in the Bond Ordinance.

DATED this 24th day of July, 1996.

PRESTON GATES & ELLIS

By 
Elizabeth Thomas, WSBA # 11544

CITY OF TACOMA

By 
Mark Bubenik, WSBA # 3093
Chief Assistant City Attorney

Attorneys for Plaintiff City of Tacoma



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ORDINANCE NO. 25930

AN ORDINANCE of the City of Tacoma, Washington establishing a telecommunications system as part of the Light Division, supplementing Ordinance No. 23514 and providing for the issuance and sale of the City's Electric System Revenue Bonds in the aggregate principal amount of not to exceed \$1,000,000 to provide part of the funds necessary for the acquisition, construction and installation of additions and improvements to the telecommunications system.



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ORDINANCE NO. 25930

AN ORDINANCE of the City of Tacoma, Washington establishing a telecommunications system as part of the Light Division, supplementing Ordinance No. 23514 and providing for the issuance and sale of the City's Electric System Revenue Bonds in the aggregate principal amount of not to exceed \$1,000,000 to provide part of the funds necessary for the acquisition, construction and installation of additions and improvements to the telecommunications system.

WHEREAS, the City of Tacoma (the "City") owns and operates an electric utility system (the "Electric System"); and

WHEREAS, the Ordinance provides that the City may create a separate system as part of the Electric System and pledge that the income of such separate system be paid into the Revenue Fund; and

WHEREAS, RCW 35A.11.020 authorizes the City to operate and supply utility and municipal services commonly or conveniently rendered by cities or towns; and

WHEREAS, RCW 35.92.050 authorizes cities to construct and operate works and facilities for the purpose of furnishing any persons with electricity and other means of power and to regulate and control the use thereof or lease any equipment or accessories necessary and convenient for the use thereof; and

WHEREAS, the Utility Board and the Council have determined that it is in the best interest of the City that it install a telecommunications system among all of its Electric System substations in order to improve communications for automatic substation control; and

WHEREAS, the City has determined that it is prudent and economical to provide additional capacity on such telecommunications system to provide the Electric System with sufficient capacity to perform or enhance such functions as automated meter reading and billing, appliance control, and load shaping; and



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2 WHEREAS, the Light Division may wish to connect such telecommunications system
3 to individual residences and businesses in its service area or to other providers of
4 telecommunications services; and

5 WHEREAS, the City has determined that it should create a telecommunications system
6 as part of the Electric System in order to construct these telecommunications improvements;
7 and

8 WHEREAS, the City by Ordinance No. 23514 passed November 20, 1985 (as
9 amended and supplemented, the "Ordinance"), authorized Electric System Revenue Bonds (the
10 "Bonds") of the City to be issued in series, made covenants and agreements in connection with
11 the issuance of such Bonds and authorized the sale and issuance of the first series of such
12 Bonds in the aggregate principal amount of \$125,505,000 (the "1985 Bonds") for the purpose
13 of refunding all of the City's then outstanding light and power revenue bonds; and

14 WHEREAS, the 1985 Bonds were issued under date of December 1, 1985 and are now
15 outstanding; and

16 WHEREAS, the City has heretofore issued ten additional series of Bonds on a parity
17 with the 1985 Bonds, which bonds were issued and are now outstanding:

18

19	Authorizing Ordinance	Bonds Dated	Principal Amount Issued
20	23663	July 1, 1986	\$ 30,000,000
21	24073	May 1, 1988	60,400,000
22	24296	May 1, 1989	48,500,000
23	25004	December 1, 1991	13,800,000
24	25004	December 5, 1991	42,400,000
25	25004	December 5, 1991	42,400,000
26	25089	May 1, 1992	31,295,000
	25165	September 1, 1992	131,675,000
	25333	August 1, 1993	3,318,500
	25489	May 10, 1994	135,665,000



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WHEREAS, after due consideration, it appears to the City Council and the Public Utility Board (the "Board") that it is in the best interest of the City to create and construct a telecommunications system and to issue Electric System Revenue Bonds to finance a portion of the costs of such construction and that the exact amount of Bonds and terms of the Bonds shall be determined by resolution of the Council; and

WHEREAS, Section 10.1 of the Ordinance provides that the City may, without the consent of the owners of any Bonds, adopt an ordinance supplemental to or amendatory of the Ordinance to provide for the issuance of Future Parity Bonds and to prescribe the terms and conditions pursuant to which such Bonds may be issued, paid or redeemed; and

WHEREAS, the City desires to provide that the issuance and sale of the Bonds will be issued and secured under the Ordinance as amended and supplemented by Ordinance No. 23663, Ordinance No. 24073, Ordinance No. 24296, Ordinance No. 25004, Ordinance No. 25089, Ordinance No. 25165, Ordinance No. 25333, Ordinance No. 25489 and this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF TACOMA:

ARTICLE I

DEFINITIONS AND AUTHORITY

Section 1.1. Supplemental Ordinance. This Ordinance No. 25930 is supplemental to and is adopted in accordance with Section 5.1 and Article X of the Ordinance and shall be known as the Eighth Supplemental Electric System Revenue Bond Ordinance (the "Eighth Supplemental Ordinance").

Section 1.2. Definitions.

A. All terms that are defined in Section 1.1 of the Ordinance shall have the same meanings, respectively, in this Eighth Supplemental Ordinance as such terms are given in



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Section 1.1 of the Ordinance, as amended and supplemented by the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Supplemental Ordinances.

B. In this Eighth Supplemental Ordinance:

"Arbitrage and Tax Certification" means the certificate executed by the Director of Finance of the City pertaining to the calculation and payment of any Rebate Amount with respect to the Bonds.

"Bond Sale Resolution" means the resolution to be adopted by the City Council setting forth the final terms of the Bonds.

"Bonds" means the Electric System Revenue Bonds, 199__, of the City issued pursuant to the Ordinance and this Eighth Supplemental Ordinance.

"Code" means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the United States Treasury or the Internal Revenue Service, to the extent applicable to the Bonds.

"Eighth Supplemental Ordinance" means this Ordinance No. 25930.

"Rebate Amount" means the amount, if any, determined to be payable with respect to the Bonds by the City to the United States of America in accordance with Section 148(f) of the Code.

Section 1.3. Authority for this Eighth Supplemental Ordinance. This Eighth Supplemental Ordinance is adopted pursuant to the provisions of the laws of the State of Washington, the Tacoma City Charter and the Ordinance.



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ARTICLE II
FINDINGS; ESTABLISHMENT OF THE TELECOMMUNICATIONS PROJECT AS A
SEPARATE SYSTEM; AND ADOPTION OF PLAN AND SYSTEM

Section 2.1. Establishment of Telecommunication System. The City hereby creates a separate system of the City's Light Division to be known as the telecommunications system (the "Telecommunications System"). The public interest, welfare, convenience and necessity require the creation of the Telecommunications System, contemplated by the plan adopted by Section 2.2 hereof, for the purposes set forth in Exhibit A. The City hereby covenants that all revenues received from the Telecommunications System shall be deposited into the Revenue Fund.

Section 2.2. Adoption of Plan; Estimated Cost. The City hereby specifies and adopts the plan set forth in Exhibit A for the acquisition, construction and implementation of the Telecommunications System (the "Telecommunications Project"). The City may modify details of the foregoing plan when deemed necessary or desirable in the judgment of the City. The estimated cost of the Telecommunications Project, including funds necessary for the payment of all costs of issuing the Bonds, is expected to be approximately \$40,000,000.

Section 2.3. Findings of Parity. The Council hereby finds and determines as required by Section 5.2 of the Ordinance as follows:

A. The Bonds will be issued for financing capital improvements to the Electric System.

B. At the time of issuance and delivery of the Bonds, there will be no deficiency in the Bond Fund and no Event of Default shall have occurred.

C. At the time of issuance and delivery of the Bonds, there will be on file with the City Clerk the certificate of the Director of Finance required by Section 5.2(B)(1) or Section 5.2(C) of the Ordinance.



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The applicable limitations contained in Section 5.2 of the Ordinance having been complied with in the issuance of the Bonds, the Bonds will have a lien upon the Net Revenues of the Electric System for the payment of principal thereof and interest thereon equal in priority to the lien upon the Net Revenues of the Electric System for the payment of the principal of and interest on the 1985 Bonds, the 1986 Bonds, the 1988 Bonds, the 1989 Bonds, the 1991 Bonds, the 1992 Bonds, the 1992B Bonds, the 1993 Bonds and the 1994 Bonds.

Section 2.4. Due Regard. The Council and Board hereby find and determine that due regard has been given to the cost of the operation and maintenance of the Electric System and that it has not obligated the City to set aside into the Bond Fund for the account of the Bonds a greater amount of the revenues and proceeds of the Electric System than in its judgment will be available over and above such cost of maintenance and operation.

Section 2.5. Findings. The Council and Board hereby find it to be necessary and in the best interests of the City to issue the Bonds in order to provide part of the funds necessary to finance the Telecommunications Project.

ARTICLE III

AUTHORIZATION OF BONDS

Section 3.1. Principal Amount, Designation and Series. Pursuant to the provisions of the Ordinance, a series of Bonds of the City entitled to the benefit, protection and security of such provisions is hereby authorized in the aggregate principal amount of not to exceed \$1,000,000. Such Bonds shall be designated as, and shall be distinguished from the Bonds of all other series by the title, "City of Tacoma, Washington Electric System Revenue Bonds, 199_."

Section 3.2. Purpose. The purpose of the Bonds is to provide part of the funds necessary to finance the Telecommunications Project, make any necessary deposit to the Reserve Account and to pay the costs of issuance and sale of the Bonds.



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2 Section 3.3. Date, Maturities and Interest. The Bonds shall be issued in the aggregate
3 principal amount of not to exceed \$1,000,000 and shall be dated as of the date provided in the
4 Bond Sale Resolution and shall bear interest from their dated date to their stated dates of
5 maturity or prior redemption. The exact principal amount of the Bonds shall be established by
6 the Bond Sale Resolution. The Bonds shall mature on the dates of the years and in the
7 principal amounts and shall bear interest payable semiannually on the dates and at the rates per
8 annum set forth in the Bond Sale Resolution.

9 Section 3.4. Denomination and Numbers. The Bonds shall be issued in fully registered
10 form in the denominations of \$5,000 or any integral multiple of \$5,000 within a maturity. The
11 Bonds shall be numbered separately in such manner and with any additional designation as the
12 Registrar deems necessary for purposes of identification. The Bond Sale Resolution may
13 provide for the Bonds to be held in book-entry only form.

14 Section 3.5. Redemption Terms. By the Bond Sale Resolution, the City Council may
15 determine that all or a portion of the Bonds shall be subject to redemption prior to maturity at
16 the option of the City, in whole or in part, on any date and at the respective redemption prices
17 specified in the resolution. The City Council may designate certain Bonds as Term Bonds that
18 will be subject to redemption by operation of the Bond Retirement Account through Sinking
19 Fund Requirements in the years and amounts set forth in the resolution.

20 Section 3.6. Reservation of Right to Purchase. The City reserves the right to use
21 money in the Revenue Fund or any other legally available funds at any time to purchase any of
22 the Bonds in the open market provided there is no deficiency in the accounts within the Bond
23 Fund. Any purchases of Bonds may be made with or without tenders of Bonds and at either
24 public or private sale.

25 Section 3.7. Tax Exemption. The City shall comply with the provisions of this section
26 unless, in the written opinion of nationally-recognized Bond Counsel to the City, such



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2 compliance is not required in order to maintain the exemption of the interest on the Bonds
3 from federal income taxation.

4 The City hereby covenants that it will not make any use of the proceeds from the sale
5 of the Bonds or any other funds of the City which may be deemed to be proceeds of such
6 Bonds pursuant to Section 148 of the Code and the applicable regulations thereunder which
7 will cause the Bonds to be "arbitrage bonds" within the meaning of said Section and said
8 regulations. The City will comply with the applicable requirements of Section 148 of the Code
9 (or any successor provision thereof applicable to the Bonds) and the applicable regulations
10 thereunder throughout the term of the Bonds.

11 The City further covenants that it will not take any action or permit any action to be
12 taken that would cause the Bonds to constitute "private activity bonds" under Section 141 of
13 the Code.

14 Section 3.8. Arbitrage Rebate. The City will pay the Rebate Amount, if any, to the
15 United States of America at the times and in the amounts necessary to meet the requirements
16 of the Code to maintain the federal income tax exemption for interest payments on the Bonds,
17 in accordance with the Arbitrage and Tax Certification.

18 ARTICLE IV

19 REGISTRATION, FORM AND GENERAL TERMS

20 Section 4.1. Registrar and Paying Agent. The initial Registrar and Paying Agent shall
21 be the fiscal agencies for the state of Washington in Seattle, Washington, and New York, New
22 York.

23 Section 4.2. Transfer and Exchange. So long as the Bonds are not in book-entry form,
24 any Bond may be transferred pursuant to its provisions at the Registrar's principal office for
25 such purpose by surrender of such Bond for cancellation, accompanied by a written instrument
26 of transfer, in form satisfactory to the Registrar, duly executed by the registered owner in



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2 person or by the registered owner's duly authorized attorney. Upon payment of any applicable
3 tax or governmental charge, the City will execute and the Registrar will authenticate and
4 deliver at the principal office of the Registrar (or send by registered mail to the owner thereof
5 at the owner's expense), in the name of the transferee or transferees, a new Bond or Bonds in
6 authorized denominations of the same interest rate, aggregate principal amount and maturity,
7 dated as of the last interest payment date to which interest has been paid so that there shall
8 result no gain or loss of interest as a result of such transfer. To the extent of authorized
9 denominations, one Bond may be exchanged for several bonds of the same interest rate and
10 maturity, and for a like aggregate principal amount, and several Bonds of the same interest rate
11 and maturity may be exchanged for one or several Bonds, respectively, of the same interest
12 rate and maturity and for a like aggregate principal amount.

13 In every case of a transfer or exchange of any Bonds, the surrendered Bonds shall be
14 canceled by the Registrar and a certificate evidencing such cancellation shall be promptly
15 transmitted by the Registrar to the City. As a condition of any such transfer or exchange, the
16 City at its option may require the payment of a sum sufficient to reimburse it for any tax or
17 other governmental charge that may be imposed thereon. All Bonds executed, authenticated
18 and delivered in exchange for or upon transfer of Bonds so surrendered shall be valid
19 obligations of the City evidencing the same debt as the Bonds surrendered, and shall be entitled
20 to all the benefits and protection of the Ordinance to the same extent as the surrendered
21 Bonds.

22 Section 4.3. Limitation on Transfer or Exchange of Bonds. The City shall not be
23 required to (a) issue, transfer, or exchange Bonds after the 15th day of the month prior to any
24 interest payment date therefor, or (b) to register, discharge from registration, transfer or
25 exchange any Bonds which have been designated for redemption within a period of 30 days
26 next preceding the date fixed for redemption.



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Section 4.4. Effect of Payment. All payments of or on account of interest to any registered owner of any Bond, and all payments of or on account of principal to any registered owner of any Bond (or to his or her assigns), shall be valid and effectual and shall be a discharge of the City, the Paying Agent and the Registrar in respect of the liability upon the Bonds or claims for interest, as the case may be, to the extent of the sum or sums paid.

All Bonds upon the payment or redemption thereof shall be canceled and destroyed by the Paying Agent, and a certificate evidencing such payment, cancellation and destruction shall be promptly transferred by the Paying Agent to the City.

Section 4.5. Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall at any time become mutilated or be lost, stolen or destroyed, the City in the case of such mutilated Bond shall, and in the case of such lost, stolen or destroyed Bond in its discretion may, execute and direct the Registrar to authenticate and deliver a new Bond of the same interest rate and maturity and of like tenor and effect in exchange or substitution for and upon surrender and cancellation of such mutilated Bond, or in lieu of or in substitution for such destroyed, stolen or lost Bond. If such stolen, destroyed or lost Bond shall have matured or have been called for redemption, instead of issuing a substitute therefor, the City may without the surrender of such Bond at its option pay the same (in which case the City shall promptly file a certificate to that effect with the Paying Agent and Registrar) or cause the same to be paid by the Paying Agent by a certificate of the City directing such payment filed with the Paying Agent. Except in the case where a mutilated Bond is surrendered, the applicant for the issuance of a substitute Bond shall furnish to the City and the Registrar evidence satisfactory to them of the theft, destruction or loss of the original Bond, and also such security and indemnity as may be required by the City or the Registrar, and no such substitute Bond shall be issued unless the applicant for the issuance thereof shall reimburse the City and the Registrar for the expenses incurred in connection with the preparation, execution, authentication, issuance and



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delivery of the substitute Bond. Any such substitute Bond shall be equally and proportionately entitled to the security of the Ordinance with all other Bonds issued hereunder, whether or not the Bond alleged to have been lost, stolen or destroyed shall be found at any time. The Registrar shall cancel all mutilated Bonds surrendered to it.

Section 4.6. Execution and Authentication of Bonds. The Bonds shall be executed on behalf of the City with the manual or facsimile signature of the Mayor and attested with the manual or facsimile signature of the City Clerk and the seal of the City shall be imprinted or impressed on each of the Bonds. The Bonds shall bear thereon a certificate of authentication, in the form set forth in Section 4.7 of this Eighth Supplemental Ordinance, executed manually by the Registrar. Only such Bonds as shall bear thereon such certificate of authentication shall be entitled to any right or benefit under the Ordinance and no Bond shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Registrar. Such certificate of the Registrar upon any Bond executed on behalf of the City shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered under the Ordinance and that the owner thereof is entitled to the benefits of the Ordinance.

In case any of the officers who shall have signed or attested any of the Bonds shall cease to be such officers before the Bonds so signed or attested shall have been actually delivered, such Bonds shall be valid nevertheless and may be issued by the City with the same effect as though the persons who had signed or attested such Bonds had not ceased to be such officers.



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Section 4.7. Form of Bonds.

(a) The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF WASHINGTON
CITY OF TACOMA
ELECTRIC SYSTEM REVENUE BOND, 199_

No. _____ \$ _____
Interest Rate: _____ Maturity Date: _____ CUSIP No: _____
_____% _____
Registered Owner: _____
Principal Amount: _____ DOLLARS

The City of Tacoma, a municipal corporation of the State of Washington (hereinafter called the "City"), for value received, hereby promises to pay to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, the Principal Amount indicated above and to pay interest on such principal amount from the date hereof or the most recent date to which interest has been paid or duly provided for, at the Interest Rate set forth above per annum, payable _____, 199_, and semiannually thereafter on the first day of each _____ and _____ until payment shall have been made or provided for.

Principal of and interest on this bond are payable solely out of the special fund of the City known as the "Electric System Revenue Bond Fund" created and established by Ordinance No. 23514 of the City (the "Bond Fund"). Both principal of and interest on this bond are payable in lawful money of the United States of America. Interest shall be paid by mailing a check or draft or by wire transfer as provided in the Bond Ordinance (as hereinafter defined) to the registered owner or assigns at the address shown on the bond register as of the 15th day of the month prior to the interest payment date. Principal shall be paid to the registered owner or assigns upon presentation and surrender of this bond at the principal office of the Paying Agent or Agents which initially are the fiscal agencies of the State of Washington in Seattle, Washington, and New York, New York. (Such fiscal agencies also act, and are hereinafter referred to collectively, as the "Bond Registrar").

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.



1 This bond is one of a duly authorized series of bonds aggregating \$ _____
2 in principal amount and designated as "Electric System Revenue Bonds, 199_." This bond and
3 the bonds of this series (the "Bonds") are issued under and pursuant to Ordinance No. 23514
4 as amended and supplemented by Ordinance No. 23663, Ordinance No. 24073, Ordinance No.
5 24296, Ordinance No. 25004, Ordinance No. 25089, Ordinance No. 25165, Ordinance
6 No. 25489 and Ordinance No. 25930 of the City (together the "Bond Ordinance"), and under
7 the authority of and in full compliance with the Constitution and laws of the State of
8 Washington.

9 The Bonds are issued for the purpose of providing part of the funds necessary for
10 financing capital improvements to the Electric System. The Bond Ordinance permits the
11 issuance of Future Parity Bonds payable from the Bond Fund ranking on a parity with the 1985
12 Bonds, the 1986 Bonds, the 1988 Bonds, the 1989 Bonds, the 1991 Bonds, the 1992 Bonds,
13 the 1992B Bonds, the 1993 Bonds, the 1994 Bonds and the Bonds and secured by an equal
14 charge and lien on the Net Revenues and permits the costs associated with certain Contract
15 Resource Obligations to be included in the Electric System's Operating Expenses (as such
16 terms are defined in the Bond Ordinance). The 1985 Bonds, the 1986 Bonds, the 1988 Bonds,
17 the 1989 Bonds, the 1991 Bonds, the 1992 Bonds, the 1992B Bonds, the 1993 Bonds, the
18 1994 Bonds, the Bonds and any Future Parity Bonds are hereinafter collectively referred to as
19 the "Parity Bonds."

20 Copies of the Bond Ordinance are on file at the office of the City Clerk and at the
21 principal office of each Paying Agent for this bond. Reference is hereby made to the Bond
22 Ordinance and to any and all modifications and amendments thereof for a more complete
23 description of the Revenues available for the payment of the principal of and interest on the
24 Bonds and the rights and remedies of the owners of the Bonds with respect thereto, the terms
25 and conditions upon which the Bonds have been issued, and the terms and conditions upon
26 which this bond shall no longer be secured by the Bond Ordinance or deemed to be
outstanding thereunder if money or certain specified securities sufficient for the payment of this
bond shall have been set aside in a special account and held in trust for the payment thereof.
Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the
Bond Ordinance.

Under the Bond Ordinance, the City is obligated to set aside and pay into the Bond
Fund out of the Revenues of said Electric System certain fixed amounts sufficient to pay the
principal of and interest and premium, if any, on all Parity Bonds at any time outstanding as the
same become due and payable, all as is more fully provided in the Bond Ordinance. The Bonds
and the interest thereon constitute the only charge against the Bond Fund and the amount of
the Net Revenues pledged to said Bond Fund, as provided in the Bond Ordinance.

In and by the Bond Ordinance, the City covenants to establish, maintain and collect
rates and charges for electric energy sold through the ownership or operation of the Electric



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System and all other services, facilities and commodities sold, furnished or supplied by the City in connection with the ownership or operation of the Electric System which shall be fair and adequate to provide Revenues sufficient for the payment of the Parity Bonds and all payments which the City is obligated to set aside in the Bond Fund and for the proper operation and maintenance of the Electric System, including payment of certain Contract Resource Obligations, all necessary repairs, replacements and renewals thereof and other costs thereof, as provided in the Bond Ordinance.

The Bonds maturing on and after _____ 1, _____ are subject to redemption prior to maturity at the option of the City on any date on and after _____ 1, 20__, in whole or in part, upon written notice as provided hereinafter, at the redemption prices with respect to each Bond (expressed as a percentage of the principal amount of the Bonds to be redeemed) set forth below, together with the interest, if any, accrued thereon to the date fixed for redemption:

Redemption Period	Redemption Price
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If less than all of the Bonds subject to optional redemption are to be called for redemption, the City shall choose the maturities to be redeemed. In the event that less than all of the Bonds of any maturity are called for redemption, the particular Bonds of such maturity to be redeemed shall be selected by lot by the Bond Registrar, or, so long as the Bonds are held in book-entry form, by the Securities Depository.

The Bonds maturing on _____ 1, _____ (hereinafter referred to as the "Term Bonds") shall be redeemed prior to maturity by lot, not later than _____ 1 in the years _____ through _____, inclusive, from amounts credited to the Bond Retirement Account in the Bond Fund as sinking fund installments therefor (to the extent such amounts have not been used to redeem or purchase such Bonds as provided below) and in the principal amounts as set forth below, upon written notice as provided hereinafter by payment of the principal amount thereof, together with the interest, if any, accrued thereon to the date fixed for redemption.

Year	Amount
------	--------

The City may purchase or redeem the Term Bonds through the application of part or all of the respective sinking fund installments therefor at any time prior to any _____ 1 due date.



1 Any money not so used to redeem or to purchase such Term Bonds shall be substantially
2 exhausted by application to the redemption of such bonds on such succeeding _____ 1. If, as
3 of any _____ 1, the principal amount of Term Bonds retired by purchase or redemption from
4 any source exceeds the cumulative requirement for sinking fund installments through such
date, such excess may be credited against the sinking fund installment for the next fiscal year.

5 Written notice of redemption shall be given by first class mail, postage prepaid, not less
6 than 30 days nor more than 60 days before the redemption date to the registered owners of the
7 Bonds to be redeemed in whole or in part at their last addresses, if any, appearing on the Bond
8 Register, but any defect with respect to the redemption of any bond shall not invalidate the
9 redemption of any other bond. Notice of redemption having been given by mailing, as
10 aforesaid, the Bonds so called for redemption shall on the date specified in such notice become
due and payable at the applicable redemption price herein provided, and from and after the date
11 so fixed for redemption (except as to any bond, or portion of any bond, not so redeemed in
accordance with such call for redemption) interest on said Bonds so called for redemption shall
12 cease to accrue.

13 A portion of the principal sum of this bond in the amount of \$5,000, or any integral
14 multiple thereof, may be redeemed, and if less than all of the principal sum hereof is to be
15 redeemed, in such case upon the surrender of this bond at the principal office of the Bond
16 Registrar, there shall be issued to the registered owner, without charge therefor, for the then
17 unredeemed balance of the principal sum hereof, fully registered bonds of like series, maturity
18 and interest rate in any of the denominations authorized by the Bond Ordinance.

19 This bond shall be transferable by the registered owner at the principal offices of the
20 Bond Registrar upon surrender and cancellation of this bond, and thereupon a new registered
21 bond or bonds of the same principal amount and interest rate and maturity will be issued to the
22 transferee as provided in the Bond Ordinance. The City, the Bond Registrar, the Paying
23 Agents and any other person may treat the person in whose name this bond is registered as the
24 absolute owner hereof for the purpose of receiving payment hereof and for all purposes and
25 shall not be affected by any notice to the contrary, whether this bond be overdue or not.

26 It is hereby certified, recited and declared that all acts, conditions and things required
by the Constitution and statutes of the State of Washington to exist, to have happened and to
have been performed precedent to and in the issuance of this bond do exist, have happened and



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have been performed in due time, form and manner as prescribed by law, and that the amount of this bond, together with all other obligations or indebtedness of the City, does not exceed any constitutional or statutory limitations of indebtedness.

IN WITNESS WHEREOF, the City of Tacoma, by its City Council, has caused this bond to be executed in its name with the facsimile or manual signature of its Mayor, and attested by the facsimile or manual signature of its Clerk, and the seal of said City to be imprinted or impressed hereon, all as of the _____ day of _____, 199_.

CITY OF TACOMA, WASHINGTON

By _____
Mayor

(SEAL)

Attest:

City Clerk

Authentication Date: _____

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Bond Ordinance and is one of the Electric System Revenue Bonds, 199_ of the City of Tacoma, Washington, dated _____, 199_.

WASHINGTON STATE FISCAL
AGENCY, Bond Registrar

By _____
Authorized Officer



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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR TAXPAYER
IDENTIFICATION NUMBER OF TRANSFEREE

[Empty box for Social Security or Taxpayer Identification Number]

(Please print or typewrite name and address, including zip code, of Transferee)

_____ the
within bond and does hereby irrevocably constitute and appoint _____
attorney-in-fact to transfer said bond on the books kept for registration thereof with full power
of substitution in the premises.

DATED: _____

SIGNATURE GUARANTEED:

NOTE: The signature on this Assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

ARTICLE V

APPLICATION OF PROVISIONS OF ORDINANCE TO BONDS

Section 5.1. Issuance of Future Parity Bonds. The provisions of Article V of the Ordinance relating to the issuance of Future Parity Bonds shall apply to the Bonds.

Section 5.2. Contract Resource Obligations. The provisions of Article VI of the Ordinance relating to Contract Resource Obligations shall apply to the Bonds.

Section 5.3. Application of Sections 7.1 through 7.3 of Ordinance Relating to Special Funds and Accounts. Except as otherwise provided below in Section 5.10, the provisions of



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2 Sections 7.1 through 7.3 of the Ordinance relating to the Revenue Fund and the accounts
3 therein, the Bond Fund and the accounts therein, the Cumulative Reserve Fund, and the
4 investment of money held for the credit of such Funds shall apply to the Bonds.

5 Section 5.4. Covenants to Secure Bonds. The provisions of Article IX of the
6 Ordinance setting forth the covenants to secure Bonds, as amended by Article VII of the First
7 Supplemental Ordinance, shall apply to the Bonds.

8 Section 5.5. Supplemental and Amendatory Ordinances. The provisions of Article X
9 of the Ordinance relating to supplemental and amendatory ordinances shall apply to the Bonds.

10 Section 5.6. Defaults and Remedies. The provisions of Article XI of the Ordinance
11 relating to defaults and remedies shall apply to the Bonds.

12 Section 5.7. Amendments and Bondowners' Meetings. The provisions of Article XII
13 of the Ordinance relating to amendments and bondowners' meetings shall apply to the Bonds.

14 Section 5.8. Miscellaneous. The provisions of Article XIII of the Ordinance relating
15 to the City's contract with the owners of Bonds, money held by the Paying Agent one year
16 after the due date, the benefits of the Ordinance and severability shall apply to the Bonds.

17 Section 5.9. Rights of AMBAC. The provisions of Article X of the Second
18 Supplemental Ordinance and Article VII of the Fifth Supplemental Ordinance and Article VIII
19 of the Sixth Supplemental Ordinance relating to the rights of AMBAC Indemnity Corporation
20 are incorporated herein by reference and shall be in force and effect so long as any 1988 Bond,
21 1992 Bond or 1992B Bond, respectively, is Outstanding and insured by the municipal bond
22 guaranty insurance policy therein authorized.

23 Section 5.10. Reserve Subaccount. There is hereby established within the Reserve
24 Account a special subaccount entitled the "199__ Reserve Subaccount." Funds in such
25 Reserve Subaccount shall be treated in all respects as other funds in the Reserve Account. The
26 City shall make transfers into the Reserve Subaccount from money and investments in the



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2 Reserve Account, from proceeds of the Bonds, or from other available money in amounts
3 sufficient to satisfy the Reserve Account Requirement with respect to the Bonds.

4 The City is authorized to satisfy the requirements of Section 7.2 of the Ordinance with
5 respect to the Reserve Account as to the Bonds through the use of Qualified Insurance, or a
6 Qualified Letter of Credit, which may be purchased on the date of closing of the Bonds or after
7 the issuance of the Bonds and substituted for amounts in the Reserve Subaccount pursuant to
8 the provisions of Section 7.2 of the Ordinance.

9 ARTICLE VI

10 DISPOSITION OF BOND PROCEEDS

11 Section 6.1. Construction Account. A special fund of the City has heretofore been
12 created and designated the "City of Tacoma Electric System Construction Fund" (the
13 "Construction Fund"). There is hereby created within the Construction Fund a special account
14 to be known as the "199__ Bonds Construction Account" into which shall be deposited from
15 the proceeds of sale of the Bonds. Money in the Construction Account shall be used for
16 paying part of the costs of the acquisition, construction and installation of the additions and
17 improvements described in Exhibit A, and for paying all expenses incidental thereto (including
18 but not limited to costs of issuance of the Bonds, engineering, financing, legal or any other
19 incidental costs) and for repaying any advances heretofore or hereafter made on account of
20 such costs, and such money or so much thereof as may be necessary be and hereby is
21 appropriated for such purpose.

22 All proceeds of the Bonds so deposited in the Construction Account shall be
23 continuously and fully invested to the extent practicable in Permitted Investments. Interest
24 earned and income or profits derived by virtue of such investments shall remain in the account
25 and be used for the purposes for which the Bonds are issued or other lawful purposes. Money
26 in the Construction Account may be transferred to the Bond Fund in such amounts as shall be



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2 necessary to pay principal of and interest on Bonds, and may be used to pay any Rebate
3 Amount.

4 Section 6.2. Disposition of Proceeds. The proceeds of the Bonds are hereby
5 appropriated for the following purposes and shall be deposited as follows:

6 1. The amount equal to the interest accruing on the Bonds from their dated
7 date to the date of their delivery shall be deposited in the Interest Account in the Bond Fund
8 and invested in Permitted Investments.

9 2. To the extent permitted by the Code, the amount that when added to
10 other money in the Reserve Account will ensure that the total amount in the Reserve Account
11 equals the Reserve Account Requirement shall be deposited in the Reserve Account in the
12 Bond Fund.

13 3. The balance of the Bond proceeds shall be deposited in the Construction
14 Account and used for the purposes specified in Sections 6.1, including payment of costs of
15 issuance of the Bonds.

16 ARTICLE VII

17 SALE OF BONDS

18 Section 7.1. Sale of Bonds. The Bonds may be sold by competitive or negotiated sale,
19 which sale shall be approved by the Bond Sale Resolution.

20 Section 7.2. Official Statement; Insurance. The Director and/or Deputy Director of
21 Utilities are authorized to prepare a preliminary official statement for the marketing of the
22 Bonds and to solicit bids for bond insurance. The Bond Sale Resolution shall approve the
23 preliminary and final official statements and any bond insurance.
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ARTICLE VIII
MISCELLANEOUS

Section 8.1. Defeasance. In the event that the City, in order to effect the payment, retirement or redemption of any Bond, sets aside in the Bond Fund or in another special account, advance refunding bond proceeds or other money lawfully available or direct obligations of the Department of the Treasury of the United States of America ("Government Obligations"), or any combination of such proceeds, money and/or Government Obligations, in amounts which, together with known earned income from the investment thereof are sufficient to redeem, retire or pay such Bond in accordance with its terms and to pay when due the interest and redemption premium, if any, thereon, and such proceeds, money and/or Government Obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Bond Fund for the payment of the principal of and interest on such Bond, and the owner of such Bond shall cease to be entitled to any lien, benefit or security of the Ordinance except the right to receive payment of principal, premium, if any, and interest from such special account, and such Bond shall be deemed not to be outstanding hereunder.

Section 8.2. Undertaking to Provide Ongoing Disclosure. In the Bond Sale Resolution the City shall undertake to provide certain ongoing disclosure for the benefit of the owners of the Bonds as required by Section (b)(5) of the Securities and Exchange Commission's Rule 15c2-12 under the Securities and Exchange Act of 1934.

Section 8.3. Severability. If any one or more of the provisions of this Eighth Supplemental Ordinance is or are held by any court of competent jurisdiction to be contrary to law, then such provision or provisions shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of the other provisions of this Eighth Supplemental Ordinance or the Bonds.



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Section 8.4. Effective Date. This Eighth Supplemental Ordinance shall take effect and be in force thirty days after its passage, approval and publication as required by law. Any actions taken pursuant to this Eighth Supplemental Ordinance before its effective date and after its passage are hereby ratified, approved and confirmed.

INTRODUCED AND READ FOR THE FIRST TIME at a regular meeting of the City Council held the 16th day of July, 1996.

PASSED by the City Council of the City of Tacoma, Washington, and authenticated by its Mayor at a regular meeting of the Council held this _____ day of July, 1996.

CITY OF TACOMA, WASHINGTON

Passed July 23, 1996

By _____
Mayor

Attest:

City Clerk

APPROVED AS TO FORM:

City Attorney



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EXHIBIT A

TELECOMMUNICATIONS PROJECT

The Telecommunications Project will include some or all of the following elements:

Infrastructure improvements

Construct a hybrid fiber coax ("HFC") telecommunications infrastructure consisting of fiber optic rings and branches connecting nodes throughout the Light Division service area. This telecommunications system will be asymmetrically two-way capable. It will interconnect all Light Division substations. Connections may also be made with Light Division customers and with other providers of telecommunications infrastructure and services. This telecommunications system will have 500 channels. It will utilize existing Light Division rights-of-way.

Functions to be performed by infrastructure improvements

Through construction of the HFC telecommunications system, the Light Division's Telecommunications System will be capable of performing some or all of the following functions:

- conventional substation communications functions
- automated meter reading (electric and water)
- automated billing (electric and water)
- automated bill payment (electric and water)
- demand side management (DSM) functions, such as automated load (*e.g.* water heater) control
- provision of information to customers that is relevant to their energy and water purchasing decisions (*e.g.* information on time-of-use or "green" power rates)
- distribution automation
- remote turn on/turn off for electric and water customers
- city government communications functions
- CATV service
- transport of signals for service providers offering telecommunications services (*e.g.* Personal Communications Service (PCS), video on demand, high speed data, as well as conventional wired and wireless telecommunications services)
- Internet access service



CLERK'S CERTIFICATE

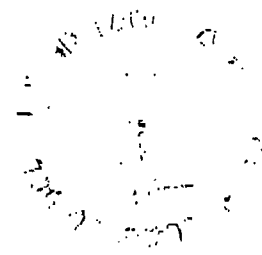
I, the undersigned, the duly chosen, qualified and acting City Clerk of the City of Tacoma, Washington, and keeper of the records of the City Council (herein called the "Council"), DO HEREBY CERTIFY:

1. That the attached Ordinance No. 25930 (herein called the "Ordinance") is a true and correct copy of an Ordinance of the Council, as finally passed at a regular meeting of the Council held on the 23rd day of July, 1996 and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of said Ordinance; that all other requirements and proceedings incident to the proper adoption of said Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City as of this 24th day of July, 1996.

Rick Rosenblatt
City Clerk
City of Tacoma, Washington



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EXHIBIT E

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IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,)

Plaintiff;)

v.)

THE TAXPAYERS AND RATEPAYERS OF)
THE CITY OF TACOMA,)

Defendants.)

No. 96 2 09938 0

PLAINTIFF'S MOTION TO APPOINT
TAXPAYER AND RATEPAYER
REPRESENTATIVE AND TO ALLOW
FEES AND COSTS


Plaintiff City of Tacoma ("City") requests that this Court appoint Harold E. Nielsen, Jr., to serve as the representative of the defendant Taxpayers and Ratepayers of the City of Tacoma, except for those taxpayers and ratepayers who intervene in this action.

The City further requests that this Court enter an order allowing a reasonable attorneys fee and costs to be paid by the City for the attorney who shall represent Nielsen in this action.

DATED this 24th day of July, 1996.

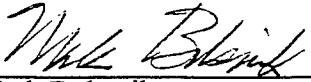
PRESTON GATES & ELLIS

By


Elizabeth Thomas, WSBA # 11544

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CITY OF TACOMA

By 
Mark Bubenik, WSBA # 3063
Chief Assistant City Attorney

Attorneys for Plaintiff City of Tacoma

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IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,

Plaintiff,

v.

THE TAXPAYERS AND RATEPAYERS OF
THE CITY OF TACOMA,

Defendants.

No. 96 2 09938 0

MEMORANDUM IN SUPPORT OF CITY
OF TACOMA'S MOTION TO APPOINT
TAXPAYER AND RATEPAYER
REPRESENTATIVE AND TO ALLOW
FEES AND COSTS

Plaintiff City of Tacoma ("City") requests that this Court appoint Harold E. Nielsen, Jr., as the representative of all City taxpayers and Light Division ratepayers in this action pursuant to RCW 7.25.020. The City has brought this declaratory judgment action under chapters 7.24 and 7.25 RCW in order to determine the validity of electric system revenue bonds ("Bonds") it wishes to issue. The City proposes to issue the Bonds in part for purposes of constructing and operating a telecommunications system.

Chapter 7.25 expressly authorizes a declaratory judgment action for purposes of determining the validity of municipal bonds. The statute specifies that the taxpayers of the issuing municipality are proper defendants in such an action. Section 7.25.020 provides that upon application of the plaintiff municipality, "the court shall enter an order naming one or more taxpayers ... upon whom service in said action shall be made as the representative of all taxpayers," except those taxpayers who choose to intervene independently.

MEMORANDUM IN SUPPORT OF CITY OF TACOMA'S
MOTION TO APPOINT TAXPAYER REPRESENTATIVE AND
TO ALLOW FEES AND COSTS - 1

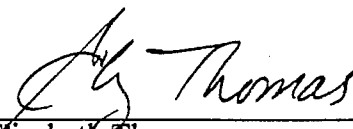
1 This Court should grant the City's request to appoint Harold E. Nielsen, Jr., as the taxpayer
2 and ratepayer representative. Nielsen, a real estate appraiser in the Pierce County Assessor-
3 Treasurer's Office and a former member of the Tacoma City Council, Tacoma Civil Service Board,
4 and Tacoma Planning Commission, as well as a former Deputy Mayor of the City of Tacoma, is well-
5 qualified and is willing to serve.

6 Further, this Court should order the City to pay the reasonable attorney's fees and costs of
7 counsel for Nielsen. RCW 7.25.020 provides that, "the court shall fix and allow a reasonable
8 attorney's fee . . . to the attorney who shall represent the representative taxpayer," and that such fee
9 and taxable costs shall be taxed as costs against the plaintiff. (Other taxpayers who intervene must
10 bear the costs of their own attorneys.) This provision for attorney fees represents sound policy.
11 Nielsen should not have to bear the expense of an attorney because he will be acting not for himself,
12 but in a representative capacity on behalf of all City taxpayers and Light Division ratepayers.

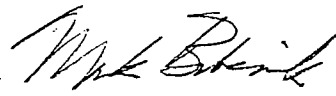
13 The City does not believe that it is necessary to specify a particular amount of attorney's fees
14 and costs to be paid to counsel for Nielsen. The City anticipates that all parties and their counsel will
15 take appropriate actions to litigate thoroughly the issues in this matter without incurring excessive
16 fees or costs.

17 DATED this 24th day of July, 1996.

18 PRESTON GATES & ELLIS

19
20 By 
Elizabeth Thomas, WSBA # 11544

21
22 CITY OF TACOMA

23 By 
24 Mark Bubenik, WSBA # 3093
Chief Assistant City Attorney

25 Attorneys for Plaintiff City of Tacoma
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MEMORANDUM IN SUPPORT OF CITY OF TACOMA'S
MOTION TO APPOINT TAXPAYER REPRESENTATIVE AND
TO ALLOW FEES AND COSTS - 2

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IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,
Plaintiff,
v.
THE TAXPAYERS AND RATEPAYERS OF
THE CITY OF TACOMA,
Defendants.

No. 96 2 09938 0
DECLARATION OF MARK BUBENIK
IN SUPPORT OF APPOINTMENT OF
TAXPAYER AND RATEPAYER
REPRESENTATIVE

1. My name is Mark Bubenik. I am the Chief Assistant City Attorney for the City of Tacoma ("City"). I am filing this declaration in support of the City's Motion To Appoint Taxpayer and Ratepayer Representative And To Allow Fees And Costs.

2. I have known Harold E. Nielsen, Jr., for approximately twenty years. Mr. Nielsen is a lifelong resident of Tacoma. He has worked as a real estate appraiser in the Pierce County Assessor-Treasurer's Office for twenty-five years. He pays taxes levied by the City and electric rates for service provided by the Light Division of the Tacoma Department of Public Utilities.

3. Mr. Nielsen has informed me that he is willing to serve as the representative of the defendant taxpayers and ratepayers in this action. He stated that he would vigorously defend the interests of City taxpayers and ratepayers, and would retain reputable counsel to oppose the City's

DECLARATION OF MARK BUBENIK
IN SUPPORT OF APPOINTMENT OF
TAXPAYER AND RATEPAYER REPRESENTATIVE - 1

1 position, in order to help provide the court with a thorough understanding of the issues to be resolved
2 in this action.

3 4. Mr. Nielsen has a strong reputation for leadership and integrity in the Tacoma
4 community. He has served for four terms as a member of the Tacoma City Council, for one term as a
5 member of the Tacoma Civil Service Board, as Deputy Mayor of Tacoma from 1980-1983, and for
6 seventeen years as a member of the Tacoma Planning Commission.

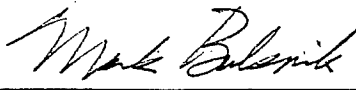
7 5. Mr. Nielsen holds an associate of liberal arts degree from Tacoma Community College
8 and attended the University of Puget Sound.

9 6. I believe that Mr. Nielsen will fully and fairly represent the interests of all individuals,
10 property owners, corporations and other entities who pay any type of taxes and electric rates to the
11 City of Tacoma in this action.

12 7. I am not aware of any reason why Mr. Nielsen should not be appointed to serve as the
13 representative of the taxpayers and ratepayers. Mr. Nielsen is not employed by the City, nor am I
14 aware that he has any other potential conflict with the shared interests of the taxpayers or ratepayers
15 in this action.

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

18 DATED this 25th day of JULY, 1996 at Tacoma, Washington.

19
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21 Mark Bubenik WSBA # 3093

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DECLARATION OF MARK BUBENIK
IN SUPPORT OF APPOINTMENT OF
TAXPAYER AND RATEPAYER REPRESENTATIVE - 2

EXHIBIT F

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FILED
IN COUNTY CLERK'S OFFICE
A.M. **AUG 16 1996** P.M.
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,)	No. 96 2 09938 0
)	
Plaintiff,)	MOTION FOR CERTIFICATION
)	OF CLASS ACTION AND FOR
v.)	APPOINTMENT OF CLASS
)	REPRESENTATIVE
THE TAXPAYERS AND THE RATEPAYERS)	
OF THE CITY OF TACOMA ,)	
)	
Defendants.)	

The City of Tacoma ("City") moves the Court for certification of its action as a class action under CR 23(b)(2). The defendant class would be comprised of the following:

All ratepayers of the Light Division of the Department of Public Utilities of the City of Tacoma

The City further moves for appointment of Harold E. Nielsen, Jr., as the representative of the class. The motion is based on the pleadings on file in this action and the City of Tacoma's supporting memorandum of law.

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DATED this 14th day of August, 1996.

PRESTON GATES & ELLIS

By *Elizabeth Thomas*
Elizabeth Thomas, WSBA # 11544

CITY OF TACOMA

Mark Buberik
By *Elizabeth Thomas*
Mark Buberik, WSBA # 3093
Chief Assistant City Attorney

Attorneys for Plaintiff City of Tacoma

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A.M. **AUG 16 1996** P.M.

PIERCE COUNTY, WASHINGTON
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IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,)
)
) Plaintiff,)
)
) v.)
)
) THE TAXPAYERS AND THE RATEPAYERS)
) OF THE CITY OF TACOMA,)
)
) Defendants.)

No. 96 2 09938 0

MEMORANDUM IN SUPPORT OF CITY
OF TACOMA'S MOTION FOR
CERTIFICATION OF CLASS ACTION
AND APPOINTMENT OF CLASS
REPRESENTATIVE

Introduction

Plaintiff City of Tacoma ("City") requests that this Court certify this action as a class action under CR 23(b)(2). The City has brought this declaratory judgment action under chapters 7.24 and 7.25 RCW in order to determine the validity of Electric System Revenue Bonds ("Revenue Bonds") it wishes to issue. The City proposes to issue the Revenue Bonds in part for purposes of constructing and operating a telecommunications system.

The City requests that the Court certify the following defendant class:

All ratepayers of the Light Division of the Department of Public Utilities of the City of Tacoma

The City further requests appointment of Harold E. Nielsen, Jr., as the class representative. The City is not requesting certification of a class of taxpayers because Chapter 7.24 RCW provides

ORIGINAL

MEMORANDUM IN SUPPORT OF CITY OF TACOMA'S
MOTION FOR CERTIFICATION OF CLASS ACTION AND
APPOINTMENT OF CLASS REPRESENTATIVE - 1

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1 for an award of relief as against all taxpayers without the need for class certification. Mr. Nielsen has
2 already been appointed to represent all taxpayers.

3 Argument

4 CR 23(b)(2) establishes the standards for class certification in a declaratory judgment action.
5 It permits the maintenance of an action as a class action if "the party opposing the class has acted or
6 refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive
7 relief or corresponding declaratory relief with respect to the class as a whole," and if the prerequisites
8 of CR 23(a) are satisfied. Under CR 23(a), one or more members of a defendant class may be sued as
9 representative parties on behalf of all defendants if (1) the class is so numerous that joinder of all
10 members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or
11 defenses of the parties are typical of the claims and defenses of the class, and (4) the representative
12 parties will fairly and adequately protect the interests of the class.

13 Both aspects of CR 23(b)(2) are satisfied by this action. First, provision of declaratory relief
14 with respect to the class as whole is appropriate. The City, which would oppose the class, is acting
15 on grounds generally applicable to all Light Division ratepayers. The City proposes to issue bonds in
16 order to provide new telecommunications services that would be available to all Light Division
17 ratepayers. In addition, the bonds would be secured by revenues from all Light Division ratepayers.
18 Thus, the City is "engaged in a 'common course of conduct' in relation to all class members" and the
19 claims arise from a " 'common nucleus of operative facts.' " *Brown v. Brown*, 6 Wn. App. 249, 255,
20 492 P.2d 581 (1971) (internal citations omitted) (reversing trial court's denial of class certification for
21 class comprised of certain Tacoma Department of Public Utilities ratepayers). All ratepayers should
22 be bound by the declaratory relief that the City is seeking.

23 Second, this action satisfies the four criteria of CR 23(a). The class would be numerous,
24 consisting of the approximately 138,312 individuals and entities that are ratepayers of the Light
25 Division of the City's Department of Public Utilities. *See* Exhibit A. Joinder of all of these ratepayers
26

1 would be impracticable. Questions of law and fact are common to all class members, since the central
2 issues involve the City's plans and the City's authority rather than any action taken or authority
3 possessed by any defendant. Accordingly, the defenses that could be expected to be raised by the
4 class representative would be typical of the defenses that could be expected to be raised by other class
5 members.

6 The proposed class representative, Harold E. Nielsen, Jr., would fairly and adequately
7 represent the interests of the class. He is a ratepayer of the Light Division, is a lifelong resident of
8 Tacoma, and has a strong reputation for civic leadership and integrity. Declaration of Mark Bubenik
9 in Support of Appointment of Taxpayer Representative at 2. Mr. Nielsen has stated that he would
10 vigorously defend the interests of ratepayers. *Id.* at 1. He has already retained reputable counsel,
11 Ronald E. Thompson, to oppose the City's position. He has already been appointed by the Court to
12 represent the taxpayers in this action, whose interests are virtually identical in ensuring that the City
13 does not take unauthorized action in issuing bonds for the telecommunications system.

14 Conclusion

15 The Court should certify a class of defendant ratepayers for purposes of this declaratory
16 judgment action because the action fully satisfies CR 23(b)(2). Mr. Nielsen should be appointed to
17 represent the class.

1 DATED this 14th day of August, 1996.

2 PRESTON GATES & ELLIS

3
4 By *Elizabeth Thomas*
5 Elizabeth Thomas, WSBA # 11544

6
7 CITY OF TACOMA

8 *Mark Bubenic*
9 By *Elizabeth Thomas*
10 Mark Bubenic, WSBA # 3093
11 Chief Assistant City Attorney

12 Attorneys for Plaintiff City of Tacoma

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MEMORANDUM IN SUPPORT OF CITY OF TACOMA'S
MOTION FOR CERTIFICATION OF CLASS ACTION AND
APPOINTMENT OF CLASS REPRESENTATIVE - 4

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IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,)
Plaintiff,)
v.)
THE TAXPAYERS AND THE RATEPAYERS)
OF THE CITY OF TACOMA,)
Defendants.)

No. 96 2 09938 0

AGREED ORDER GRANTING
CERTIFICATION OF ACTION AS
CLASS ACTION AND APPOINTMENT
OF CLASS REPRESENTATIVE

This matter came before the Court on the City of Tacoma's ("City's") motion for an order certifying the City's action as a class action under CR 23(b)(2) and the appointment of Harold E. Nielsen, Jr., as class representative. The Court considered the pleadings filed in this action and the City's memorandum in support of its motion for certification of class action and appointment of class representative.

Based on the evidence presented, the Court finds that certification of this action as a class action under CR 23(b)(2) and the appointment of Harold E. Nielsen, Jr., as class representative are appropriate.

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AGREED ORDER GRANTING CERTIFICATION OF ACTION AS
CLASS ACTION AND APPOINTMENT OF CLASS
REPRESENTATIVE - 1

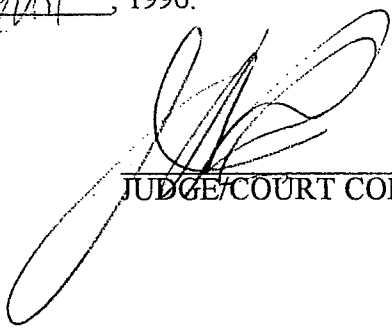
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Based upon the above findings, It Is Ordered:

The City of Tacoma's motion is granted, the City's action is certified as a class action under CR 23(b)(2), and Harold E. Nielsen, Jr., is appointed class representative.

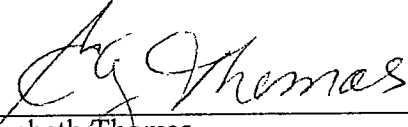
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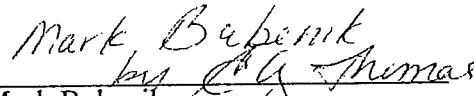
JUDGE/COURT COMMISSIONER

Presented by:

PRESTON GATES & ELLIS


By 
Elizabeth Thomas, WSBA # 11544

City of Tacoma

By 
Mark Bubenik, WSBA # 3093
Chief Assistant City Attorney

Attorneys for Plaintiff
City of Tacoma

Approved for Entry;
Notice of Presentation Waived:

By 
Ronald E. Thompson WSBA #4005

Attorney for Defendants
Taxpayers and Ratepayers of the City of Tacoma

AGREED ORDER GRANTING CERTIFICATION OF ACTION AS CLASS ACTION AND APPOINTMENT OF CLASS REPRESENTATIVE - 2

EXHIBIT G

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The Honorable Grant L. Anderson

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IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,

Plaintiff,

v.

THE TAXPAYERS AND THE RATEPAYERS
OF THE CITY OF TACOMA,

Defendants.

No. 96 2 09938 0

MEMORANDUM IN SUPPORT OF CITY
OF TACOMA'S MOTION FOR
SUMMARY JUDGMENT

MEMORANDUM IN SUPPORT OF CITY OF TACOMA'S
MOTION FOR SUMMARY JUDGMENT - 1

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I. INTRODUCTION

The City of Tacoma (the "City") brought this declaratory judgment class action under RCW 7.24 and 7.25 and CR 23(B)(2) to confirm its authority to issue bonds for the purpose of constructing and operating a telecommunications system consisting of a hybrid fiber coaxial network (the "Telecommunications System"). On July 23, 1996, the Tacoma City Council adopted Ordinance No. 25930, which authorized the sale of Electric System revenue bonds (the "Revenue Bonds") in order to finance the first phase of constructing and operating the Telecommunications System. The City will utilize the Telecommunications System to enhance electric service to customers of its Light Division. The City may also utilize a portion of the Telecommunications System to provide cable television service to customers in the Light Division service area, and lease Telecommunications System facilities or capacity to providers of telecommunications services.

II. RELIEF REQUESTED

The City requests that the Court enter judgment declaring that:

1. The Court has jurisdiction over the subject matter and parties in this action.
2. Tacoma City Ordinance No. 25930 (the "Bond Ordinance") was properly enacted.
3. The City has authority under the laws of the State of Washington and the United States to provide cable television service in the Light Division service area.
4. The City has authority under the laws of the State of Washington and the United States to lease telecommunications facilities and capacity to telecommunications providers.
5. The City has authority under the laws of the State of Washington and the United States to issue the Bonds for the purposes set for in paragraphs (3) and (4) above and in the manner set forth in the Bond Ordinance.

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III. STATEMENT OF ISSUES

1. Whether the City has authority under state law to provide cable television service.
2. Whether the City has authority under federal and state law to lease telecommunications facilities and capacity to telecommunications providers.

IV. EVIDENCE RELIED UPON

The City believes that the following facts are undisputed in every material respect. These facts are contained in the Declaration of Jon Athow in Support of the City's Motion for Summary Judgment ("Athow Decl.").

Plaintiff, the City of Tacoma, is a municipal corporation and a city of the first class of the State of Washington. The Defendants herein are taxpayers of the City of Tacoma and ratepayers of its electrical utility, which is known as the Light Division of the Department of Public Utilities (the "Light Division"). Harold E. Nielsen, Jr., the taxpayer and ratepayer representative, is a resident and taxpayer of the City and a customer of the Light Division. The City currently owns and operates, through its Light Division, an electric utility (the "Electric System") for the purpose of providing electricity and other energy services throughout the City and other portions of Pierce County.

The Telecommunications System will be used to improve the speed and capability of the existing real-time communications among certain Electric System substations, and to extend such real-time communications to the remaining substations. In addition, the Telecommunications System may be used to enhance such existing energy services as demand management, identification of outages, meter reading, billing and payment, and resource dispatch. The Telecommunications System may be used to perform similar functions for the City's provision of water service. The City's authority to issue the Revenue Bonds to finance the purposes discussed in this paragraph is not at issue.

1 The City may also utilize a portion of the Telecommunications System to provide cable
2 television service to customers within the Light Division service area, and to lease facilities or
3 capacity to providers of video-on-demand, data transport, telephony, and other telecommunications
4 services. By providing cable television service and/or leasing facilities or capacity to
5 telecommunications providers, the City can ensure a range of choices for consumers, provide public
6 interest television programming, and improve the availability of competitively priced
7 telecommunications services.

8 The City also estimates that by providing cable television service and/or leasing facilities or
9 capacity, it could generate substantial revenue to help offset the costs of constructing and operating
10 the Telecommunications System. Because the infrastructure for the telemetry improvements designed
11 to meet Electric System needs represents a substantial portion of the costs of the Telecommunications
12 System, the relative cost of these additional revenue-producing capabilities is low.¹

13 The Tacoma City Council enacted Ordinance No. 25930 (the "Bond Ordinance") on July 23,
14 1996, at a regular meeting.² The Bond Ordinance provides for the construction and operation of a
15 Telecommunications System within the Light Division and for the issuance and sale of Electric
16 System revenue bonds in the aggregate principal amount of \$1,000,000.

17 V. ARGUMENT

18 A. Summary Judgment Standard

19 Summary judgment is appropriate to dispose of actions or parts thereof when no genuine
20 issues of material fact exist or when only a question of law exists. CR 56(c). "The burden is on the
21 moving party to demonstrate that there is no issue as to a material fact." *Scott v. Pacific West*
22 *Mountain Resort*, 119 Wn. 2d 484, 502-03 (1992). If the party seeking summary judgment
23 successfully carries its initial burden, the burden shifts to the non-moving party to establish the

24 ¹ Declaration of Jon Athow in Support of Motion for Summary Judgment ("Athow Decl."), ¶ 10.

25 ² A true and correct copy of the Bond Ordinance is attached as Exhibit C to Mr. Athow's Declaration.

1 existence of the facts on which it has the burden of proof at trial. *Young v. Key Pharmaceuticals,*
2 *Inc.*, 112 Wn. 2d 216, 225 (1989). The non-moving party must respond with specific facts and
3 cannot rely on bare allegations contained in his or her pleadings. *Baldwin v. Sisters of Providence,*
4 112 Wn. 2d 127, 132 (1989). Conclusory statements or argumentative assertions raised in affidavits
5 are insufficient to raise an issue of fact and do not preclude summary judgment. *Grimwood v.*
6 *University of Puget Sound, Inc.*, 110 Wn. 2d 355, 359-60 (1988).

7 In the instant case, there are no issues of material fact. The facts bearing on the City's
8 authority to provide cable television service and to lease telecommunications facilities and capacity to
9 telecommunications providers are undisputed. Only questions of law remain. The case should
10 therefore be resolved on summary judgment.

11 **B. The City Has Authority Under Washington Statutes To Construct and Operate the**
12 **Entire Telecommunications System and To Lease Portions of the System's Capacity or**
13 **Facilities.**

14 1. **A Charter City Has Broad Powers.**

15 The Washington Constitution grants broad powers to first-class charter cities such as Tacoma.
16 It states, "Any city containing a population of ten thousand inhabitants, or more, shall be permitted to
17 frame a charter for its own government, consistent with and subject to the Constitution and laws of
18 this state" Wash. Const. art XI, § 10. Under Chapter 35 RCW, a charter city has "all the
19 powers which are conferred upon incorporated cities and towns by this title or other laws of the state,
20 and all such powers as are usually exercised by municipal corporations of like character and degree."
21 RCW 35.22.570. In addition to this "omnibus" grant of power, RCW 35.22.900 provides that grants
22 of power to first-class cities must be liberally construed to carry out the objectives of chapter 35.22
23 RCW. *See also Citizens for Financially Responsible Government v. City of Spokane*, 99 Wn. 339,
24 343 (1983).

25 In light of these constitutional and statutory provisions, the Washington Supreme Court has
26 held that "the only limitation on the power of cities of the first class is that their action cannot

1 contravene any constitutional provision or any legislative enactment. . . . [A] city of the first class has
2 as broad legislative powers as the state, except when restricted by enactments of the state legislature."
3 *Winkenwerder v. City of Yakima*, 52 Wn. 2d 617, 622 (1958).

4 2. A City Has Even Broader Powers When It Is Operating a Utility.

5 The powers of a city under Washington law are especially broad when the city is performing a
6 proprietary, as distinguished from a governmental, function. In *Tacoma v. Taxpayers*, 108 Wn.2d
7 679 (1987), the Washington Supreme Court stated that while municipal authority must be narrowly
8 construed when the function is governmental, "when the Legislature authorizes a municipality to
9 engage in a business, it may exercise its business powers much in the same way as a private individual.
10 . . . We have viewed the Legislature as implicitly authorizing a municipality to make all contracts, and
11 to engage in any undertaking necessary to make its municipal electric utility system efficient and
12 beneficial to the public." *Id.* at 694-95. See also *Hite v. Public Utility Dist. No. 2*, 112 Wn.2d 456,
13 459 (1989) ("It is clear that in the production and sale of electricity, a municipal corporation acts in
14 its proprietary capacity. . . . In that capacity, a municipal corporation acts as the proprietor of a
15 business enterprise for the private advantage of the city and may exercise its business powers in much
16 the same way as a private individual or corporation.").³

17 In addition, the courts have recognized many instances in which public utility districts, which
18 are municipal corporations with more limited powers than cities, may engage in activities that are
19 incidental to their expressly authorized functions of providing electric or other utility service. See,
20 e.g., *Puget Power and Light Co. v. Public Utility District No. 1 of Chelan County*, 17 Wn. App. 861
21 (1977) (involving public utility district's provision of recreational facilities); *Snohomish County*
22 *Public Utility District No. 1 v. Broadview Television Co.*, 91 Wn.2d 3, 8 (1978) (upholding district's

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25 ³ *Hite and Taxpayers* made clear that the holding in *Chemical Bank v. Washington Public Power Supply*
26 *System*, 99 Wn.2d 772 (1983), does not detract from the broad authority that cities enjoy when acting in a proprietary
capacity.

1 authority to lease pole attachments even though activity is "only incidental to the accomplishment of
2 the district's primary purpose, the distribution and sale of electricity").

3 3. The City Has Authority Under Washington Statutes To Provide Telecommunications
4 Services.

5 The City's statutory powers include the authority to provide telecommunications services.
6 First, the City, as a first class charter city having code city powers as well, has all powers not denied
7 by law, "including operating and supplying of utilities and municipal services commonly or
8 conveniently rendered by cities or towns." RCW 35A.11.020. Tacoma may conveniently render
9 telecommunications services because the Light Division has an existing citywide electric system of
10 connections to customers' homes, because it has existing billing relationships with customers, and
11 because it can provide services economically. Second, there is no express statutory prohibition
12 against city provision of municipal telecommunications services. *Winkenwerder, supra*. To the
13 contrary, the Legislature has acknowledged that cities provide communications services through
14 enacting a statute providing for the burying of city-owned communications facilities. RCW
15 35.96.030. Finally, the Legislature has determined that competitive markets for telecommunications
16 services serve the public interest. RCW 80.36.300; *In re Electric Lightwave, Inc.*, 123 Wn.2d 530,
17 538-39 (1994) (noting that "it is the state's policy to promote diversity in the supply of
18 telecommunications services and products in telecommunications markets throughout the state").
19 The City's provision of telecommunications services will make the market more competitive, thus
20 furthering the public interest recognized by the Legislature.

21 4. Washington Case Law Recognizes the City's Authority To Provide
22 Telecommunications Services.

23 The Washington Supreme Court in *Issaquah v. Teleprompter Corp.*, 93 Wn. 2d 567 (1980),
24 recognized the power of a code city under RCW 35A.11.020 to utilize its telecommunications system
25 to provide telecommunications services, including cable television service. The Court held in
26 *Teleprompter* that a city was authorized by statute to operate a cable television system under the

1 broad authority of RCW 35A.11.020 because there was "no general law which conflicts with the
2 city's authority under the optional municipal code to operate such a system." *Id.* At 575. First class
3 charter cities such as Tacoma have all the powers granted to code cities. RCW 35.22.570. Thus,
4 under *Teleprompter* the City is clearly authorized to use its Telecommunications System to offer
5 cable television service.

6 Tacoma's authority is not limited to the provision of cable television service.
7 *Teleprompter* provides no basis for distinguishing cable television from other telecommunications
8 services. The Washington Legislature views cable television as a telecommunications service. *See*,
9 *e.g.*, RCW 80.04.010 (defining "telecommunications" as "the transmission of information by wire,
10 radio, *optical cable*, electromagnetic, or other similar means) (emphasis added); RCW 80.36.370
11 (exempting cable television from the Washington Utilities and Transportation Commission's
12 regulation of telecommunications services). Thus, *Teleprompter* clarifies the authority for Tacoma to
13 provide telecommunications services.

14 5. The City Has Authority To Lease City-Owned Telecommunications Facilities

15 The City has authority under its charter and under state law to lease excess capacity and
16 facilities of its Telecommunications System to other telecommunications providers. Tacoma's Charter
17 expressly permits the City to lease City property. Tacoma, Wash., Code § 9.1. Under state law, a
18 first class city has the power to:

19 control the finances and property of the corporation, and to acquire, by purchase and
20 otherwise, such lands and other property as may be necessary for any part of the
21 corporate uses provided for by its charter, and to dispose of any such property as the
interests of the corporation may, from time to time, require.

22 RCW 22.280(3). The Washington Supreme Court has upheld the authority of cities to lease
23 municipal property to private parties as long as the lease does not interfere with public use.
24 *Winkenwerder, supra* at 624. Cities are specifically authorized to lease surplus utility property and
25 equipment. Ch. 35.94 RCW.

1 C. Federal Law Requires that the City Be Allowed To Provide Telecommunications
2 Service.

3 The City's authority to provide telecommunications services must be recognized under the
4 Telecommunications Act of 1996, Pub. L. No. 104-104, § 253, 110 Stat. 70 (1996) (the "Act"), as a
5 consequence of the Act's prohibition against barriers to the entry of any entity into the
6 telecommunications market. Federal law can preempt state utility regulation. *Public Utility District*
7 *No. 1 of Pend Oreille County v. Federal Power Commission*, 308 F.2d 318 (D.C. Cir. 1962) (holding
8 that the Federal Power Act preempted Washington statute purporting to limit city's ability to
9 condemn property for power plant). The *Pend Oreille* court found that preemption was required
10 merely by implication of a federal law. Here, the case for preemption is far stronger because the Act
11 expressly preempts state interference in the telecommunications market. Section 253 of the Act
12 states, "No state or local statute or regulation, or other state or local legal requirement, may prohibit
13 or have the effect of prohibiting the ability of *any entity* to provide *any* interstate or intrastate
14 telecommunications service." Telecommunications Act of 1996, Pub. L. No. 104-104, § 253, 110
15 Stat. 70 (1996) (emphasis added). There is no language in either the statute or its legislative history
16 exempting cities from the law's application. To the contrary, a House Committee Report states that
17 Section 253 "is intended to remove all barriers to entry in the provision of telecommunications
18 services." House Rep. No. 104-458. A state law precluding telecommunications services constitutes
19 a legal requirement. Thus, any Washington law that would prohibit Tacoma from providing
20 telecommunications service is expressly preempted by the Act.

21 In addition, the thrust of the Telecommunications Act is to encourage the availability and
22 affordability of telecommunications services. *See, e.g.*, Section 254, requiring various mechanisms to
23 promote universal service. Tacoma is well positioned to make telecommunications services available
24 to the public at a competitive price, thereby furthering this federal policy.

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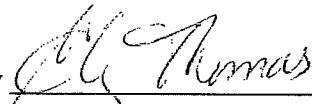
VI. CONCLUSION

Under its broad powers as a first-class charter city, the City has authority to use a portion of its Telecommunications System to provide cable television service and to lease a portion of its Telecommunications System facilities or capacity to other telecommunications service providers. Federal law expressly bars any requirement that would undercut this authority. Because there is no dispute over the material facts underlying its authority, the City is therefore entitled to judgment as a matter of law.

DATED this 5th day of November, 1996.

Respectfully submitted,

PRESTON GATES & ELLIS

By 
Elizabeth Thomas, WSBA # 11544
Laura A. Rosenwald, WSBA # 25722

CITY OF TACOMA


By 
Mark Bubenik, WSBA # 3093
Chief Assistant City Attorney
Attorneys for Plaintiff City of Tacoma

EXHIBIT H

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

CITY OF TACOMA, a municipal corporation,
Plaintiff,
v.
THE TAXPAYERS AND THE RATEPAYERS
OF THE CITY OF TACOMA,
Defendants.

No. 96-2-09938-0

DECLARATION OF JON ATHOW IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

1. My name is Jon Athow. I am over the age of eighteen, competent to testify in this matter, and make this declaration based upon my own personal knowledge. I am employed by the Light Division of the City of Tacoma. My title is Telecommunications Project Manager. My responsibilities include planning for the creation and operation of a telecommunications system for the Light Division. I have been employed by the Light Division for three years. Prior to joining the Light Division, I was a Navigator in the United States Navy and a machine vision/artificial intelligence software developer with an industrial controls manufacturing company. I received a Bachelor of Science degree in Electrical Engineering from M.I.T., the Massachusetts Institute of Technology. A copy of my current resume is attached as Exhibit A.

DECLARATION OF JON ATHOW IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 1



1 2. The Light Division relies upon telecommunications facilities and services for a wide
2 range of purposes including dispatching its generating resources, determining whether to make
3 purchases and sales on the spot market, maintaining appropriate levels of power in its distribution
4 system, ensuring that power is constantly and instantly available to meet customer demand, ensuring
5 the safe operation of its transmission system, coordinating the activities of its field crews and
6 identifying promptly any outages or other system problems. The Light Division has designed and
7 built, and operates, limited telecommunications systems in support of these missions that include fiber
8 optics loops, point to point microwave, telephone systems including internal T1, and mobile radio.

9 3. Additional telecommunications facilities and services would enhance the Light
10 Division's ability to provide highly reliable, cost-effective and convenient electric service to its
11 customers. A sophisticated telecommunications system would enable many operation improvements,
12 including:

- 13 • Distribution Automation, to monitor and control system components such as
14 transformers, switches, and capacitors, to provide dynamic load control and
15 Voltage/VAR control, and to support increased reliability
- 16 • Transmission and Distribution Availability and monitoring for posting to other service
17 providers
- 18 • Outage handling, including improved outage locating abilities and the reduction of
19 outages through fault detection, fault isolation, and predictive maintenance
- 20 • Automated meter reading
- 21 • Data exchange with utility field personnel and vendors
- 22 • Substation monitoring as a means of determining substation upgrades or deferrals
- 23 • Dispatch of third-party generation

24 4. A sophisticated telecommunications system would also enable many service
25 improvements, including:
26

- 1 • Aggregated Customer Billing for customers with multiple locations
- 2 • Market pricing/availability, including the provision of competitive energy market
- 3 options
- 4 • Interactive utility customer service communication
- 5 • Remote connect and disconnect
- 6 • Data networking with commercial/industrial customers to facilitate electrical system
- 7 response to customer real-time process requirements
- 8 • Power quality monitoring
- 9 • Customer usage management via two-way communication permitting the customer
- 10 and utility to manage electricity consumption via time of use pricing, real-time pricing,
- 11 or direct load control
- 12 • Interactive communications for demand-side management and load management
- 13 through flexible pricing
- 14 • Provision of energy usage information to customers
- 15 • Automated bill payment

16 5. The expectations of today's electrical customers have grown enormously. Customers
17 today demand options in their power supplies, have little tolerance for even momentary outages or
18 power quality problems, and have come to expect high levels of customer service.

19 6. An advanced telecommunications system not only is a key element in meeting the
20 expectations of today's energy customers, but also is being designed to meet the needs of tomorrow's
21 energy customers.

22 7. The Light Division has carefully analyzed what telecommunications facilities it would
23 need in order to meet the current and anticipated needs of the electric system. It retained SRI
24 International as a consultant to evaluate and report on options. With SRI International, the Light
25 Division reviewed the existing telecommunications infrastructure, emerging telecommunications
26

1 options, and ways to meet Light Division needs. A copy of SRI International's Telecommunications
2 Strategy Assessment - Final Report Summary is attached as Exhibit B. The Summary was received
3 by the City but does not necessarily represent the position of the City.

4 8. The Light Division determined that a broadband, two-way system based on fiber
5 optics in conjunction with other technologies would be the best long-term approach for meeting its
6 needs.

7 9. The Light Division has also evaluated the possibility of designing a system that is
8 capable of carrying other telecommunications services, including cable television service, as well as
9 meeting Electric System needs.

10 10. The telecommunications infrastructure designed to meet current and future Electric
11 System needs represents a substantial portion of the costs of this more capable Telecommunications
12 System.

13 11. By providing cable television service and/or leasing facilities or capacity to
14 telecommunications providers, the Light Division can ensure a range of choices for consumers,
15 provide more educational and other public interest television programming, and improve the
16 availability of competitively priced telecommunications services. Such services could be provided
17 efficiently because of the lower cost of capital and the fact that the Light Division already has a drop
18 to every home.

19 12. Regardless of whether the Light Division's new communications system were designed
20 to allow for the provision of cable television service, it would have excess, or spare, capacity until the
21 time when anticipated future electric system needs are fully realized.

22 13. In order to defray costs and encourage the provision of advanced telecommunications
23 services to its customers, the Light Division would lease facilities or transport would be made
24 available on a competitively neutral, non-discriminatory basis.

EXHIBIT I

CERTIFICATE OF DELIVERY

On this day I delivered a true and accurate copy of the document to which this certificate is affixed to Puget Sound Courier for delivery to the attorneys of record for plaintiff-defendant. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated 12/3/96 at Tacoma, Washington

Jennifer Watson

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,

Plaintiff,

v.

THE TAXPAYERS AND RATEPAYERS OF THE CITY OF TACOMA,

Defendants.

NO. 96-2-09938-0

DEFENDANTS' RESPONSIVE MEMORANDUM IN OPPOSITION TO CITY OF TACOMA'S MOTION FOR SUMMARY JUDGMENT

COME NOW the Defendants, The Taxpayers and The Ratepayers of the City of Tacoma, by and through their attorneys of record, Thompson, Krilich, La Porte, Tucci & West, P.S., and submit their Responsive Memorandum in Opposition to The City of Tacoma's Motion for Summary Judgment. This response is supported by the records and files herein and the Affidavit of Heidi E. Imhof and Defendants' Motion to Strike the Declaration of Jon Athow.

Plaintiff's Motion for Summary Judgment should be denied because the Plaintiff's have failed to meet their burden, as many issues of material fact exist.

The City of Tacoma has based their entire motion on the Declaration of Jon Athow who is not an authorized spokesperson for either the City of Tacoma or the City Light Division. Further, Mr. Athow's Declaration is wrought with conclusory statements, argumentative

COPY

1 assertions, hearsay, speculation, and inadmissible opinion testimony. The City further asserts
2 that it's authority to issue revenue bonds to finance the project which is the subject of this
3 lawsuit is not at issue. The City's authority to proceed with this project is the subject of this
4 lawsuit and it's authority to issue revenue bonds is the essence of the project itself. Summary
5 judgment is not proper in this case.
6

7 Not only is summary judgment improper, but this declaratory action is untimely. The
8 City has asked for a declaratory judgment granting the City authority to proceed with a project
9 that has not even been put to paper. There is no business plan or proposal for the
10 telecommunications project. (Deposition of Steve Klein, Page 11, Line 20 - Page 12, Line 5).
11 The City has no financial plan for the project. (Deposition of Steve Klein, Page 12, Lines 8-
12 14). Any estimate on the cost would be speculation. (Deposition of Jon Athow, Page 18, Lines
13 5-8). In addition, the City admitted that it was a definite possibility that some of the funds
14 could come from general obligation bonds. (Deposition of Steve Klein, Page 15, Lines 7-10
15 and Page 16, Lines 2-4).
16

17 The City has filed a Complaint for Declaratory Judgment and has asked this court for
18 a judgment declaring that:
19

- 20 1) This court has jurisdiction over the subject matter and the parties in this action;
21 2) The City properly enacted the \$1,000,000.00 bond ordinance to pay for the
22 telecommunications project;
23 3) The City has authority to provide cable television service in the Light Division
24 service area;
25

1 1. Bond Ordinance No. 25930 was improperly enacted.

2 Under the Tacoma City Charter, Article IV, Section 4.2, provides in relevant part that:

3 The City may purchase, acquire, or construct any public utility
4 system, or part thereof, or make any additions and betterments
5 thereto or extensions thereof, without submitting the proposition
6 to the voters, provided no general indebtedness is incurred by
7 the City. **If such indebtedness is to be incurred, approval by
8 the electors, in the manner provided by state law, shall be
9 required.**

10 (Emphasis added).

11 In this case, although there is no feasibility plan, no business plan, and no financial plan,
12 the spokesperson for Tacoma City Light admitted that some of the funds necessary for the
13 telecommunications project could come from general obligation bonds. (Deposition of Steve
14 Klein, Page 15, Lines 7-10, Page 16, Lines 2-4).

15 Under the Tacoma City Charter, the City Council does not have authority to enact an
16 ordinance for an undefined project which could and probably will submit the ratepayers and
17 taxpayers to debt without voter approval.

18 The City has not specifically defined how the new telecommunication system would be
19 an addition and betterment or an extension of the current public utilities system. In order to
20 issue any bond either by ordinance or by voter approval, public utilities must meet the
21 aforementioned threshold burden. As set forth in the Plaintiff's Answers to Defendants' First
22 Set of Interrogatories and the depositions of Mr. Athow and Mr. Klein, there is no plan for the
23 new telecommunication system.

1 The fact of the matter is, this new telecommunications system project is in its conceptual
2 stages and a summary judgment is inappropriate at this time. In fact, the declaratory action
3 brought by the City is most probably untimely, because there is no plan or system to evaluate
4 the City's authority therein.
5

6 **2. The City has no telecommunications system from which to determine any**
7 **authority.**

8 The City has asked this court to declare that it generally has the authority to provide
9 cable television services to its ratepayers and to lease the telecommunication facilities to any
10 other telecommunication provider of the City's choice. The City has yet to define its
11 hypothetical telecommunication system and the public utility employees presumably in charge
12 of defining the project have no definite idea what the telecommunication system would entail.
13 The Superintendent of City Light states that the project is still in its conceptual stages and
14 nothing has been fully defined. (Deposition of Steve Klein, Page 16, Lines 6-10).
15

16 It became quite apparent through discovery, that no one in the public utilities department
17 had any definite answer with regard to Tacoma City Light's telecommunications project. Steve
18 Klein, the Superintendent of Tacoma City Light assigned Jon Athow as telecommunications
19 project manager, to examine all issues from marketing to technology.
20

21 (Deposition of Steve Klein, Page 18, Lines 19-21). Mr. Athow, as the project manager, did not
22 even know if his business plan would include a marketing plan. (Deposition of Jon Athow,
23 Page 51, Lines 16-17). Clearly Mr. Athow has no appreciation for the business management
24 or operations of City Light's hypothetical telecommunications project.
25

1 Mr. Athow himself has no idea how much the telecommunications project is going to
2 cost. (Deposition of Jon Athow, Page 18, Lines 5-8). Mr. Athow speculated that the project
3 could cost \$40,000,000.00, but he adopted that hearsay figure from an independent consulting
4 firm. (Deposition of Jon Athow, Page 19, Lines 3-9). It is unclear to the Defendants how an
5 independent consulting firm could have come up with a cost figure for a project that has yet to
6 be defined.

8 Beginning on Page 8, Line 7 of the Plaintiff's Memorandum in Support of City of
9 Tacoma's Motion for Summary Judgment, the City states that "Tacoma may conveniently render
10 telecommunication services". Part of the basis for the City's assertion is that the City can
11 provide telecommunication services economically. The City has submitted absolutely no proof
12 that the City of Tacoma can conveniently render telecommunication services or that those
13 services would be economical. There is no plan, there is no budget, and there is no projection
14 for what these services could cost the ratepayer. (Deposition of Jon Athow, Page 8, Lines 6-12,
15 Page 18, Lines 5-8; Deposition of Mark Peace, Page 19, Line 25, and Page 20, Lines 1-22;
16 Deposition of Steven Klein, Page 12, Lines 17-25).

18 The uncertainty and lack of information by Tacoma City Light was further emphasized
19 in a December 2, 1996 newspaper article in the Tacoma News Tribune. In the article, council
20 member Baarsma was quoted as stating that the public utilities has already made a proposal to
21 the council and that the project would be built in 6-9 months after a contract was in place.
22 According to the defendants' discovery, there is no proposal, no budget, no projections of
23

1 ratepayer costs and no contract discussions. (Plaintiff's Answers to Defendants' Request for
2 Production Nos. 2, 3 and 4).

3
4 The City has not met their burden of showing that no issues of material fact exist
5 regarding their authority to utilize a telecommunications system to provide cable t.v. service or
6 to lease the capacity to a telecommunication provider of their choice. There has been no
7 telecommunication system defined by the City and it would therefore be inappropriate for this
8 court to state that the City has authority to proceed into the unknown. There is clearly an issue
9 of material fact regarding the City's definition of the telecommunication system project.
10 Namely, there is no project plan at this time.

11
12 The City asserts that the powers of a city when performing in a proprietary function are
13 especially broad. As cited by the Plaintiffs, Washington law authorizes a municipality to engage
14 in business when the undertaking is "necessary to make its municipal electric utility system
15 efficient and beneficial to the public." Tacoma vs. Taxpayers, 108 Wn. 2d 679, 694-95 (1987).
16 Washington law clearly did not authorize a municipality to engage in uninformed business
17 decisions and particularly engaging in a new business venture without any plan, feasibility study
18 or financial plan.

19
20 The cases cited by the Plaintiff on Page 7 of its Memorandum are distinguishable from
21 this case. In the four cases cited by the Plaintiff, Tacoma vs. Taxpayers, Height vs. Public
22 Utility Dist. No. 2, Puget Power & Light Co. vs. Public Utility Dist. No. 1, and Public Utility
23 District No. 1 vs. Broadview Television Co., the courts all considered activities that the
24 municipality engaged in for the benefit of the public or the ratepayers. In this case, the Plaintiff
25

1 has fallen far short of showing that this new improved telecommunication system would in fact
2 benefit the ratepayers. The City doesn't even know the full extent its new improved
3 telecommunication system and therefore it would be improbable that they could determine how
4 it would benefit the ratepayers. There is presently no plan or system to evaluate whether it will
5 benefit the ratepayers.
6

7 The City's summary judgment motion should be denied because the City does not
8 presently have a telecommunication system that could provide cable television to its ratepayers
9 nor does the City have a telecommunication system that can be leased to other
10 telecommunication providers. Summary judgment is improper in this case and most probably
11 this declaratory judgment action is improper at this time. The City must first show that the new
12 telecommunication system is a necessary addition and betterment or extension of the current
13 public utilities system.
14

15 **3. The City has no authority to issue bonds for a project that has not been**
16 **specifically defined.**

17 As set forth above in Section 1, the Tacoma City Charter has it's own set of checks and
18 balances. The City cannot place the ratepayers and taxpayers into debt without voter approval.
19 The City has not done the legwork to define the telecommunication system project in order to
20 determine that the ratepayers and taxpayers would not be subject to indebtedness as a result of
21 this project. The City does not have authority under the Tacoma City Ordinance to issue bonds
22 under the current set of facts and the City's Motion for Summary Judgment should be denied.
23

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CONCLUSION

In response to a summary judgment motion, the opposing party does not need to submit affidavits or responding materials unless the moveant meets its burden. Hash vs. Children's Orthopaedic Hospital & Medical Ctr., 110 Wn. 2d 9912, 757 P.2d 507 (1988). However, if the non-moving party submits affidavits, the court generally will be more lenient in examing the affidavits presented by the non-moveant. Public Utility Dist. No. 1 vs. WPPSS, 104 Wn. 2d 353, 705 P.2d 1195 (1985).

In ruling on a motion for summary judgment, the court must consider all of the material evidence and all inferences must be made in light most favorable to the non-moving party and, if reasonable minds might reach different conclusions, the summary judgment motion should be denied. Scott vs. Pacific West Mountain Resort, 119 Wn. 2d 484, 834 P.2d 6 (1992), Atlantic Mutual Ins. Co. vs. Roffey, Inc., 73 Wash. App. 858 (1994).

The City has prematurely brought this declaratory action with the court requesting preliminary authority to use a portion of its hypothetical telecommunication system to provide cable television service and to lease a portion of its facilities to other telecommunication service providers. At this point, the telecommunication system has not been planned and it is therefore unknown whether the system would even have the capacity to provide cable television services as well as the capacity to lease facilities to other telecommunication service providers. It certainly may be prudent to determine whether the City has authority to provide the aforementioned services however, the City's first and only obligation is to the ratepayers of its

1 electric utility and to engage only in undertakings necessary to make the electric utility system
2 efficient and beneficial to the ratepayers.

3
4 The City has yet to show that the new telecommunication system idea is an addition and
5 betterment or an extension of the current public utility system. The City cannot meet this
6 burden by conclusory statements and speculation. The Plaintiff's Motion for Summary
7 Judgment should be denied.

8 RESPECTFULLY SUBMITTED this 3rd day of December, 1996.

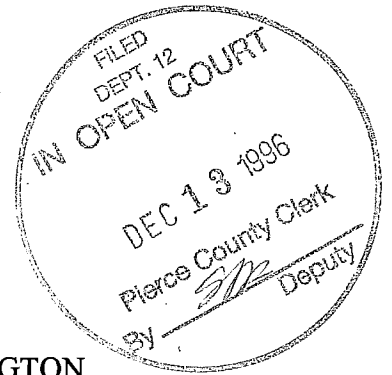
9
10 THOMPSON, KRILICH, LA PORTE,
TUCCI & WEST, P.S.

11
12 By: 

13 Ronald E. Thompson, WSB #4005
14 Heidi E. Imhof, WSB #23083
15 Attorneys for Defendants
16
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EXHIBIT J

The Honorable Grant L. Anderson



IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,)
)
) Plaintiff,)
)
) v.)
)
) THE TAXPAYERS AND RATEPAYERS OF)
) THE CITY OF TACOMA,)
)
) Defendants.)

No. 96 2 09938 0

ORDER GRANTING CITY OF
TACOMA'S MOTION FOR
SUMMARY JUDGMENT

This matter came on this day for hearing before the undersigned upon the City of Tacoma's ("City's") Motion for Summary Judgment. Plaintiff City of Tacoma appeared through its counsel, Elizabeth Thomas. Defendants Taxpayers and Ratepayers of the City of Tacoma appeared through their counsel, Ronald E. Thompson.

Counsel for the parties have drawn the Court's attention to the following documents: Summons, Complaint for Declaratory Judgment; Acceptance of Service; City of Tacoma's Motion for Summary Judgment; Memorandum in Support of Motion for Summary Judgment; Declaration of Jon Athow in Support of Motion for Summary Judgment; Defendants' Responsive Memorandum in Opposition to City of Tacoma's Motion for Summary Judgment; and City of Tacoma's Reply Brief.

Based on these documents, the Court finds that there is no genuine issue as to any material fact and that the facts set forth in the Declaration of Jon Athow are true.

ORDER GRANTING CITY OF TACOMA'S
MOTION FOR SUMMARY JUDGMENT - 1

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Having considered the documents identified by the parties, the arguments of counsel and the record herein, the Court concludes that the following order should be entered.

1. The Court has jurisdiction over the subject matter and parties in this action.
2. Tacoma City Ordinance No. 25930 (the "Bond Ordinance") was properly enacted.
3. The City has authority under the laws of the State of Washington and the United States to provide cable television service in the Light Division service area.
4. The City has authority under the laws of the State of Washington and the United States to lease telecommunications facilities and capacity to telecommunications providers.
5. ~~The City has authority under the laws of the State of Washington and the United States to issue the Bonds for the purposes set for in paragraphs (3) and (4) above and in the manner set forth in the Bond Ordinance.~~

DONE IN OPEN COURT this 13 day of December, 1996.

GRANT L. ANDERSON

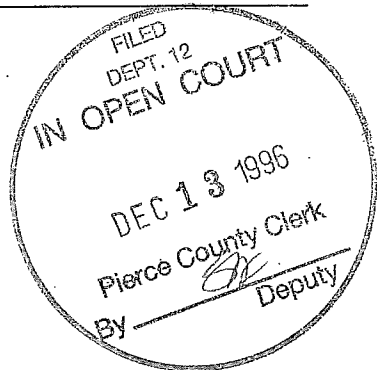
JUDGE

Presented by:
PRESTON GATES & ELLIS

By LSI
Elizabeth Thomas, WSBA # 11544
Laura A. Rosenwald, WSBA # 25722

CITY OF TACOMA

By LSI
Mark Bubenik, WSBA # 3093
Chief Assistant City Attorney
Attorneys for Plaintiff City of Tacoma



ORDER GRANTING CITY OF TACOMA'S
MOTION FOR SUMMARY JUDGMENT - 2

EXHIBIT K

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SUPERIOR COURT
ADMINISTRATION

Honorable Grant L. Anderson

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PIERCE COUNTY, WASHINGTON
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APR 14 1997

THOMPSON, KRILICH, LAPORTE
TACOMA, WASH. WEST INC., P.S.

IN THE SUPERIOR COURT OF WASHINGTON

FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,)

Plaintiff,)

v.)

THE TAXPAYERS AND THE RATEPAYERS)
OF THE CITY OF TACOMA,)

Defendants.)

No. 96 2 09938 0

MEMORANDUM IN SUPPORT OF CITY
OF TACOMA'S MOTION FOR
SUMMARY JUDGMENT

~~RECEIVED~~

~~APR 14 1997~~

~~THOMPSON, KRILICH, LAPORTE
TACOMA, WASH. WEST INC., P.S.~~

I. INTRODUCTION

The City of Tacoma (the "City") brought this declaratory judgment class action under RCW 7.24 and 7.25 and CR 23(B)(2) to confirm its authority to issue bonds for the purposes of constructing and operating a telecommunications system consisting of a hybrid fiber coaxial network (the "Telecommunications System").

On December 13, 1996, this Court ruled on four of the City's five requested declarations. The Court held that (1) the Court has jurisdiction over the subject matter and parties in this action; (2) Tacoma Ordinance No. 25930 (the "Bond Ordinance"), which provides for the issuance and sale of Electric System revenue bonds in the aggregate principal amount of \$1,000,000 (the "Bonds") in order to finance the first phase of constructing and operating the Telecommunications System, was properly enacted; (3) the City has authority under the laws of the State of Washington and the United

MEMORANDUM IN SUPPORT OF CITY OF TACOMA'S
MOTION FOR SUMMARY JUDGMENT - 1

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1 States to provide cable television service in the service area of the Light Division of the City's
2 Department of Public Utilities (the "Light Division"); and (4) the City has authority under the laws of
3 the State of Washington and the United States to lease telecommunications facilities and capacity to
4 telecommunications providers. See Order Granting City of Tacoma's Motion for Summary Judgment
5 dated December 13, 1996 (the "Order").

6 Only one issue remains: Whether the City has authority to issue revenue bonds to finance the
7 first phase of construction and operation of the Telecommunications System. The City is entitled to
8 summary judgment on this final issue. Issuing the bonds is a legislative act subject to review only for
9 such deficiencies as fraud, bad faith, or ultra vires actions. Through the Order, the Court has already
10 determined that construction and operation of the Telecommunications System is not ultra vires. No
11 facts relation to fraud, bad faith, etc. have bee alleged.

12 II. RELIEF REQUESTED

13 The City requests that the Court enter judgment declaring that:

- 14 1. The City has authority under the laws of the State of Washington to issue revenue
15 bonds for the purposes of financing a telecommunications system to provide cable
16 television service in the Light Division Service area and lease telecommunications
17 facilities and capacity to telecommunications providers.

18 III. STATEMENT OF ISSUE

- 19 1. Whether the City may issue revenue bonds under the properly enacted Bond
20 Ordinance for the purposes of providing cable television service and leasing telecommunications
21 facilities and capacity pursuant to the authority confirmed by this Court's previous Order.

22 IV. EVIDENCE RELIED UPON

23 The City believes that the following facts are undisputed in every material respect. These
24 facts are contained in the Declaration of Jon Athow in Support of Motion for Summary Judgment,
25
26

1 dated November 5, 1996 ("First Athow Decl.") and the Second Declaration of Jon Athow in Support
2 of Motion for Summary Judgment dated April 11, 1997 ("Second Athow Decl.").

3 Plaintiff, the City of Tacoma, is a municipal corporation and a city of the first class of the
4 State of Washington. The Defendants are taxpayers of the City and ratepayers of its electrical utility,
5 the Light Division. Harold E. Nielsen, Jr., the taxpayer and ratepayer representative, is a resident and
6 taxpayer of the City and a customer of the Light Division. The City currently owns and operates,
7 through its Light Division, an electric utility (the "Electric System") for the purpose of providing
8 electricity and other energy services throughout the City and other portions of Pierce County.

9 On July 23, 1996, the Tacoma City Council adopted Ordinance No. 25930 (the "Bond
10 Ordinance"). The Bond Ordinance provides for the issuance and sale of Electric System revenue
11 bonds in the aggregate principal amount of \$1,000,000 (the "Bonds") in order to finance the first
12 phase of constructing and operating the Telecommunications System. The Telecommunications
13 System will be used to improve the speed and capability of the existing real-time communications
14 among certain Electric System substations, and to extend such real-time communications to the
15 remaining substations. In addition, the Telecommunications System may be used to enhance such
16 existing energy services as demand management, identification of outages, meter reading, billing and
17 payment, and resource dispatch. The Telecommunications System may be used to perform similar
18 functions for the City's provision of water service.

19 The City may also utilize a portion of the Telecommunications System to provide cable
20 television service to customers within the Light Division service area, and to lease facilities or
21 capacity to providers of video-on-demand, data transport, telephony, and other telecommunications
22 services. This Court's previous Order determined that the City has the authority to engage in these
23 activities, and that the Bond Ordinance was properly enacted.

24 The Light Division, with the assistance of numerous experts, has prepared a comprehensive
25 Telecommunications Study. The City has recently adopted resolutions approving this Study and
26

1 authorizing the Light Division to proceed with implementation. See Exhibits A, B, and C to Second
2 Athow Decl. (Public Utility Board Resolution No. Substitute U-9258; City Council Substitute
3 Resolution No. 33668; and Public Utility Board Amended Substitute Resolution No. U-9258.) The
4 City Council acted unanimously after substantial public participation.

5 The Telecommunications Study incorporates a comprehensive business plan outlining the
6 proposed services, operations, organizational structure and finances of the Telecommunications
7 System. See Exhibit D to Second Athow Decl. (Telecommunications Study notebook), eleventh
8 through sixteenth tabs. The chief concern raised by defendants' opposition on the previous summary
9 judgment motion was the absence of such a plan. That objection has now been fully met.

10 V. ARGUMENT

11 A. Summary Judgment Standard

12 Summary judgment is appropriate to resolve actions or parts thereof when no genuine issues
13 of material fact exist or when only a question of law exists. CR 56(c). "The burden is on the moving
14 party to demonstrate that there is no issue as to a material fact." *Scott v. Pacific West Mountain*
15 *Resort*, 119 Wn. 2d 484, 502-03 (1992). If the party seeking summary judgment successfully carries
16 its initial burden, the burden shifts to the non-moving party to establish the existence of the facts on
17 which it has the burden of proof at trial. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn. 2d 216, 225
18 (1989). The non-moving party must respond with specific facts and cannot rely on bare allegations.
19 *Baldwin v. Sisters of Providence*, 112 Wn. 2d 127, 132 (1989). Conclusory statements or
20 argumentative assertions are insufficient to raise an issue of fact. *Grimwood v. University of Puget*
21 *Sound, Inc.*, 110 Wn. 2d 355, 359-60 (1988).

1 In the instant case, there are no issues of material fact relating to the City's authority to issue
2 bonds. The City's authority to provide cable television service and to lease telecommunications
3 facilities and capacity to telecommunications providers has already been confirmed. Only questions of
4 law remain. The case should therefore be resolved on summary judgment.

5 **B. The City's Plans for the Telecommunications System Are Not Subject to Judicial**
6 **Review in the Absence of Bad Faith, Fraud or Ultra Vires Actions.**

7 Judicial review of the legislative actions of Washington municipalities is extremely limited.
8 The leading case on the question of judicial review of municipal legislative actions is *Blade v. La*
9 *Conner*, 167 Wn. 403 (1932). In *Blade*, as in the instant case, a taxpayer sought to enjoin a town
10 from issuing bonds for purposes of a utility project. *Blade* involved the acquisition of a water plant.
11 In considering whether the town had authority to issue the bonds. The court declined to consider
12 whether the plant could supply an adequate amount of water. As the court explained, "It is well
13 settled that a court of equity will not review the action of the legislative authority of a municipality as
14 to such matters as rest within its discretion unless fraud or bad faith are shown, or unless the action
15 taken is clearly ultra vires." *Id.* at 407.

16
17 In *City of Bremerton v. Kitsap County Sewer District*, 71 Wn. 2d 689 (1967), the court
18 refused to consider claims remarkably similar to the defendant's suggestion here that proposed utility
19 facilities may not be needed. *Bremerton* involved a sewer district's claim that installation of municipal
20 water mains was illegal because there was no need for such mains. *Id.* at 704. Citing *Blade*, the
21 court stated that its role was to determine only whether the city had authority to regulate and control
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1 the use, distribution and price of its water service. *Id.*¹ Because this Court has already confirmed
2 Tacoma's authority to develop the Telecommunications System no further inquiry is warranted.

3 The sole question on this motion for summary judgment is whether the City has authority to
4 issue bonds to finance an activity that is indisputably within its municipal powers: construction and
5 operation of the Telecommunications System. Thus, no claim of ultra vires action can be sustained.
6 Moreover, there has been no showing of bad faith or fraud. The City's actions are entitled to a
7 presumption of good faith a defendants have the burden of proving otherwise. *Blade*, 167 Wash. At
8 408. Therefore the Court must defer to the City's judgment on the desirability of constructing and
9 operating the Telecommunications System and the means of doing so.
10

11 **C. The City Has Authority Under Washington Statute To Issue Bonds for the**
12 **Telecommunications System.**

13 Washington first-class cities may issue bonds for *any* lawful corporate purpose, RCW
14 35.22.280(4). This Court has already determined that construction and operation of the
15 Telecommunications System is a lawful corporate purpose of the City. *See Order*. Thus, the City
16 may issue the Bonds to finance construction and operation of the Telecommunications System.
17 Accordingly, this Court must find that the City has the authority to issue the Bonds for the purpose of
18 financing construction and operation of the Telecommunications System.

19 **VI. CONCLUSION**

20 As this Court has determined, the City has authority to provide cable television service in the
21 Light Division service area; and to lease telecommunications facilities and capacity to
22

23 ¹ *Accord Rowan v. Convention Center*, 78 Wn. App. 322, 329 (1995) (if municipal corporation's
24 actions come within purpose and object of enabling statute and no express limitations apply, court
25 leaves choice of means used in operating corporation to discretion of municipal authorities, and
26 judicial review is limited to whether action is arbitrary, capricious or unreasonable); *Public Util. Dist.
No. 1 v. City of Newport*, 38 Wn. 2d 221, 226 (1951) (desirability of city's operation of electrical
distribution system that duplicated system of public utility district was "a problem for the
legislature—not the courts.").

1 telecommunications providers. Thus development of the Telecommunications System is a lawful
2 corporate purpose of the municipality. The only remaining issue is whether the City may issue
3 revenue bonds to construct the Telecommunications System. Because the City may issue bonds for
4 any lawful municipal purpose, it may issue bonds to finance the Telecommunications System. The
5 Defendants have not alleged bad faith or fraud on the part of the City. The City is entitled to
6 judgment as a matter of law that it has authority to issue bonds for the purpose of financing
7 construction and operation of the Telecommunications System.

8 DATED this 11th day of April, 1997.

9
10 Respectfully submitted,

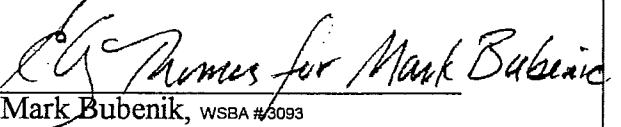
11 PRESTON GATES & ELLIS

12
13 By 

14 Elizabeth Thomas, WSBA # 11544

Laura A. Rosenwald, WSBA # 25722

15 CITY OF TACOMA

16
17 By 

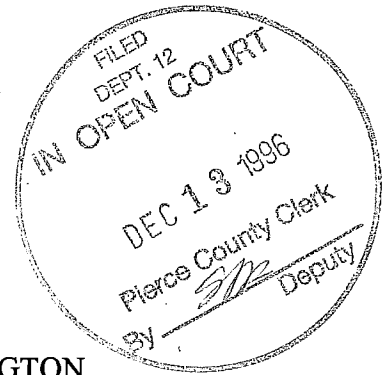
18 Mark Bubenik, WSBA #3093

Chief Assistant City Attorney

Attorneys for Plaintiff City of Tacoma

EXHIBIT J

The Honorable Grant L. Anderson



IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,)
)
) Plaintiff,)
)
) v.)
)
) THE TAXPAYERS AND RATEPAYERS OF)
) THE CITY OF TACOMA,)
)
) Defendants.)

No. 96 2 09938 0

ORDER GRANTING CITY OF
TACOMA'S MOTION FOR
SUMMARY JUDGMENT

This matter came on this day for hearing before the undersigned upon the City of Tacoma's ("City's") Motion for Summary Judgment. Plaintiff City of Tacoma appeared through its counsel, Elizabeth Thomas. Defendants Taxpayers and Ratepayers of the City of Tacoma appeared through their counsel, Ronald E. Thompson.

Counsel for the parties have drawn the Court's attention to the following documents: Summons, Complaint for Declaratory Judgment; Acceptance of Service; City of Tacoma's Motion for Summary Judgment; Memorandum in Support of Motion for Summary Judgment; Declaration of Jon Athow in Support of Motion for Summary Judgment; Defendants' Responsive Memorandum in Opposition to City of Tacoma's Motion for Summary Judgment; and City of Tacoma's Reply Brief.

Based on these documents, the Court finds that there is no genuine issue as to any material fact and that the facts set forth in the Declaration of Jon Athow are true.

ORDER GRANTING CITY OF TACOMA'S
MOTION FOR SUMMARY JUDGMENT - 1

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Having considered the documents identified by the parties, the arguments of counsel and the record herein, the Court concludes that the following order should be entered.

- 1. The Court has jurisdiction over the subject matter and parties in this action.
- 2. Tacoma City Ordinance No. 25930 (the "Bond Ordinance") was properly enacted.
- 3. The City has authority under the laws of the State of Washington and the United States to provide cable television service in the Light Division service area.
- 4. The City has authority under the laws of the State of Washington and the United States to lease telecommunications facilities and capacity to telecommunications providers.
- 5. ~~The City has authority under the laws of the State of Washington and the United States to issue the Bonds for the purposes set for in paragraphs (3) and (4) above and in the manner set forth in the Bond Ordinance.~~

DONE IN OPEN COURT this 13 day of December, 1996.

GRANT L. ANDERSON

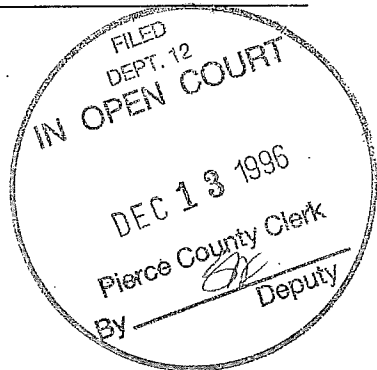
JUDGE

Presented by:
PRESTON GATES & ELLIS

By LSI
Elizabeth Thomas, WSBA # 11544
Laura A. Rosenwald, WSBA # 25722

CITY OF TACOMA

By LSI
Mark Bubenik, WSBA # 3093
Chief Assistant City Attorney
Attorneys for Plaintiff City of Tacoma



ORDER GRANTING CITY OF TACOMA'S
MOTION FOR SUMMARY JUDGMENT - 2

EXHIBIT K

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SUPERIOR COURT
ADMINISTRATION

Honorable Grant L. Anderson

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IN COUNTY CLERK'S OFFICE

A.M. APR 14 1997 P.M.

PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK

BY _____ DEPUTY

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APR 14 1997

THOMPSON, KRILICH, LAPORTE
TACOMA, WASH. WEST INC., P.S.

IN THE SUPERIOR COURT OF WASHINGTON

FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,)

Plaintiff,)

v.)

THE TAXPAYERS AND THE RATEPAYERS)
OF THE CITY OF TACOMA,)

Defendants.)

No. 96 2 09938 0

MEMORANDUM IN SUPPORT OF CITY
OF TACOMA'S MOTION FOR
SUMMARY JUDGMENT

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~~APR 14 1997~~

~~THOMPSON, KRILICH, LAPORTE
TACOMA, WASH. WEST INC., P.S.~~

I. INTRODUCTION

The City of Tacoma (the "City") brought this declaratory judgment class action under RCW 7.24 and 7.25 and CR 23(B)(2) to confirm its authority to issue bonds for the purposes of constructing and operating a telecommunications system consisting of a hybrid fiber coaxial network (the "Telecommunications System").

On December 13, 1996, this Court ruled on four of the City's five requested declarations. The Court held that (1) the Court has jurisdiction over the subject matter and parties in this action; (2) Tacoma Ordinance No. 25930 (the "Bond Ordinance"), which provides for the issuance and sale of Electric System revenue bonds in the aggregate principal amount of \$1,000,000 (the "Bonds") in order to finance the first phase of constructing and operating the Telecommunications System, was properly enacted; (3) the City has authority under the laws of the State of Washington and the United

MEMORANDUM IN SUPPORT OF CITY OF TACOMA'S
MOTION FOR SUMMARY JUDGMENT - 1

J:\LAR\24624-00.015\SJM2.DOC

COPY

PRESTON GATES & ELLIS LLP
5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 States to provide cable television service in the service area of the Light Division of the City's
2 Department of Public Utilities (the "Light Division"); and (4) the City has authority under the laws of
3 the State of Washington and the United States to lease telecommunications facilities and capacity to
4 telecommunications providers. See Order Granting City of Tacoma's Motion for Summary Judgment
5 dated December 13, 1996 (the "Order").

6 Only one issue remains: Whether the City has authority to issue revenue bonds to finance the
7 first phase of construction and operation of the Telecommunications System. The City is entitled to
8 summary judgment on this final issue. Issuing the bonds is a legislative act subject to review only for
9 such deficiencies as fraud, bad faith, or ultra vires actions. Through the Order, the Court has already
10 determined that construction and operation of the Telecommunications System is not ultra vires. No
11 facts relation to fraud, bad faith, etc. have bee alleged.

12 II. RELIEF REQUESTED

13 The City requests that the Court enter judgment declaring that:

- 14 1. The City has authority under the laws of the State of Washington to issue revenue
15 bonds for the purposes of financing a telecommunications system to provide cable
16 television service in the Light Division Service area and lease telecommunications
17 facilities and capacity to telecommunications providers.

18 III. STATEMENT OF ISSUE

- 19 1. Whether the City may issue revenue bonds under the properly enacted Bond
20 Ordinance for the purposes of providing cable television service and leasing telecommunications
21 facilities and capacity pursuant to the authority confirmed by this Court's previous Order.

22 IV. EVIDENCE RELIED UPON

23 The City believes that the following facts are undisputed in every material respect. These
24 facts are contained in the Declaration of Jon Athow in Support of Motion for Summary Judgment,
25
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1 dated November 5, 1996 ("First Athow Decl.") and the Second Declaration of Jon Athow in Support
2 of Motion for Summary Judgment dated April 11, 1997 ("Second Athow Decl.").

3 Plaintiff, the City of Tacoma, is a municipal corporation and a city of the first class of the
4 State of Washington. The Defendants are taxpayers of the City and ratepayers of its electrical utility,
5 the Light Division. Harold E. Nielsen, Jr., the taxpayer and ratepayer representative, is a resident and
6 taxpayer of the City and a customer of the Light Division. The City currently owns and operates,
7 through its Light Division, an electric utility (the "Electric System") for the purpose of providing
8 electricity and other energy services throughout the City and other portions of Pierce County.

9 On July 23, 1996, the Tacoma City Council adopted Ordinance No. 25930 (the "Bond
10 Ordinance"). The Bond Ordinance provides for the issuance and sale of Electric System revenue
11 bonds in the aggregate principal amount of \$1,000,000 (the "Bonds") in order to finance the first
12 phase of constructing and operating the Telecommunications System. The Telecommunications
13 System will be used to improve the speed and capability of the existing real-time communications
14 among certain Electric System substations, and to extend such real-time communications to the
15 remaining substations. In addition, the Telecommunications System may be used to enhance such
16 existing energy services as demand management, identification of outages, meter reading, billing and
17 payment, and resource dispatch. The Telecommunications System may be used to perform similar
18 functions for the City's provision of water service.

19 The City may also utilize a portion of the Telecommunications System to provide cable
20 television service to customers within the Light Division service area, and to lease facilities or
21 capacity to providers of video-on-demand, data transport, telephony, and other telecommunications
22 services. This Court's previous Order determined that the City has the authority to engage in these
23 activities, and that the Bond Ordinance was properly enacted.

24 The Light Division, with the assistance of numerous experts, has prepared a comprehensive
25 Telecommunications Study. The City has recently adopted resolutions approving this Study and
26

1 authorizing the Light Division to proceed with implementation. See Exhibits A, B, and C to Second
2 Athow Decl. (Public Utility Board Resolution No. Substitute U-9258; City Council Substitute
3 Resolution No. 33668; and Public Utility Board Amended Substitute Resolution No. U-9258.) The
4 City Council acted unanimously after substantial public participation.

5 The Telecommunications Study incorporates a comprehensive business plan outlining the
6 proposed services, operations, organizational structure and finances of the Telecommunications
7 System. See Exhibit D to Second Athow Decl. (Telecommunications Study notebook), eleventh
8 through sixteenth tabs. The chief concern raised by defendants' opposition on the previous summary
9 judgment motion was the absence of such a plan. That objection has now been fully met.

10 V. ARGUMENT

11 A. Summary Judgment Standard

12 Summary judgment is appropriate to resolve actions or parts thereof when no genuine issues
13 of material fact exist or when only a question of law exists. CR 56(c). "The burden is on the moving
14 party to demonstrate that there is no issue as to a material fact." *Scott v. Pacific West Mountain*
15 *Resort*, 119 Wn. 2d 484, 502-03 (1992). If the party seeking summary judgment successfully carries
16 its initial burden, the burden shifts to the non-moving party to establish the existence of the facts on
17 which it has the burden of proof at trial. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn. 2d 216, 225
18 (1989). The non-moving party must respond with specific facts and cannot rely on bare allegations.
19 *Baldwin v. Sisters of Providence*, 112 Wn. 2d 127, 132 (1989). Conclusory statements or
20 argumentative assertions are insufficient to raise an issue of fact. *Grimwood v. University of Puget*
21 *Sound, Inc.*, 110 Wn. 2d 355, 359-60 (1988).

1 In the instant case, there are no issues of material fact relating to the City's authority to issue
2 bonds. The City's authority to provide cable television service and to lease telecommunications
3 facilities and capacity to telecommunications providers has already been confirmed. Only questions of
4 law remain. The case should therefore be resolved on summary judgment.

5 **B. The City's Plans for the Telecommunications System Are Not Subject to Judicial**
6 **Review in the Absence of Bad Faith, Fraud or Ultra Vires Actions.**

7 Judicial review of the legislative actions of Washington municipalities is extremely limited.
8 The leading case on the question of judicial review of municipal legislative actions is *Blade v. La*
9 *Conner*, 167 Wn. 403 (1932). In *Blade*, as in the instant case, a taxpayer sought to enjoin a town
10 from issuing bonds for purposes of a utility project. *Blade* involved the acquisition of a water plant.
11 In considering whether the town had authority to issue the bonds. The court declined to consider
12 whether the plant could supply an adequate amount of water. As the court explained, "It is well
13 settled that a court of equity will not review the action of the legislative authority of a municipality as
14 to such matters as rest within its discretion unless fraud or bad faith are shown, or unless the action
15 taken is clearly ultra vires." *Id.* at 407.

16
17 In *City of Bremerton v. Kitsap County Sewer District*, 71 Wn. 2d 689 (1967), the court
18 refused to consider claims remarkably similar to the defendant's suggestion here that proposed utility
19 facilities may not be needed. *Bremerton* involved a sewer district's claim that installation of municipal
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3 The sole question on this motion for summary judgment is whether the City has authority to
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5 operation of the Telecommunications System. Thus, no claim of ultra vires action can be sustained.
6 Moreover, there has been no showing of bad faith or fraud. The City's actions are entitled to a
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8 408. Therefore the Court must defer to the City's judgment on the desirability of constructing and
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11 **C. The City Has Authority Under Washington Statute To Issue Bonds for the**
12 **Telecommunications System.**

13 Washington first-class cities may issue bonds for *any* lawful corporate purpose, RCW
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16 may issue the Bonds to finance construction and operation of the Telecommunications System.
17 Accordingly, this Court must find that the City has the authority to issue the Bonds for the purpose of
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19 **VI. CONCLUSION**

20 As this Court has determined, the City has authority to provide cable television service in the
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4 any lawful municipal purpose, it may issue bonds to finance the Telecommunications System. The
5 Defendants have not alleged bad faith or fraud on the part of the City. The City is entitled to
6 judgment as a matter of law that it has authority to issue bonds for the purpose of financing
7 construction and operation of the Telecommunications System.

8 DATED this 11th day of April, 1997.

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10 Respectfully submitted,

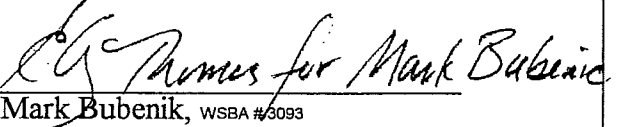
11 PRESTON GATES & ELLIS

12
13 By 

14 Elizabeth Thomas, WSBA # 11544

Laura A. Rosenwald, WSBA # 25722

15 CITY OF TACOMA

16
17 By 

18 Mark Bubenik, WSBA #3093

Chief Assistant City Attorney

Attorneys for Plaintiff City of Tacoma

EXHIBIT L

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The Honorable Grant L. Anderson

SUPERIOR COURT
ADMINISTRATION

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THOMPSON, KRILICH, LAPORTE
ATTORNEYS AT LAW

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IN COUNTY CLERK'S OFFICE

A.M. APR 14 1997 P.M.

PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

CITY OF TACOMA, a municipal corporation,

Plaintiff,

v.

THE TAXPAYERS AND THE RATEPAYERS
OF THE CITY OF TACOMA,

Defendants.

No. 96-2-09938-0

SECOND DECLARATION OF JON
ATHOW IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

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~~APR 14 1997~~

~~THOMPSON, KRILICH, LAPORTE
ATTORNEYS AT LAW~~

1. My name is Jon Athow. I am over the age of eighteen, competent to testify in this matter, and make this declaration based upon my own personal knowledge. I am employed by the Light Division of the City of Tacoma. My title is Telecommunications Project Manager. My responsibilities include planning for the creation and operation of a telecommunications system for the Light Division. I have been employed by the Light Division for three years.

2. The City of Tacoma, through its Light Division, is considering constructing and operating telecommunications facilities and services to enhance the Light Division's ability to provide highly reliable, cost-effective and convenient electric service to its customers. Such a system would also be capable of carrying other telecommunications services, including cable television service.

SECOND DECLARATION OF JON ATHOW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT - 1

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PRESTON GATES & ELLIS LLP
5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 3. The Light Division produced a Business Plan for the telecommunications system as a
2 key element of its Telecommunications Study.

3 4. The Telecommunications Study was unanimously approved by the Tacoma Public
4 Utility Board on March 26, 1997. A copy of the Board's Substitute Resolution No. U-9258
5 approving the Business Plan is attached as Exhibit A.

6 5. On April 8, 1997 the Tacoma City Council held a public hearing on the proposed
7 development of the telecommunications system and on the Business Plan. Public testimony was taken
8 and the Council debated the matter for over two hours. Earlier the same day, the Council had
9 conducted a three-hour workshop.

10 6. The Telecommunications Study was unanimously approved by the Tacoma City
11 Council on April 8, 1997. A copy of City Council Substitute Resolution No. 33668 approving the
12 Telecommunications Study and authorizing implementation is attached as Exhibit B.

13 7. On April 9, 1997 the Public Utility Board adopted Amended Substitute Resolution No
14 U-9258 to conform the language of its resolution to City Council Substitute Resolution No. 33668.
15 A copy of this Board Resolution is attached as Exhibit C.

16 8. The Telecommunications Study is attached as Exhibit D. The Business Plan is
17 comprised of all material contained behind the eleventh through sixteenth tabs.

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

20 Dated: April 11, 1997 at Tacoma, Washington.

21
22 
23 _____
24 Jon Athow
25
26



RESOLUTION NO.

SUBSTITUTE
U-9258

1
2
3 WHEREAS the City of Tacoma, Department of Public Utilities,
4 Light Division desires to: (1) develop a state-of-the-art fiber optic
5 technology to support enhanced electric system control, reliability and
6 efficiency; (2) develop capability to meet the expanding
7 telecommunications requirements in an evolving competitive electric
8 market, the most critical of which is real-time, two-way interactive
9 communications with individual energy consumers, (3) create greater
10 revenue diversification through new business lines (i.e. internet transport,
11 cable TV, etc.), (4) enhance traditional products and service, and (5)
12 maximize return on Light Division assets, and

13 WHEREAS these desired capabilities can be provided with a broad
14 band telecommunications system for all of the Light Division's service area,
15 and

16 WHEREAS a broad band telecommunications system will have
17 available capacity for future Light Division needs and will also have the
18 capacity to provide Telecommunications services for data transport, high
19 speed internet access, full cable television service, and other uses, and

20 WHEREAS the Light Division has retained consultants to review
21 and analyze the feasibility of a broad band telecommunications systems for
22 the Light Division's service area, and a business plan has been prepared
23 for this purpose (copies are on file with the Clerk), and

24 WHEREAS the cost of constructing, installing and commencing to
25 operate a broad band telecommunications system will be approximately
26 \$65 million dollars, but the benefits to the Light Division, the City and the
27 Light Division customers are projected to exceed and justify the initial cost,
28 and
29

EXHIBIT A



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WHEREAS the City Council and Public Utility Board will continue to be involved in the future decision-making on this proposal including construction contracts, and debt financing approvals, quarterly reviews on the project direction during the startup period, approval of agreements for use of City rights-of-way for telecommunications purposes which agreements will (to the extent required by law) treat the Light Division substantially similar to other franchises that the City grants for similar businesses, and

WHEREAS the Public Utility Board hereby finds and determines that the Light Division's proposal for a broad band telecommunications system is in the best interests of the City, will serve as a public purpose, and should be approved and implemented; Now, therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That the Board hereby approves the Light Division's proposal including the Business Plan for a broad band telecommunications system, and the Board recommends that the City Council approve a resolution to authorize the Light Division to proceed to implement said proposal for a broad band telecommunications system, and the Board recommends that the City Council continue to be involved in the major policy decisions including construction contracts, debt financings, the public rights-of-way use agreements for telecommunications and quarterly reviews.

Approved as to form & legality:

Ross Singleton
Acting Chairman

Mark Bubenik
Chief Assistant City Attorney

W. J. Barker
Acting Secretary

Lydia Stevenson
Clerk

Adopted 3/26/97



SUBSTITUTE

RESOLUTION NO. 33668

1
2 WHEREAS the City of Tacoma, Department of Public Utilities, Light
3 Division desires to: (1) develop a state-of-the art fiber optic system to
4 support enhanced electric system control, reliability and efficiency; (2)
5 develop capability to meet the expanding telecommunications requirements
6 in an evolving competitive electric market, the most critical of which is real-
7 time, two-way interactive communications with individual energy consumers,
8 (3) create greater revenue diversification through new business lines (i.e.
9 internet transport, cable TV, etc.), (4) enhance traditional products and
10 services, and (5) maximize return on Light Division assets, and

11 WHEREAS these desired capabilities can be provided with a broad
12 band telecommunications system for all of the Light Division's service area,
13 and

14 WHEREAS a broad band telecommunications system will have
15 available capacity for future City Light Division needs and will also have the
16 capacity to provide telecommunications services for data transport, high
17 speed internet access, full cable television service, and other uses, and

18 WHEREAS the Light Division has retained consultants to review and
19 analyze the feasibility of a broad band telecommunications system for the
20 Light Division's service area, and a business plan has been prepared for
21 this purpose (copies are on file with the Clerk), and

22 WHEREAS the cost of constructing, installing and commencing to
23 operate a broad band telecommunications system will be approximately \$65
24 million dollars, but the benefits to the Light Division, the City and the Light
25 Division customers are projected to exceed and justify the initial cost, and
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27 **EXHIBIT B**
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WHEREAS the City Council and Public Utility Board will continue to be involved in the future decision-making on this proposal including construction contracts and debt financing approvals, quarterly reviews on-the project direction during the startup period, approval of agreements for use of City rights-of-way for telecommunications purposes which agreements will (to the extent required by law or City Council) treat the Light Division substantially similar to other franchises that the City grants for similar businesses, and

WHEREAS the City Council hereby finds and determines that the Light Division's proposal for a broad band telecommunications system is in the best interests of the City, will serve a public purpose, and should be approved and implemented; Now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the Council hereby finds and determines that the City Light Division's broad band telecommunications proposal is in the best interests of the City, will serve a public purpose and that the said Business Plan is sufficient and adequate, therefore, the Council hereby approves the Light Division's proposal including the Business Plan and the Department of Public Utilities, Light Division is hereby authorized to proceed to implement said proposal for a broad band telecommunications system, and

That the proposed broad band telecommunications system shall be owned, operated and controlled by the City of Tacoma Department of Public Utilities Light Division with the Public Utility Board providing oversight and approval of business and third party agreements, as appropriate under the City Charter, Tacoma Municipal Code and other applicable laws, and the City Council shall continue to be involved in the major policy decisions including



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construction contracts, rate setting policies, debt financings, the public rights-of-way use for telecommunications agreements and quarterly reviews.

Adopted _____

Mayor

Attest: City Clerk

Approved as to form & legality:

Chief Assistant City Attorney

Requested by Public Utility
Board Resolution No. U-9258

599c



AMENDED
SUBSTITUTE
U-9258

RESOLUTION NO.

1
2 WHEREAS the City of Tacoma, Department of Public Utilities,
3 Light Division desires to: (1) develop a state-of-the-art fiber optic system
4 to support enhanced electric system control, reliability and efficiency;
5 (2) develop capability to meet the expanding telecommunications
6 requirements in an evolving competitive electric market, the most critical of
7 which is real-time, two-way interactive communications with individual
8 energy consumers, (3) create greater revenue diversification through new
9 business lines (i.e. internet transport, cable TV, etc.), (4) enhance
10 traditional products and service, and (5) maximize return on Light Division
11 assets, and

12 WHEREAS these desired capabilities can be provided with a broad
13 band telecommunications system for all of the Light Division's service area,
14 and

15 WHEREAS a broad band telecommunications system will have
16 available capacity for future Light Division needs and will also have the
17 capacity to provide Telecommunications services for data transport, high
18 speed internet access, full cable television service, and other uses, and

19 WHEREAS the Light Division has retained consultants to review
20 and analyze the feasibility of a broad band telecommunications systems for
21 the Light Division's service area, and a business plan has been prepared
22 for this purpose (copies are on file with the Clerk), and

23 WHEREAS the cost of constructing, installing and commencing to
24 operate a broad band telecommunications system will be approximately
25 \$65 million dollars, but the benefits to the Light Division, the City and the
26 Light Division customers are projected to exceed and justify the initial cost,
27 and

28 EXHIBIT C
29



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WHEREAS the City Council and Public Utility Board will continue to be involved in the future decision-making on this proposal including construction contracts, and debt financing approvals, quarterly reviews on the project direction during the startup period, approval of agreements for use of City rights-of-way for telecommunications purposes which agreements will (to the extent required by law or City Council) treat the Light Division substantially similar to other franchises that the City grants for similar businesses, and

WHEREAS the Public Utility Board hereby finds and determines that the Light Division's proposal for a broad band telecommunications system is in the best interests of the City, will serve as a public purpose, and should be approved and implemented; Now, therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That the Board hereby approves the Light Division's proposal including the Business Plan for a broad band telecommunications system, and the Board recommends that the City Council approve a resolution to authorize the Light Division to proceed to implement said proposal for a broad band telecommunications system, and the Board recommends that the City Council continue to be involved in the major policy decisions including construction contracts, rate setting policies, debt financings, the public rights-of-way use agreements for telecommunications and quarterly reviews.

Approved as to form & legality:

G. S. Karavitis
Assistant City Attorney

Daryl Hedman
Chairman
Bil Moss
Secretary

Lydia Stevenson
Clerk

Adopted April 9, 1997

500d(a)

SECOND DECLARATION OF JON ATHOW

EXHIBIT D

EXHIBIT M

RECEIVED

APR 29 1997

Preston Gates & Ellis LLP

The Honorable Grant L. Anderson

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

CITY OF TACOMA, a municipal
corporation,

Plaintiff,

v.

THE TAXPAYERS AND THE
RATEPAYERS OF THE CITY OF
TACOMA,

Defendants.

NO. 96-2-09938-0

**DEFENDANT'S RESPONSIVE
MEMORANDUM IN OPPOSITION
TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT**

Hearing Date: May 9, 1997

COMES NOW the defendants, The Taxpayers and the Ratepayers of the City of Tacoma, by and through their attorneys of record, Heidi Imhof and Ronald E. Thompson, of the law offices of Thompson, Krilich, La Porte, Tucci & West, P.S., and submit their responsive memorandum in opposition to the City of Tacoma's Motion for Summary Judgment.

This response is supported by the records and files herein, the declaration of W. Cary Deaton, CPA, the declaration of Thomas G. Pagano, CPA, CVA, Declaration of Heidi Imhof authenticating excerpts from the April 8, 1997 City Council meeting and Article IV, Section 4.2 of the Tacoma City Charter and Verbatim Report of Proceedings dated December 13, 1996.

DEFENDANT'S RESPONSIVE MEMORANDUM IN
OPPOSITION TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT- 1

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TACOMA, WASHINGTON 98402-5416

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1 Plaintiff's motion for summary judgment should be denied because the plaintiffs have
2 failed to meet their burden by demonstrating that there is no issue of material fact regarding
3 the City's authority to issue bonds to finance the proposed telecommunications system
4 project.

5 The City of Tacoma has based their entire motion on the simple proposition that
6 because the Court has determined that the City has the authority to venture into the
7 telecommunications area in the general sense, that it thereby may issue bonds to finance
8 the construction and operation of their telecommunications project. What the City has failed
9 to recognize is that the Tacoma City Charter places specific restrictions on the issuance of
10 bonds and the financing of projects. Article IV, Section 4.2 of the Tacoma City Charter,
11 requires that expenditures that are utilized for an addition to or betterment of any public utility
12 must be submitted to a vote of the electorate when a general indebtedness may be incurred.
13 (Declaration of Imhof regarding excerpts from Tacoma City Charter)
14

15 The City has submitted nothing but a generalized financial plan with no degree of
16 certainty whatsoever. Upon analysis by qualified experts in the field, W. Cary Deaton, CPA,
17 and Tom Pagano, CPA, CVA, it was determined that the City's estimate of debt service on
18 the revenue bonds based on today's interest rate are more than \$10,000,000 below true
19 projections. In addition, the profits are overstated by \$154,468,000 over the 20 year
20 projections. (Declaration of Pagano) In addition, the City had made absolutely no provisions
21 for the payment of interest or the return of Tacoma City Light's initial \$30,000,000.00
22 contribution to the project.
23
24

25 At the April 8, 1997 City Council meeting, Mr. Steve Klein, City Light Superintendent,

26
DEFENDANT'S RESPONSIVE MEMORANDUM IN
OPPOSITION TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT- 2

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1 stated that the money that the City was investing in this project was being done to obtain the
2 highest yield or return on investment for the ratepayers and taxpayers. However, the
3 financial plan does not allow for any return on investment. Further, Mr. Klein stated that the
4 money was being invested into the telecommunications system instead of buying down debt.
5 (Declaration of Imhof excerpting April 8, 1997 City Council meeting) Isn't this another way
6 of saying they are borrowing from Peter to pay Paul? The City is not paying down debt that
7 would otherwise be done but for the funds being transferred to the telecommunications
8 project. The City is still burdened with the cost of debt that could have been reduced or
9 eliminated, but for the telecommunications project.
10

11 Also, completely absent from Tacoma City Light's plan is an analysis of the risks to
12 the taxpayers and ratepayers of Tacoma. It is the expert opinion of Mr. Pagano and Mr.
13 Deaton that the business plan is based on invalid assumptions and cannot be supported
14 under the AICPA guidelines or current events in the industry. The proposal represents a
15 great financial risk and will cause a general indebtedness to the taxpayers and ratepayers
16 of Tacoma that could only be paid by increasing the rates charged to the ratepayers for
17 utilities or borrowing from the general fund.
18

19 If the City were allowed to issue bonds to finance this project, they would be acting
20 ultra virus. Under the Tacoma City Charter, the expenditure of funds and issuance of bonds
21 in the cases like these must go to a vote of the people. When the proposed "revenue"
22 bonds cannot be paid off with the revenues from non-utility services such as cable television
23 and telephony services, the ratepayers and taxpayers in the city of Tacoma will have to pay
24 the tab. They will pay the tab by paying increased utility rates or borrowing from the general
25

fund.

1 Tacoma City Light's telecommunications project has many of the same characteristics
2 as the WPPSS nuclear power plan construction project. In WPPSS, the plans to construct
3 the nuclear power plants and the power needs did not proceed as projected and the
4 revenues bonds could not be paid off. Similarly in this case, if the telecommunication project
5 does not proceed exactly as projected by Tacoma City Light, the bond debt will not be able
6 to be serviced with the revenues from the telecommunication project and the ratepayers and
7 taxpayers would be burdened with that debt. The risk of debt is just too high for the City to
8 be entering into this project without voter approval.
9

10 The municipal bond issue is extremely important. The credit rating of cable
11 companies is normally substandard and risky, and the city of Tacoma has not even
12 considered the affect of a lower credit rating for their municipal bonds. (Declaration of W.
13 Cary Deaton) The City of Tacoma has been proceeding full speed ahead with this project
14 with a blind eye towards the legality of issuing bonds on this project. Mr. Steve Klein, City
15 Light Superintendent, still doesn't know how much the project will cost or where exactly the
16 money is coming from or what it is being spent on. (Excerpts from City Council meeting
17 dated 4/8/97)
18

19 If and when this telecommunications system is finished, only 3% of the revenues to
20 pay for the system will come from utility services. This project cannot be paid for without
21 cable television and internet services. Yet, on page three (3) of the City's own motion they
22 state only that they "may . . . provide cable television service."
23

24 Even with providing cable television services, the City's financial plan is seriously
25

26 DEFENDANT'S RESPONSIVE MEMORANDUM IN
OPPOSITION TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT- 4

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1 flawed in its income projections to the tune of an overstatement of \$154,468,000 in the 20
2 year plan. (Declaration of W. Cary Deaton) In addition, the debt service payments
3 contemplated on the revenue bonds are at least \$10,000,000 short. (Declaration of W. Cary
4 Deaton) The City's projections ignore current trends with regard to technology, regulations
5 and competition. This is not a classroom exercise, this is reality and the fact of the matter
6 is that this telecommunications project will backfire and the ratepayers will be stuck with the
7 debt if the City is allowed to issue bonds based on their "dreamland" financial plan. Although
8 the City Council voted to enter into the telecommunications project, they did so with
9 reservation about the financing.
10

11 The Court has already determined that the City has the authority to generally enter
12 into the field of telecommunications, but it does not necessarily follow that the City has
13 authority to issue revenue bonds for the project. To issue revenue bonds there must be a
14 degree of certainty that those revenues will be received to service the bond debt. In this
15 case, there is absolutely no degree of certainty that there will be enough revenue to service
16 the bonds. That certainty is not present. This court has not and cannot determine on
17 summary judgment that the City has authority to issue bonds when they will, in all likelihood,
18 generally in debt the ratepayers and taxpayers of Tacoma. The bond issuance must go to
19 a vote of the people. The Tacoma City Charter, Article IV, § 4.2 provides for such a vote
20 and the charter should be followed. If the charter provisions are not followed, the City would
21 be exceeding its authority to issue the revenue bonds; the City would be acting ultra vires.
22 Based on the Declaration of W. Cary Deaton, CPA, the Declaration of Thomas G. Pagano,
23 CPA, CVA, the Tacoma City Charter, and the excerpts from the April 8, 1997 City Council
24
25
26

DEFENDANT'S RESPONSIVE MEMORANDUM IN
OPPOSITION TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT- 5

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meeting, the plaintiff's motion for summary judgment should be denied.

I.

SUMMARY JUDGMENT LAW

In ruling on a motion for summary judgment the court's function is to determine whether a genuine issue of material fact exists, not to resolve factual issues on their merits. Balise v. Underwood, 62 Wn.2d 195, 381 P.2d 966 (1963). The summary judgment procedure may not be used to try an issue of fact. Thomas v. C.J. Montag & Sons, Inc., 54 Wn.2d 20, 337 P.2d 1052 (1959).

In ruling on a motion for summary judgment, the court must consider all of the material evidence and all inferences from the evidence most favorably to the non-moving part and, when so considered, if reasonable persons might reach different conclusions, the motion should be denied. Scott v. Pacific West Mountain Resort, 119 Wn.2d 484, 834 P.2d 6 (1992); Wood v. Seattle, 57 Wn.2d 469, 358 P.2d 140 (1960). A corollary to this principle is that even though evidentiary facts are not in dispute, if different inferences or conclusions may be drawn from them as to ultimate facts such as intent, knowledge, good faith, or negligence, summary judgment is not warranted. Preston v. Duncan, 55 Wn.2d 678, 349 P.2d 605 (1960); Money Savers Pharmacy, Inc. v. Koffler Stores (Western) Ltd., 37 Wn. App. 602, 682 P.2d 960 (1984).

Washington Civil Procedure Deskbook, Volume III, Chapter 56.6(6)(a), pages 56-23-24, F. Ross Boundy and Diana V. Blakney (Wash. St. Bar Assoc. 1992).

The non moving party is not required to submit responsive pleadings. "A genuine issue as to the credibility of the movant's evidence requires denial of a motion for summary judgment." Balise v. Underwood, 62 Wn.2d 195, 381 P.2d 966 (1963); Gingrich v. Unigard Security Insurance, 57 Wn. App. 424, 788 P.2d 1096 (1990). Courts have also denied summary judgment "when complicated questions or important public issues are to be resolved. 10A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 2739 (2d ed. 1983)." Washington Civil Procedure Deskbook, Volume III, § 56.6(5)(b), page 56-22.

1 On review, appellate courts have been reluctant to sustain an entry of summary
2 judgment where there is a potential for factual dispute or significant disputed inferences from
3 those facts.

4 In this case, not only do we have a factual dispute regarding the financial forecasts
5 and projections in the City of Tacoma's telecommunications plan, but there is also a dispute
6 as to the validity of the business financial plan itself with respect to its noncompliance with
7 the generally accepted accounting procedures published by the American Institute of
8 Certified Public Accountants for the standards in forecasts and projections of financial
9 business plans.

10 When considering all of the material evidence and all inferences from the evidence
11 in a light most favorable to the defense, a reasonable person could conclude that the City
12 would be exceeding its authority if a \$1,000,000 revenue bond was issued to fund a
13 \$67,000,000 project when the financial plan for that project has been determined by experts
14 in the field to fall \$154,468,000 short in total income projections over a 20 year period.
15 Reasonable minds could conclude that there would not be the revenue funds available to
16 service the debt and that the City and therefore the taxpayers and ratepayers would then be
17 burdened with the debt. Therefore, the City's motion for summary judgment should be
18 denied.
19
20

21 II.

22 ARGUMENT

23 Based on an expert review of Tacoma City Light's business financial plan for the
24 telecommunication project, there are serious questions as to the validity of that financial plan.
25
26

1 (Declaration of W. Cary Deaton, CPA; Declaration of Thomas G. Pagano, CPA, CVA) Filed
2 herewith and incorporated by reference into this memorandum are the declarations of W.
3 Cary Deaton, CPA, and Thomas G. Pagano, CPA, CVA. Mr. Deaton and Mr. Pagano each
4 analyzed two different areas of the City's Telecommunications Plan.

5 **A. THERE ARE ISSUES OF FACT RE: FINANCING OF TACOMA CITY LIGHT'S**
6 **PROJECTED FINANCIAL STATEMENTS**

7 Mr. Deaton primarily focused on the debt service of the bonds, the financing for the
8 project, and the pro-forma cash budget. Throughout Mr. Deaton's declaration, he sets forth
9 many issues of fact with regard to the inadequacy of the financial plan prepared by the City.
10 He states that generally accepted accounting procedures were not followed in the City's
11 financial plan. (Declaration of W. Cary Deaton)

12 Based on Mr. Deaton's preliminary review of the City's financial plan, the projections
13 by the City were based on invalid assumptions that cannot be substantiated in the light of
14 current events. (Declaration of W. Cary Deaton) Mr. Deaton estimated that the projected
15 debt service on the proposed revenue bonds is understated by \$10,000,000.00 and that no
16 return on investment has been provided for the \$30,000,000.00 to be invested by the City.
17 (Declaration of W. Cary Deaton) Mr. Deaton concluded that the shortfalls in the City's plan
18 will cause a general indebtedness to the City and the ratepayers and taxpayers will be
19 funding this loss through increased utility rates or borrowing from the general fund.
20 (Declaration of W. Cary Deaton)

21
22
23 **B. THERE ARE ISSUE OF FACT RE: THE SALES AND EXPENSE PORTION OF**
24 **THE TACOMA CITY LIGHT'S PROJECTED FINANCIAL STATEMENTS**

25 Mr. Pagano primarily focused on only five (5) line items in the City's Pro-Forma

1 Income Statement. After analysis, he concluded that the City's projected profits should be
2 reduced by approximately \$154,468,000 over the 20 year projections. (Declaration of
3 Thomas G. Pagano) This is a 41.7% decrease in operating profits. (Declaration of Thomas
4 G. Pagano)

5 Mr. Pagano's declaration sets forth a detailed explanation of the analysis and
6 conclusions reached when reviewing the City's financial plan. Mr. Pagano's declaration is
7 hereby incorporated in this memorandum by reference. Mr. Pagano analyzed the City's pro-
8 forma income statement based on the current market and regulations in the industry.
9 (Declaration of Thomas G. Pagano) Based on his analysis he concluded that the City's pro-
10 forma income statement was seriously flawed from the feasibility perspective. First, the City
11 overstated the number of cable TV subscribers which would result in a \$62,444,000.00
12 decrease in revenue based on the current market. Second, the City overstated projected
13 revenues from telephone and data transport by 25% based on imminent FCC regulations.
14 Third, the City overstated residential data transport revenues by a total of \$33,595,000 based
15 on the prevailing costs of such services in the local market. Finally, the City underestimated
16 its marketing costs by \$15,761,000 based on the current marketing costs for other
17 companies in the industry.
18
19

20 The bottom line is that the City will not be able to achieve the projected revenues as
21 set forth in their pro-forma income statement. (Declaration of Thomas G. Pagano) Mr.
22 Pagano concluded that if the City's revenue projections were not met, the City would not be
23 able to service the revenue bond debt and the debt would have to be paid either out of the
24 City's general fund or by an increase in the utility rates to the ratepayers and taxpayers of
25

26 DEFENDANT'S RESPONSIVE MEMORANDUM IN
OPPOSITION TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT- 9

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1 Further, if the City decides not to enter into the cable television service industry, there
2 is absolutely no possibility whatsoever that this project could be paid for from the utility
3 revenues. (Declaration of Thomas G. Pagano, CPA, CVA)

4 **III.**

5 **CONCLUSION**

6 The City argues that it has the sole authority to determine whether the
7 telecommunications project is in the best interests of the ratepayers. The issue before this
8 court on summary judgment is whether the City has authority to issue revenue bonds for the
9 project as set for in the City's financial plan.
10

11 **QUESTION:** Under the Tacoma City Charter, does the City have authority to issue
12 bonds for a project without a vote of the people when the financial feasibility of the
13 project is not certain?

14 **ANSWER:** No.

15 The City's motion for summary judgment should be denied. The City's financial plan
16 is not feasible. The City has overstated their expected operating profit by 41.7% or
17 \$154,468,000. This project will generally in debt the City and the issuance of bonds must
18 go to a vote of the people pursuant to Article IV, § 4.2 of the Tacoma City Charter.

19 Under the City's financial plan, if the revenues projected are not achieved, the City will
20 be in a state of general indebtedness and the debt would be serviced either from the general
21 fund or the ratepayers and taxpayers of Tacoma will be funding this loss through increased
22 utility rates. (Declaration of W. Cary Deaton, CPA; Declaration of Thomas G. Pagano, CPA,
23 CVA)
24

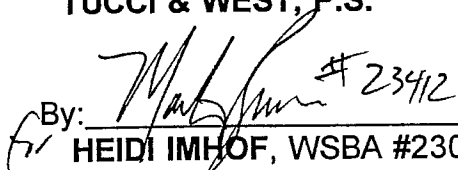
25 The cable television service and the telephony services are not incidental to the City's
26

1 telecommunication upgrades, they are essential. If the City cannot or do not achieve the
2 income projected for these services in their financial plan, the telecommunications project
3 will not pay for itself. The City and its taxpayers/ratepayers will not be getting the highest
4 yield or return on their money. The upgrades that the City is making to the current system
5 will only generate at most 3% of the total funds necessary to pay for the project from utility
6 services. The remaining funds must be generated by non utility services such as cable
7 television and data transportation. The City does not have a feasible financial plan for
8 obtaining the necessary income from these non utility services. Based upon an expert
9 analysis, the City has overestimated their operating income by 41.7% or \$154,468,000.00,
10 after analyzing only five (5) line items in the City's pro-forma income statement. We can only
11 speculate as to the impact of subjecting the remaining fifteen (15) line items to the same
12 scrutiny. There are clearly issues of fact regarding whether or not the City would be
13 exceeding its authority by issuing revenue bonds based on the current financial plan.
14

15 The City cannot be allowed to issue a \$1,000,000.00 revenue bond to fund a project
16 that will cost many millions more without an adequate degree of certainty that there will be
17 revenues available to pay the debt. By issuing such bonds, the City would be exceeding its
18 authority; the City would be acting ultra-vires.
19

20 **RESPECTFULLY SUBMITTED** this 28th day of April, 1997.

21 **THOMPSON, KRILICH, LA PORTE,**
22 **TUCCI & WEST, P.S.**

23 By:  #23412
24 **HEIDI IMHOF, WSBA #23083**
25 **Attorneys for Defendants**

26 DEFENDANT'S RESPONSIVE MEMORANDUM IN
OPPOSITION TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT- 11

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EXHIBIT N

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A.M. MAY 05 1997 P.M.

THOMPSON, KRILICH LAROCHE
ATTORNEYS AT LAW

PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON

FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,)

Plaintiff,)

v.)

THE TAXPAYERS AND THE RATEPAYERS)
OF THE CITY OF TACOMA,)

Defendants.)

No. 96 2 09938 0

CITY OF TACOMA'S REPLY BRIEF

I. INTRODUCTION

The City of Tacoma (the "City") has moved for summary judgment on the fifth of five issues brought in this action:¹ Whether the City has authority to issue revenue bonds to finance the first phase of construction and operation of a telecommunications system consisting of a hybrid fiber coaxial network (the "Telecommunications System"). In its Motion on this final issue, the City

¹ On December 13, 1996, this Court ruled on four of the City's five requested declarations. The Court held that (1) the Court has jurisdiction over the subject matter and parties in this action; (2) Tacoma Ordinance No. 25930 (the "Bond Ordinance"), which provides for the issuance and sale of Electric System revenue bonds in the aggregate principal amount of \$1,000,000 (the "Bonds") in order to finance the first phase of constructing and operating the Telecommunications System, was properly enacted; (3) the City has authority under the laws of the State of Washington and the United States to provide cable television service in the service area of the Light Division of the City's Department of Public Utilities (the "Light Division"); and (4) the City has authority under the laws of the State of Washington and the United States to lease telecommunications facilities and capacity to telecommunications providers. See Order Granting City of Tacoma's Motion for Summary Judgment dated December 13, 1996 (the "Order").

COPY

1 explained how issuing the bonds is a legislative act subject to review only for such deficiencies as
2 fraud, bad faith, or ultra vires actions. The City noted that no facts relating to fraud, bad faith, etc.,
3 have been alleged and that through the Order, the Court has already determined that construction and
4 operation of the Telecommunications System is not ultra vires.

5 Defendants' responsive brief did not take issue with any of these points. Nor did their brief
6 attempt to show facts sufficient to satisfy the stringent legal standard for review of legislative acts.
7 Defendants' sole legal argument is that the Tacoma City Charter (the "Charter") requires a public
8 vote authorizing issuance of the Bonds. However, the Charter does not require a vote of the people
9 under the facts of this case because no such vote is required for the issuance of *revenue* bonds.

10 Defendants' brief also argues extensively that revenues from the Telecommunications System
11 may be inadequate to cover debt service on the Bonds. This factual argument is simply not material
12 to the question of the City's authority to issue the Bonds, and therefore cannot raise a "genuine issue
13 as to any *material* fact[.]" CR 56 (emphasis supplied). Moreover, the issue is outside of the scope of
14 the Court's review.

15 II. STATEMENT OF ISSUES

16 1. Whether a Tacoma City Charter provision that requires a vote of the people to
17 authorize certain general obligation bonds should be read to require such a vote for the issuance of
18 Electric System revenue bonds for the first phase of the Telecommunications Project.

19 2. Whether the adequacy of revenues from the Telecommunications System is material to
20 whether the Tacoma City Council acted within its legislative discretion in approving the Bond
21 Ordinance and determining to proceed with the Telecommunications Project.

22 III. STATEMENT OF FACTS

23 For purposes of this Motion for Summary Judgment, the City accepts Defendants' truly
24 factual statements. However, the Court should not consider Defendants' unsupported conclusions or
25
26

1 the statements of their experts that are beyond the scope of their expertise.² Many of Defendants'
2 unsupported conclusions are belied by admissible evidence. For example, the brief makes an
3 inflammatory and irrelevant reference to the Washington Public Power Supply System,³ claiming that
4 the Tacoma general fund and City taxpayers will be burdened with debt if Light Division revenues fail
5 to cover debt service on the Bonds.

6 Defendants' have alleged no specific facts in support of their conclusion that the
7 Telecommunications Project could become an obligation of the general fund. The Bond Ordinance
8 expressly states that it provides "for the issuance and sale of the City's Electric System Revenue
9 Bonds[.]" Complaint, Ex. 1, title page; *see also* id. at sections 1.2.B ("Bonds" defined to mean
10 revenue bonds); 2.3 (Bonds' only lien is upon net revenues of electric system); 2.4 (finding that
11 sufficient revenues over and above operation and maintenance will be available to pay debt service on
12 Bonds); 3.1 and 4.7(a) (reiterating that the type of bond involved is a revenue bond).

13 The difference between revenue bonds and general obligation bonds is highly significant. The
14 City's obligation under a revenue bond is limited to funds available from the Electric System (which
15 includes the Telecommunications Project). Bond holders will buy a bond that says, "Principal of and
16 interest on this bond are payable solely out of the special fund of the City known as the Electric
17 System Revenue Bond Fund[.]" Bond Ordinance section 4.7(a). The bond will also make clear that
18 the City is obligated to set aside only "Revenues of said Electric System" to pay off the bonds. *Id.*
19 Thus, no general fund dollars are committed and no general obligation is incurred under the Bond
20 Ordinance. By the same token, revenues from electric customers are retained by the Light Division
21
22

23 ² Defendants' submission of a declaration from Mr. Pagano fails to comply with the rules for disclosure of
24 experts. Defendants have not identified Mr. Pagano as a witness, despite the fact that the cutoff for disclosure of
25 witnesses was in November 1996. The City was not aware that he had been retained prior to receiving Defendants
26 response on this motion, and have had no opportunity to conduct discovery. Yet in order to put this matter before the
Court expeditiously, the City is not seeking discovery at this time.

³ *See* Defendants' Responsive Memorandum in Opposition to City of Tacoma's Motion for Summary Judgment
("Defendants' Response") at 4.

1 and are not available to the General Fund. In sum, there is no exposure to the City general fund or
2 City taxpayers.

3 In a similarly unsupported and unsupportable allegation, Defendants claim that the City has
4 failed to fully consider the legality of the issuance of the Bonds. *See* Defendants' Response at 4.
5 However, the whole purpose of this action is to ensure full consideration of whether the Bonds are
6 legal prior to proceeding with the Telecommunications System.⁴

7 Defendants also assert that the City's financial projections ignore current trends with regard to
8 technology, regulations and competition. *See* Defendants' Response at 5. This argument is
9 immaterial for reasons detailed below. Moreover, the Telecommunications Study was prepared by a
10 team of experts who devoted considerable attention to trends in the telecommunications industry.
11 *See* Klein Decl. at Paragraphs 7-11. Defendants allege without benefit of supporting authority that
12 the Tacoma City Council ("City Council") had reservations about financing the Telecommunications
13 System. *See* Defendants' Response at 5. However, it is an undisputed fact that the City Council
14 unanimously adopted the Resolution authorizing the City to proceed with the Telecommunications
15 System.⁵

16 IV. ARGUMENT

17 A. To Defeat a Motion for Summary Judgment, Defendants Must Present Admissible 18 Evidence To Establish the Existence of an Issue of Material Fact.

19 Summary judgment is appropriate to resolve actions or parts thereof when no genuine issues
20 of material fact exist or when only a question of law exists. CR 56(c). "The burden is on the moving
21 party to demonstrate that there is no issue as to a material fact." *Scott v. Pacific West Mountain*
22 *Resort*, 119 Wn. 2d 484, 502-03 (1992). If the party seeking summary judgment successfully carries
23 its initial burden, the burden shifts to the non-moving party to establish the existence of the facts on

24 ⁴ The City's approach to this Telecommunications Project, seeking confirmation of its authority from this Court
25 before proceeding, is markedly different from the course of events involving WPPSS. There, no declaration of
26 authority was sought before construction began.

⁵ Second Declaratoin of Jon Athow in Support of Motion for Summary Judgment dated April 11, 1997,
("Second Athow Decl."), paragraph 6.

1 which it has the burden of proof at trial. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn. 2d 216, 225
2 (1989). The non-moving party must respond with specific facts and cannot rely on bare allegations.
3 *Baldwin v. Sisters of Providence*, 112 Wn. 2d 127, 132 (1989). Conclusory statements or
4 argumentative assertions are insufficient to raise an issue of fact. *Grimwood v. University of Puget*
5 *Sound, Inc.*, 110 Wn. 2d 355, 359-60 (1988).

6 Defendants have presented no admissible evidence demonstrating the existence of an issue of
7 material fact regarding the City's authority to issue the Bonds. Instead, they rely on unsupported
8 conclusions and opinions of experts testifying beyond the scope of their expertise and on immaterial
9 issues. Therefore, they have failed to make the showing necessary to defeat this summary judgment
10 motion.

11 **B. Defendants Have Implicitly Accepted the City's Argument that the City's Plans for the**
12 **Telecommunications System Are Not Subject to Judicial Review in the Absence of Bad**
13 **Faith, Fraud or Ultra Vires Actions.**

14 Judicial review of the legislative actions of Washington municipalities is extremely limited.
15 *See City's Memorandum in Support of City of Tacoma's Motion for Summary Judgment at 2; Blade*
16 *v. La Conner*, 167 Wn. 403, 407 (1932) (holding court will not review action of municipal legislative
17 authority as to such matters as rest within its discretion unless fraud or bad faith are shown, or unless
18 action is clearly ultra vires). Defendants have conceded this point, as their Response does not dispute
19 the City's description of the scope of review.

20 Defendants have merely contended that issuing the Bonds is financially risky.⁶ They have not
21 alleged fraud or bad faith. Defendants have not alleged that any action is ultra vires, aside from the

22 ⁶ Even if financial risk were material or within the scope of review, in enacting the Bond Ordinance, the City
23 Council stated that "the City has determined that it is prudent and economical to provide additional capacity on [its]
24 telecommunications system to provide the Electric System with sufficient capacity to perform and enhance such
25 functions as automated meter reading and billing, appliance control, and load shaping" and found that sufficient
26 revenues over and above operation and maintenance will be available to pay debt service on the Bonds. Ordinance at
page 1 and section 2.4. Such City Council findings are presumed valid as long as they are reasonable. *Lenci v. City of*
Seattle, 63 Wn. 664, 668 (1964). Defendants have provided no specific facts to overcome the presumption that the
Council's determination was reasonable. By contrast, there is admissible evidence that the Council was aware of
potential risks and was willing to accept them. Klein Del., paragraph 14.

1 asserted failure to comply with the Charter provision. Therefore, they have implicitly admitted that
2 the City has authority to issue the Bonds if their Charter argument fails.

3
4 **C. Charter Section 4.2 Is Irrelevant Because the Question of Whether the City May**
5 **Finance the Telecommunications System with General Obligation Bonds Is Not Before**
6 **the Court.**

7 Defendants claim that under the Tacoma City Charter, a vote of the people is required in order
8 to incur general indebtedness for the Telecommunications Project. This may be true, but the
9 argument is wholly misplaced. Under the Charter, no vote of the people is required for utility system
10 acquisitions unless “general indebtedness is incurred by the city.”⁷ The Bonds are revenue bonds.
11 Under Washington law, the principal and interest on revenue bonds is payable only from specified
12 municipal revenues, and such bonds “shall **not** constitute . . . a general obligation” of the municipal
13 corporation. RCW 39.46.150. Therefore, no amount of argument over the assumptions and
14 conclusions of the financial plan can convert the bonds at issue in this case from revenue bonds into
15 general obligation bonds. No matter how poorly the Telecommunications Project might perform,
16 holders of the Bonds would have no claim upon the general fund. Poor performance could not
17 convert the Bonds from revenue bonds into general obligation bonds. Accordingly, no vote of the
18 people is required for issuance of the Bonds.

19 The City could have chosen to issue general obligation bonds for the Telecommunications
20 System. However, at this time, it has elected to issue only revenue bonds. If the City in the future
21 wished to issue general obligations bonds as a funding source for the Telecommunications System,
22 the Charter provision might apply. However, concerns about general obligation bonds at this point
23 are purely speculative.

24 ⁷ The Charter provision upon which Defendants rely is Section 4.2 It provides:

25 The city may purchase, acquire, or construct any public utility system, or part thereof, or make any
26 additions and betterments thereto or extensions thereof, without submitting the proposition to the voters,
provided no general indebtedness is incurred by the city. If such indebtedness is to be incurred, approval by
the electors, in the manner provided by state law, shall be required.

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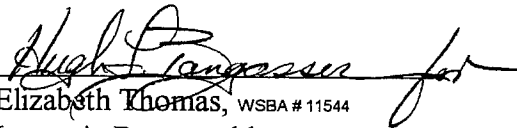
IV. CONCLUSION

This Court has already ruled that the City has authority to construct and operate a telecommunications system for purposes of enhancing electrical service and for providing telecommunications services and leasing telecommunications facilities and capacity. This Court's role is not to second-guess the City Council's and Public Utility Board's carefully considered decisions about whether and how the Telecommunications System should be developed. The only question before the Court is whether the City can issue revenue bonds to finance activities that, according to the Court, it is authorized to carry on. Defendants' sole legal argument, that the City must obtain a vote of the people for such bonds, fails because revenue bonds are not a "general obligation." Defendants' remaining factual arguments are either unsupported by admissible evidence or do not address the standard under which the Court must review legislative acts. Therefore, the Court should grant the City's Motion for Summary Judgment.

DATED this 5th day of May, 1997.

Respectfully submitted,

PRESTON GATES & ELLIS

By 
Elizabeth Thomas, WSBA # 11544
Laura A. Rosenwald, WSBA # 25722

CITY OF TACOMA

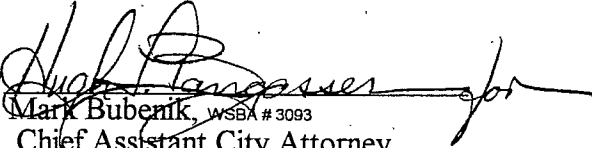
By 
Mark Buberik, WSBA # 3093
Chief Assistant City Attorney
Attorneys for Plaintiff City of Tacoma

EXHIBIT O

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The Honorable Grant L. Anderson

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SUPERIOR COURT
ADMINISTRATION

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A.M. MAY 05 1997 P.M.

THOMPSON, KRILICH, LAPORTE
ATTORNEYS AT LAW

PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

CITY OF TACOMA, a municipal corporation,)

No. 96-2-09938-0

Plaintiff,)

DECLARATION OF STEVEN J. KLEIN
IN SUPPORT OF CITY'S REPLY

v.)

THE TAXPAYERS AND THE RATEPAYERS)
OF THE CITY OF TACOMA,)

Defendants.)

1. My name is Steve Klein. I am the Superintendent of the Light Division of Tacoma Public Utilities. The purpose of this declaration is to support the City of Tacoma's reply brief on its motion for summary judgment. I am over the age of eighteen, competent to testify in this matter, and make this declaration based upon my own personal knowledge.

2. The City of Tacoma, through its Light Division, plans to construct and operate telecommunications facilities and services to enhance the Light Division's ability to provide highly reliable, cost-effective and convenient electric service to its customers (the "Telecommunications Project"). Such a system would also be capable of carrying other telecommunications services, including cable television service.

DECLARATION OF STEVEN J. KLEIN
IN SUPPORT OF CITY'S REPLY BRIEF- 1

COPY

1 3. As my staff has described previously, the City adopted the Bond Ordinance
2 (Complaint, Ex. 1) in July 1996 for the purpose of partially funding the Telecommunications Project.¹
3 The City's purpose in bringing this litigation is to test the validity of the Bond Ordinance, which
4 provides for the issuance of revenue bonds only. The City is not asking the Court to determine
5 whether the City could issue any other type of bonds.

6 4. The Bond Ordinance unequivocally provides for the issuance of revenue bonds rather
7 than general obligation bonds. The Bond Ordinance expressly states that it provides "for the issuance
8 and sale of the City's Electric System Revenue Bonds[.]" Complaint, Ex. 1, title page; *see also* id. at
9 sections 1.2.B ("Bonds" defined to mean revenue bonds); 2.3 (Bonds' only lien is upon net revenues
10 of electric system); 2.4 (finding that sufficient revenues over and above operation and maintenance
11 will be available to pay debt service on Bonds); 3.1 and 4.7(a) (reiterating that the type of bond
12 involved is a revenue bond).

13 5. The difference between revenue bonds and general obligation bonds is highly
14 significant. The City's obligation under a revenue bond is limited to funds available from the Electric
15 System (which includes the Telecommunications Project). Bond holders will buy a bond that says,
16 "Principal of and interest on this bond are payable solely out of the special fund of the City known as
17 the Electric System Revenue Bond Fund[.]" Bond Ordinance section 4.7(a). The bond will also
18 make clear that the City is obligated to set aside only "Revenues of said Electric System" to pay off
19 the bonds. *Id.* Thus, no general fund dollars are committed and no general obligation is incurred
20 under the Bond Ordinance. By the same token, revenues from electric customers are retained by the
21 Light Division and are not available to the General Fund.

22 6. The only other funding source that is currently contemplated for the
23 Telecommunications Project is a surplus of approximately \$40 million in the Light Division current
24

25 ¹ Declaration of Jon Athow in Support of Motion or Summary Judgment (Nov. 5, 1996),
26 paragraph 15.

1 fund. This is the money that I mentioned at a City Council meeting on April 8, 1997.² This money is
2 generated exclusively by Light Division activities, primarily sales of electric power. As I stated, that
3 \$40 million might otherwise be used to buy down debt. But contrary to the unsupported implication
4 of Defendants' Response, the money would only be used to buy down Light Division debt, not
5 general fund or other City debt. Because the Telecommunications Project is an element of the
6 Electric System, it will enhance the capability and value of the Electric System, and will be owned and
7 operated by the Light Division, it is an appropriate investment for Light Division surplus.

8 7. The Light Division produced a Telecommunications Study³ that includes a Business
9 Plan. The Business Plan was *unanimously* approved by both the Tacoma Public Utility Board and the
10 Tacoma City Council in April 1997.

11 8. The Business Plan is based upon assumptions that are fully substantiated in light of
12 current trends in the telecommunications industry. It involved a review of the industry both nationally
13 and locally. *Id.* at page 1. It was based on input from a wide range of experts. The
14 Telecommunications Study, including the Business Plan, was prepared by a multidisciplinary group
15 called the Telecommunications Study Team. This team of approximately twenty people included Jon
16 Athow, other Light Division staff and outside consultants practicing in the areas of
17 telecommunications, finance, business planning, marketing and the law.

18 9. The Telecommunications Study also included an economic development study
19 produced expressly for purposes of analyzing whether the City should proceed with the
20 Telecommunications Project. *See* Appendix D. Two of the five authors of this economic
21 development study hold doctorate degrees, and the authors consulted with about 20 other
22 professionals in the community.

23
24
25 ² My comments are excerpted in the Declaration of Heidi Imhoff dated April 28, 1997.

26 ³ This study, which is contained in a three-ring binder, was submitted as Exhibit D to Jon Athow's declaration dated April 11, 1997.

1 10. Through the Telecommunications Study, the City carefully considered issues similar to
2 those raised by Defendants' witnesses. *See, e.g.*, chapter on options (fifth section of Study). This
3 section of the Study analyzes in detail the various options for telecommunications services from
4 various private providers, considering such factors as types of service offered, current and potential
5 technology utilized by different providers, projections for future growth and financial risk, investment
6 profile, etc. This options analysis is thoroughly documented through 73 endnotes. *See also*
7 Appendix B (Light Division response to TCI letter regarding municipal ownership of
8 telecommunication and cable systems).

9 11. The members of the Utility Board and the members of the City Council participated
10 actively in analysis of financial plan issues. After the Telecommunications Study was complete, they
11 held a three-hour work session on the Telecommunications Project and entertained about two hours
12 of public testimony and discussion before unanimously voting to proceed with the Project as set forth
13 in the Study. Discussion was vigorous both at the work session and at the public hearing.

14 12. As Light Division staff explained to the Board and Council, and as the Council itself
15 found in the Resolution approving the Project,⁴ a key purpose of the Telecommunications Project is
16 to protect and enhance the value of the Light Division's existing electric utility assets by having a
17 telecommunications system that is sophisticated enough to enable the Light Division to compete
18 effectively in the rapidly evolving electric industry. To fulfill this important purpose of protecting the
19 value of existing Light Division *electric* assets, it is not at all necessary that the revenues from the
20 provision of telecommunications and cable television services cover the entire cost of the
21 Telecommunications Project.

22 13. The Council and Board were aware when they voted to proceed that revenues from
23 the provision of telecommunications and cable services might fall short of projections. As Light
24 Division staff informed the Board and Council, under a "worst case" shortfall, electric rates might

25 _____
26 ⁴ This resolution as adopted is attached as Exhibit B to Jon Athow's declaration dated April 11,
1997.

1 have to be increased by as much as 2.5%. This scenario assumed that we incurred all the cost of
2 building the system but obtained no revenues from provision of cable television service or from
3 provision of telecommunications service to third parties. This "worst case" scenario is significantly
4 worse than the scenario that Defendants' experts present.

5 14. Light Division staff explained to the City Council our view that even if the
6 Telecommunications Project's revenues fell short of projections, even to the point of a worst case
7 scenario (resulting in a 2.5% rate increase), still the City should proceed with the Project in order to
8 secure the value of the City's electric system assets. I believe that in voting to proceed with the
9 Project, the Council fully understood and accepted the risk of an electric rate increase.

10 15. Thus, it is not terribly important whether the Telecommunications Project's own
11 revenues will be sufficient to cover its costs. Similarly, although I believe our Financial Plan is very
12 sound, including our assumptions regarding interest rates and other factors, whether we used
13 precisely correct assumptions is not significant.

14 16. The important question is whether Light Division revenues will be sufficient to cover
15 Telecommunications Project costs, since we are issuing electric system revenue bonds for the Project
16 and other Project costs will be funded by accumulated Light Division revenues. Obviously, Light
17 Division revenues are sufficient. Indeed, Light Division revenues are 40 times greater than worst-
18 case Project costs. Thus there is zero possibility that the Telecommunications Project could
19 somehow affect the City's general fund and its taxpayers.

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

22 Dated: May 5, 1997 at Tacoma, Washington.

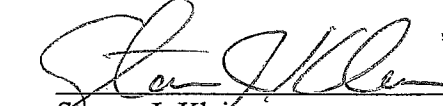
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EXHIBIT P

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IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation,
Plaintiff,
v.
THE TAXPAYERS AND RATEPAYERS OF
THE CITY OF TACOMA,
Defendants.

No. 96 2 09938 0

~~(PROPOSED)~~
ORDER GRANTING CITY OF
TACOMA'S MOTION FOR
SUMMARY JUDGMENT

This matter came on this day for hearing before the undersigned upon the City of Tacoma's ("City's") Motion for Summary Judgment. Plaintiff City of Tacoma appeared through its counsel, Elizabeth Thomas. Defendants Taxpayers and Ratepayers of the City of Tacoma appeared through their counsel, Ronald E. Thompson.

Counsel for the parties have drawn the Court's attention to the following documents:
Summons, Complaint for Declaratory Judgment; Acceptance of Service; City of Tacoma's Motion for Summary Judgment; Memorandum in Support of Motion for Summary Judgment; Second Declaration of Jon Athow in Support of Motion for Summary Judgment; Defendants' Responsive Memorandum in Opposition to City of Tacoma's Motion for Summary Judgment; Declarations of Heidi Imhoff, Thomas Pagano, and Cary Deaton; City of Tacoma's Reply Brief; and Declaration of Steven J. Klein.

ORDER GRANTING CITY OF TACOMA'S
MOTION FOR SUMMARY JUDGMENT - 1

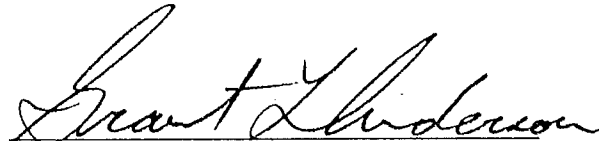
1/11/97 however the court is making no finding as to the financial feasibility of the Project or as to the legality of any future bond issues. 11/6

1 Based on these documents, the Court finds that there is no genuine issue as to any material
2 fact and that the facts set forth in the Declaration of Jon Athow ~~and Steven J. Klein~~ are true. M

3 Having considered the documents identified by the parties, the arguments of counsel and the
4 record herein, the Court concludes that the following order should be entered.

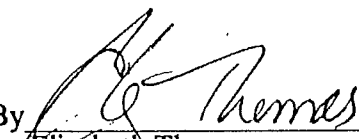
5 The City has authority under the laws of the State of Washington and the United States to
6 ^{B1 million of revenue} issue the Bonds for the purposes set forth in paragraphs (3) and (4) in this Court's Order dated
7 December 13, 1996 and in the manner set forth in the Bond Ordinance.

8 DONE IN OPEN COURT this 9th day of May, 1997.

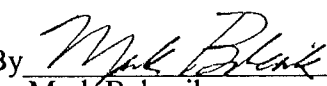
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11 JUDGE

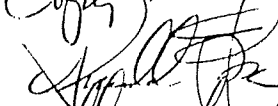
12 Presented by:

13 PRESTON GATES & ELLIS

14
15 By 
16 Elizabeth Thomas, WSBA # 11544
Laura A. Rosenwald, WSBA # 25722

17 CITY OF TACOMA

18
19 By 
20 Mark Bubenik, WSBA # 3093
21 Chief Assistant City Attorney
Attorneys for Plaintiff City of Tacoma

22 (Copy received 9 May 97)
23 
24 Attorney for Putnam
25 4085
26

ORDER GRANTING CITY OF TACOMA'S
MOTION FOR SUMMARY JUDGMENT - 2

EXHIBIT Q

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

EDWARD E. (TED) COATES;)
MICHAEL CROWLEY; MARK BUBENIK)
and MARGARET BUBENIK d/b/a)
Steele Manor Apartments;)
THOMAS H. OLDFIELD; and)
INDUSTRIAL CUSTOMERS OF)
NORTHWEST UTILITIES, an Oregon)
nonprofit corporation,)
Plaintiffs,)
vs.)
CITY OF TACOMA,)
Defendant.)



No. 17-2-08907-4

DEPOSITION UPON ORAL EXAMINATION
OF
WILLIAM FOSBRE

10:05 A.M.

NOVEMBER 29, 2017

1001 FOURTH AVENUE, SUITE 4200

SEATTLE, WASHINGTON

REPORTED BY: LESLIE POST, CCR No. 2378



1 A. Correct.

2 Q. Can you give me some explanation as to how
3 it came to -- how this memorandum came about, why was
4 it prepared, at whose request, et cetera?

5 A. Well, the memorandum came about so that we
6 could have one place where all the subjects that had
7 been talked about related to telecommunications could
8 be put down in a risk format to talk about various
9 things that had been addressed by the courts, by the
10 FCC, by our City Charter, so it could be used by both
11 the Board and Council when they were discussing what
12 to do with the Wave proposal and with Click!.

13 Q. Okay.

14 A. It's meant to be a higher level document,
15 almost like an Attorney General's opinion, just to
16 give people background so when they're deciding on an
17 alternative or a course, they will at least know what
18 some of the law is that's out there.

19 Q. So when this memo was prepared and signed by
20 you and I guess initialed by Ms. Pauli, it was I take
21 it distributed in some fashion to the Mayor,
22 City Council and Public Utility Board?

23 A. Correct.

24 Q. Was that at a particular meeting or just in
25 advance of some meeting or can you remember how it was



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

EDWARD E. (TED) COATES, et. al.,

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

No. 17-2-08907-4

DECLARATION OF CHRIS
ROBINSON IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PARTIAL SUMMARY JUDGMENT

I, Chris Robinson, declare as follows:

1. I am over the age of 18, have personal knowledge of the facts stated herein, and am competent to testify thereto.

2. I am Superintendent and Chief Operating Officer of Tacoma Power.

3. Tacoma Power consists of six units, one of which is Click! ("Click"). Click is organized as a unit under Tacoma Power, just like the Generation unit or the Transmission and Distribution unit.

4. The Click General Manager reports to me, the Power Superintendent, and is part of my Power management team.

1 5. Ever since the construction of the telecommunications system in the late
2 1990s, it has connected most of Tacoma Power's distribution and transmission assets,
3 allowing for efficient and remote operation of those assets, including outage tracking and
4 detection, automatic substation control, and monitoring for preventative maintenance
5 through SCADA data. For the customers who have had meters installed, the system also
6 made possible automated meter reading and billing, distribution automation, and remote
7 turn on/turn off for electric customers.

8 6. At its peak, Tacoma Power had over 18,000 gateway meters installed at its
9 electric customers' residences and places of business.

10 7. By the mid- to late 2000s, the electric utility industry began to recognize
11 that wireless telecommunications technology would begin to take the place of wired
12 telecommunications systems with respect to smart meter applications.

13 8. Partially as a result of changes in the industry and the fact that Tacoma
14 Power's meter supplier stopped manufacturing the gateway meters, Tacoma Power
15 stopped deploying new gateway meters in 2009 and stopped replacing existing gateway
16 meters in 2015. Tacoma Power, however, did continue to replace "PayGo" meters with
17 spare parts or functioning gateway meters until late 2016.

18 9. Today, Tacoma Power continues to use the telecommunications system to
19 gather information from and control some of the operations of its generation, distribution,
20 and transmission assets. Tacoma Power also continues to use the telecommunications
21 system to operate the remaining 14,240 gateway meters still installed and operating at its
22 customers' residences and places of business.

23 10. Because Tacoma Power's use of the telecommunications system for AMI
24 metering has changed and diminished over the years due to changes in
25 telecommunications technology, Tacoma Power, the TPU Board, and City Council have

1 been grappling with what to do with its telecommunications assets. Although they have
2 not yet been formally designated, significant parts of the System essentially are (or will
3 become) surplus property. Municipal utilities and cities must care for surplus property
4 and decide how and when to dispose of it.

5 11. Attached as Exhibit A is an accurate and complete copy of resolutions
6 passed in 2009 by the Tacoma Public Utilities (“TPU”) Board and Tacoma City Council
7 declaring nine substation properties as surplus, including the Centennial Substation at 543
8 North Stadium Way.

9 12. Attached as Exhibit B is an accurate and complete copy of a 2017
10 memorandum from TPU Director William Gaines explaining that Tacoma Power was now
11 prepared to sell the Centennial Substation property that was surplus in 2009. The
12 memorandum states that if Tacoma Power did not dispose of the Centennial Substation
13 property, it would continue to incur management and administrative costs related to the
14 property.

15 13. Attached as Exhibit C is an accurate and complete copy of the 2017
16 resolution of the TPU Board authorizing the sale of the Centennial Substation property at
17 543 North Stadium Way, which had been surplus by the TPU Board and City Council
18 in 2009.

19 14. Attached as Exhibit D is an accurate and complete copy of City Council
20 Resolution 39869 that was adopted by the City Council on November 21, 2017,
21 authorizing the sale of the Centennial Substation property at 543 North Stadium Way,
22 which had been surplus by the TPU Board and City Council in 2009.

23 15. Tacoma Water owned 106 acres of property around the McMillin
24 reservoirs as a buffer between the reservoirs and the surrounding community.

1 16. Attached as Exhibit E is an accurate and complete copy of the 2017
2 resolution of the TPU Board declaring the McMillin reservoir property surplus and
3 authorizing its sale to Pierce County.

4 17. Attached as Exhibit F is an accurate and complete copy of the materials
5 provided to the TPU Board by TPU staff in support of the 2017 resolution to declare the
6 McMillin reservoir property surplus. In a November 3, 2017 memorandum, TPU Director
7 William Gaines explained “with replacement of the open reservoirs by enclosed tanks in
8 2012, there is no longer a need for Tacoma Water to own the property.”

9 18. Attached as Exhibit G is an accurate and complete copy of City Council
10 Resolution 39884 adopted by the City Council on December 19, 2017, declaring the
11 McMillin reservoir property surplus and authorizing its sale to Pierce County.

12 19. Although the open McMillin reservoirs were covered in 2012, the TPU
13 Board and City Council waited until 2017 and 2018, respectively, for real estate market
14 conditions to improve before declaring the property surplus and selling this buffer
15 property to Pierce County.

16 20. Attached as Exhibit H is an accurate excerpt of the portion of the
17 November 7, 2014 Tacoma Public Utilities 2013 Management Review prepared by Sage
18 Management Consultants, LLC. The excerpted portion addresses the management of the
19 Click unit of Tacoma Power.

20 21. Based on my experience in the utility industry, I believe that although the
21 telecommunications system has not reached its full anticipated usage, the
22 telecommunications system still has very significant value. Based on the research
23 conducted by Tacoma Power as it considers when and what type of AMI meters and
24 network to install in the future, I understand that Tacoma Power’s telecommunications
25 system may still be valuable for back-haul capacity even when AMI meters are installed

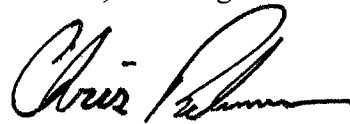
1 in Tacoma Power's service territory. I also understand that the telecommunications
2 system is valuable to internet service providers and cable television providers, which is
3 evidenced by the lease proposal that Tacoma Power received from WAVE Broadband in
4 2015. This may include the latent value in the hundreds of miles of unused or "dark" fiber
5 as well as coaxial cable that runs to individual residences and businesses that was installed
6 in anticipation of future use by the electric system.

7 22. If Tacoma Power is unable to give benefits to certain customers that are not
8 available to all customers, Tacoma Power may be unable to offer many of its current
9 programs, including energy conservation loans, assistance to low income seniors, pay-as-
10 you-go payment options, and local improvement district projects.

11 23. While TPU management and the City proceed with developing a plan for
12 repurposing Tacoma Power's telecommunications system, Tacoma Power will continue to
13 use the system for efficient electric system management and will continue to sell its
14 excess capacity through its Click division. Similar to the Centennial Substation and
15 McMillin reservoir properties described above, Tacoma Power will spend utility revenues
16 to maintain the telecommunications asset until TPU decides how best to repurpose it.

17
18 I declare under penalty of perjury that the foregoing is true and correct:

19
20 EXECUTED this 7th day of February, 2018, in Tacoma, Washington.

21
22 

23
24
25
Chris Robinson

EXHIBIT A



Req. #12146

RESOLUTION NO. 37730

1 A RESOLUTION relating to utility property; declaring certain property owned by
2 the Department of Public Utilities, Light Division, to be surplus pursuant
3 to RCW 35.94.040.

4 WHEREAS the Department of Public Utilities, Light Division
5 (d.b.a. "Tacoma Power") has owned and operated nine electrical substation
6 sites on various properties located throughout the City and Pierce County, and

7 WHEREAS each substation site is approximately 0.04 to 0.5 acres and
8 was utilized for supporting the 4.2 KV electrical distribution system, and

9 WHEREAS Tacoma Power has upgraded the distribution system and
10 determined it no longer needs the smaller 4.2 KV substations or properties, and

11 WHEREAS Tacoma Power has removed all equipment from the sites,
12 determined that the properties are no longer needed for continued utility
13 services, and the property is surplus to its needs, and

14 WHEREAS RCW 35.94.040 requires the City to determine by resolution
15 of its legislative authority that lands originally acquired for public utility purposes
16 are surplus to the City's needs and are not required for providing continued
17 public utility service, and

18 WHEREAS the Public Utility Board recommends the City Council
19 approve the declaration of surplus; Now, Therefore,
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BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the nine substation properties located throughout the City and Pierce County, as described in the attached Exhibit "A," are declared surplus to the City's needs and are not required for continued public utility service, pursuant to RCW 35.94.040.

Adopted FEB 10 2009

Andy Borman
Mayor

Attest:

Doris Borman
City Clerk

Approved as to form:

[Signature]
Assistant City Attorney

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RESOLUTION NO. U-10270

1
2 A RESOLUTION declaring utility-owned real property surplus to the needs of
3 Tacoma Power.

4 WHEREAS the City of Tacoma, Department of Public Utilities, Light
5 Division (d.b.a. "Tacoma Power") has owned and operated nine electrical
6 substation sites on various properties (as further described in Exhibit A) located
7 throughout the City of Tacoma and Pierce County, Washington, and

8 WHEREAS each substation site is approximately 0.4 to 0.5 acres, and
9 was utilized for supporting the 4.2 KV electrical distribution system, and

10 WHEREAS Tacoma Power has upgraded the distribution system and
11 determined it no longer needs the smaller 4.2 KV substations or properties, and

12 WHEREAS Tacoma Power has removed all equipment from the sites
13 and remediated as necessary to ensure applicable environmental standards
14 have been met, and

15
16 WHEREAS Tacoma Power has determined that the properties are no
17 longer needed for continued utility services, and has declared them surplus
18 property to its needs, and

19
20 WHEREAS Tacoma Power requests that the Utility Board and Tacoma
21 City Council approve the Declaration of Surplus of these properties in
22 anticipation of their eventual sale; Now, Therefore,

23 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

24 That the nine substation properties (as further described in Exhibit A)
25 owned by Tacoma Power and located in the City of Tacoma and Pierce County,
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Washington are found not to be essential for continued effective utility service by Tacoma Power and is properly declared surplus property and excess to Tacoma Power needs.

BE IT FURTHER RESOLVED that the City Council is requested to declare the nine substation properties (as further described in Exhibit A) owned by Tacoma Power and located in the City of Tacoma and Pierce County, Washington as surplus to the needs of the City and Tacoma Power.

Approved as to form and legality:	<u>Laura Fox</u> Chair
<u>William C. Fosbre</u> Chief Deputy City Attorney	<u>Peter Thein</u> Secretary
<u>Elizabeth Larson</u> Clerk	Adopted <u>1/28/09</u>



TACOMA PUBLIC UTILITIES
3628 South 35th Street
Tacoma, Washington 98409-3192

December 15, 2008

To the Chairman and Members of the Public Utility Board and
The Mayor and Members of the City Council

Tacoma Power hereby requests that the Public Utility Board and Tacoma City Council approve declaring the following nine substations surplus to the needs of Tacoma Power.

- | | |
|--------------------------|----------------------------|
| 1) Adams Substation | 6) Lincoln Park Substation |
| 2) Centennial Substation | 7) Parkland Substation |
| 3) Downing Substation | 8) Ruston Substation |
| 4) Fairmont Substation | 9) Warner Substation |
| 5) Junett Substation | |

The sites were acquired at various times and were mainly utilized for supporting a 4.2 KV distribution system. These substations were no longer required once the entire electrical distribution system was upgraded. The properties have been decommissioned and all of the equipment removed. Additionally, the parcels have been inspected and remediated as necessary to ensure applicable environmental standards are met prior to sale.

The properties are located throughout the City of Tacoma and range in size from 0.04 acre to nearly 0.50 acre. The sites have been appraised by GPA Valuation in order to establish a fair market value, these valuations will be utilized to set the minimum bids for the disposition of the property in accordance with the best interests of Tacoma Power and established City procedures.

I hereby recommend favorable consideration of this matter by the Public Utility Board and City Council.

Sincerely,


William A. Gaines
Director of Utilities





3628 South 35th Street
Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

Declaration of Surplus Property Certification

Various Light Division Properties

TPU Reference: P2008-209/218

In accordance with *Tacoma Power Staff Procedures A-3, Disposal of Light Division Real Property*, it is herein recommended that certain tracts of land, listed below, be declared surplus to the needs of Tacoma Public Utilities and the Light Division.

1. Adams Substation, 1920 Adams Street N, Tacoma
2. Centennial Substation, 543 N Stadium Way, Tacoma
3. Downing Substation, 1801 N Orchard Street, Tacoma
4. Fairmont Substation, 4924 N 31st Street, Tacoma
5. Junett Substation, 3008 N 16th Street, Tacoma
6. Lincoln Park Substation, 1009 S 35th Street, Tacoma
7. Parkland Substation, 101 127th Street E, Tacoma
8. Ruston Substation, 5001 N Visscher Street, Tacoma
9. Warner Substation, 3404 S 45th Street, Tacoma

The majority of the sites were the sites of substations that supported a 4.2 KV distribution system. These substations were no longer required once the entire electrical distribution system was upgraded. The substations on the properties have been decommissioned and the equipment has been removed.

An appraisal has been done on all of the properties. Additionally, the properties have been inspected and remediated as necessary to ensure applicable environmental standards are met prior to sale.

Tacoma Power management and staff have reviewed these properties and determined they are surplus to both its current and future needs. Tacoma Power therefore finds no reason to retain these properties and has approved the proposed recommendation for declaring the properties surplus and the eventual sale of those properties.

The real properties to be declared surplus are described on exhibit "A".

Said tracts of land meets the operational, legal and environmental conditions of surplus property, and IS HEREBY DECLARED SURPLUS to the needs of Tacoma Power on this _____ day of _____, 2008.

APPROVED:



William A. Gaines
Director of Utilities

APPROVED:



Gary D. Armfield
Superintendent, Tacoma Power

REVIEWED:



Dave Ward
Transmission & Distribution Manager

APPROVED AS TO FORM:



Bill Fosbre
Interim Chief Assistant City Attorney

REVIEWED:

Russell Post
Environmental Services

REVIEWED:



Maureen Barnes
Real Property Services

REVIEWED:



Jeff Singleton
Chief Surveyor

EXHIBIT "A"

SUBSTATION LEGAL DESCRIPTIONS

1. Adams Substation

The East 170 feet of the North 120 feet of Block 102, Amended Map of Second School Land Addition, according to the plat recorded in Book 7 of Plats at page 79, records of Pierce County, Washington

2. Centennial Substation

Commencing at the intersection of the Southerly line of Stadium Way and the Westerly line of North 6th Street produced, which is the Northeasterly corner of Block 3604, Map of New Tacoma, W.T.;
thence running Northeasterly along the Westerly line of North 6th Street produced 80 feet;
thence Southeasterly at right angles 55 feet along the Northeasterly line of Stadium Way to the point of beginning
thence continuing Southeasterly along said Northeasterly line of Stadium Way 25 feet;
thence Northeasterly at right angles 72 feet more or less to a point on the Southwesterly line of the right-of-way of the Northern Pacific Railway Company;
thence Northwesterly along said right-of-way line 26 feet more or less;
thence Southwesterly at right angles to Stadium Way 78 feet more or less to the point of beginning

3. Downing Substation

The West 100 feet of the South 130 feet of Block 106, Amended Map of Second School Land Addition, according to the plat recorded in Book 7 of Plats at page 79, in Pierce County, Washington

4. Fairmont Substation

Lots 11 and 12, Block 1309, Fairmont Park Addition to Tacoma, according to the plat recorded in Book 4 of Plats at page 7, in Pierce County, Washington

5. Junnett Substation

Lots 1, 2, 3 and 4, Block 6, Baker's First Addition to Tacoma, according to the plat recorded in Book 2 of Plats at page 118, in Pierce County, Washington

6. Lincoln Park Substation

A portion of lots 1, 2, 3 and 4, Block 17, Lincoln Park Addition to the City of Tacoma, according to the plat recorded in Book 7 of Plats at page 111, described as follows:

Commencing at the Southeast corner of Section 8 Township 20 North Range 3 East of the W.M. in Pierce County, Washington;
thence South 89° 45' 45" West along the South boundary of said Section 1303.00 feet to the Southwest corner of said Plat of Lincoln Park Addition to the City of Tacoma;
thence North 00° 05' 15" East along the West boundary of said plat a distance of 30 feet to the true point of beginning;
thence continuing North 00° 05' 15" East along said West boundary a distance of 119.5 feet;
thence South 89° 54' 45" East 79.33 feet;
thence South 00° 50' 22" West 104.33 feet;
thence on a curve to the right having a radius of 15 feet through an angle of 88° 55' 23" to a point 30 feet north of the South boundary of said plat and North 89° 45' 45" East of the point of beginning;
thence South 89° 45' 45" West 63.04 feet to the point of beginning

7. Parkland Substation

The South 50 feet of lot 1, Rostedt's Subdivision, according to the plat recorded in Book 6 of Plats at page 81 in Pierce County, Washington

8. Ruston Substation

Lots 21, 22 and 23, Block 2, Defiance Park Addition, according to the Plat recorded in Book 5 of plats, page(s) 29, in Pierce County, Washington.

9. Warner Substation

Lots 1 and 2, Block 41, Cascade Park Addition to Tacoma, according to the plat recorded in Book 1 page 120, in Pierce County, Washington

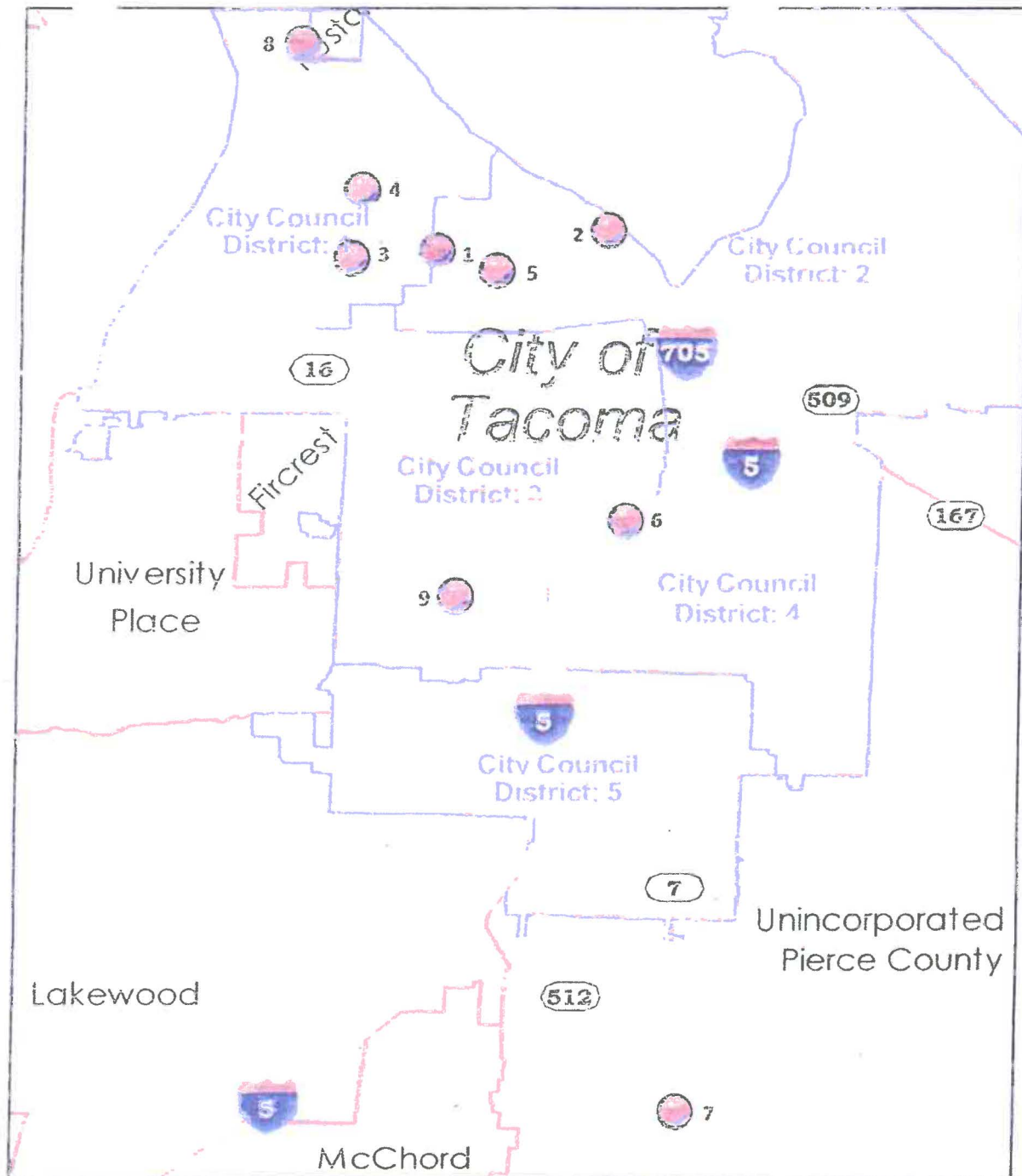


EXHIBIT "B"

1. Adams Substation
1920 N Adams St., Tacoma
2. Centennial Substation
543 N Stadium Way, Tacoma
3. Downing Substation
1801 N Orchard St, Tacoma
4. Fairmont Substation
4924 N 31st St., Tacoma
5. Junett Substation
3008 N 16th St., Tacoma
6. Lincoln Park Substation
1009 S 35th St., Tacoma
7. Parkland Substation
101 127th St. E, Tacoma
8. Ruston Substation
5001 N Visscher St., Tacoma
9. Warner Substation
3404 S 45th St., Tacoma

EXHIBIT B



TO: Mayor and City Council
FROM: William A. Gaines, Director of Utilities/CEO
COPY: Elizabeth Pauli, City Manager, and City Clerk
SUBJECT: Resolution – Set Public Hearing – October 24, 2017
DATE: September 27, 2017

SUMMARY:

To set Tuesday, November 7, 2017, as the date for a Public Hearing regarding the sale of approximately 1,875 SF of Tacoma Power property for \$72,100.

STRATEGIC POLICY PRIORITY:

- Assure outstanding stewardship of the natural and built environment.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

This request supports the above policy priorities by allowing retention of the property in a substantially native condition, and offering the opportunity for public input on this real estate transaction.

BACKGROUND:

This vacant property was declared surplus to Tacoma Power's needs in 2009 by Tacoma Public Utility Board Resolution No. U-10270 and City Council Resolution No. 37730, along with a Director's Memorandum. Through an informal bid process in 2017, a neighbor was the successful bidder and will purchase the property for \$72,100. A restrictive covenant will be included in the quit claim deed prohibiting development of the property.

The sale is subject to both Public Utility Board and City Council approval. The terms and conditions of the purchase and sale agreement have been approved by Real Property Services and reviewed by the City's Legal Department and is now routing for signature. If approved, the sale is expected to close by November 30, 2017.

ALTERNATIVES:

The alternatives to disposing of the property through the bid/sale process, as allowed under TMC 1.06.280f, are to either retain ownership or to dispose via a negotiated disposition. Tacoma Power does not have a need for continued fee ownership of the property, and if it were to retain ownership there would be continued management and administrative costs. The informal bid/sale process was determined to be the most efficient disposition method, as the most likely purchaser is a neighbor and the property would likely not appeal to most other market participants.

RECOMMENDATION:

Tacoma Power and Real Property Services recommend that the City Council set a Public Hearing in accordance with RCW 35.94.040, to be held November 7, 2017 to receive public comment regarding the proposed sale of approximately 1,875 SF of Tacoma Power real property located in Tacoma, WA. Once the Public Hearing has been conducted, a separate request will be presented to the City Council for the approval of the sale and conveyance of the real property.

FISCAL IMPACT:

There is no fiscal impact to setting this public hearing.

EXHIBIT C



RESOLUTION NO. U-10961

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A RESOLUTION related to Tacoma Power; authorizing a negotiated sale of surplus real property to Ronald L. and Linda R. Coleman.

WHEREAS the City of Tacoma, Department of Public Utilities, Light Division (d.b.a. "Tacoma Power"), in 2009, by Utility Board Resolution U-10270, declared surplus approximately 1,875 SF of property located at 543 North Stadium Way, in Tacoma, Washington ("Property"), and

WHEREAS Tacoma Power has negotiated an offer to sell the property to Ronald L. and Linda R. Coleman, pending Public Utility Board and City Council approval, in the amount of \$72,100; Now, Therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

Sec. 1. That the negotiated sale of approximately 1,875 SF of property, located at 543 North Stadium Way, in Tacoma, Washington, as more fully described in the documents on file with the Clerk of the Board, to Ronald L. and Linda R. Coleman, in exchange for payment of \$72,100, is hereby approved.

Sec 2. That the City Council is requested to hold a public hearing on this matter pursuant to RCW 35.04.040, and thereafter approve this recommended negotiated sale and authorize the proper officers of the City of Tacoma to execute all documents necessary to perfect the sale, substantially in the same form as on file with the Clerk of the Board and approved by the City Attorney.

Approved as to form and legality:	<u>Morgan J. Jurszyl</u>
	Chair
<u>William Foshe</u>	<u>Aaron Hake</u>
Chief Deputy City Attorney	Secretary
<u>Charles Jacobs</u>	Adopted <u>10-11-17</u>
Clerk	

REQUEST FOR RESOLUTION

INSTRUCTIONS: File request in the Office of the Director of Utilities as soon as possible but not later than nine working days prior to the Board meeting at which it is to be introduced. Completion instructions are contained in Administrative Policy POL-104.

1. Summary title for Utility Board agenda: (not to exceed twenty-five words)

Authorize the sale of approximately 1,875 SF of Tacoma Power property to Ronald L. and Linda R. Coleman for \$71,200.

2. A resolution is requested to: (brief description of action to be taken, by whom, where, cost, etc.)

Authorize the sale of approximately 1,875 SF of Tacoma Power property - identified as Pierce County Assessor Tax Parcel No. 0321322021 - located at 543 North Stadium Way, in Tacoma, WA, to Ronald L. and Linda R. Coleman for \$72,100.

3. Summarized reason for resolution:

This vacant property was declared surplus to Tacoma Power's needs in 2009 by Tacoma Public Utility Board Resolution No. U-10270 and City Council Resolution No. 37730, along with a Director's Memorandum. Through an informal bid process in 2017, a neighbor was the successful bidder and will purchase the property for \$72,100. A restrictive covenant will be included in the quit claim deed prohibiting development of the property.

The sale is subject to both Public Utility Board and City Council approval. The terms and conditions of the purchase and sale agreement have been approved by Real Property Services and reviewed by the City's Legal Department and is now routing for signature. If approved, the sale is expected to close by November 30, 2017.

4. Attachments:

- a. Director's Memo
- b. Aerial Photos
- c. Purchase and Sale Agreement
- d. 2009 documents for Declaration of Surplus Property
- e. CAM Request to set Public Hearing

5. Funds available Proposed action has no budgetary impact

6. Deviations requiring special waivers:

Originated by:

Joseph A. Wilson, T&D Power Section
Assistant Manager

Requested by:

Chris Robinson, Power
Superintendent/COO

Approved:

William A. Gaines, Director of Utilities / CEO



3628 South 35th Street
Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

Date: September 27, 2017
To: William A. Gaines, Director of Utilities/CEO
From: Chris Robinson, Power Superintendent/COO *CR*
Subject: Disposition of Centennial Substation Property

Recommendation:

Tacoma Power requests that you authorize the sale of its property known as the Centennial Substation site identified as Pierce County Assessor Tax Parcel No. 0321322021, consisting of approximately 1,875 SF of land, located at 543 North Stadium Way in Tacoma, WA to Ronald L. and Linda R. Coleman for \$72,100.

Background:

This vacant property was declared surplus to Tacoma Power's needs in 2009 by Tacoma Public Utility Board Resolution No. U-10270 and City Council Resolution No. 37730, along with a Director's Memorandum. Through an informal bid process in 2017, a neighbor was the successful bidder and will purchase the property for \$72,100. A restrictive covenant will be included in the quit claim deed prohibiting development of the property.

Your approval is requested to submit this matter to the Public Utility Board for consideration and approval. Upon approval from the Public Utility Board, Real Property Services will hold a Public Hearing and seek final approval of the sale from the Tacoma City Council. If approved, the sale is expected to close by November 30, 2017.

APPROVED:

William A. Gaines
Director of Utilities/CEO

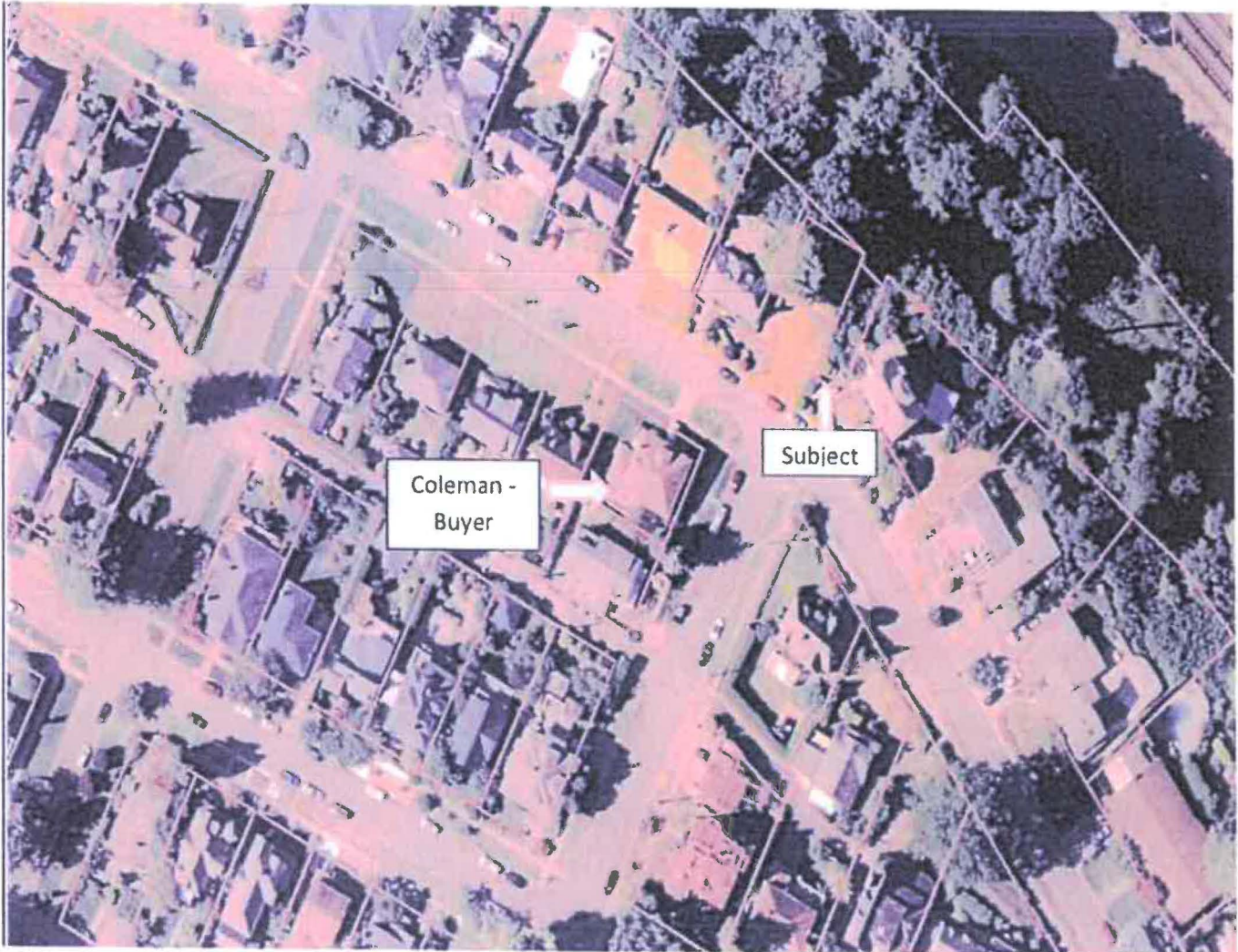
Pierce County Tax Parcel No. 0321322021

543 North Stadium Way, Tacoma, WA 98403



Pierce County Tax Parcel No. 0321322021

543 North Stadium Way, Tacoma, WA 98403



CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
LIGHT DIVISION
REAL ESTATE PURCHASE AND SALE AGREEMENT
AGREEMENT NO. A3145

Reference No.: P2014-114

Seller: City of Tacoma, Department of Public Utilities,
Light Division, (d.b.a. Tacoma Power)

Buyer: Ronald L. Coleman and Linda R. Coleman, H/W
Abbreviated

Legal Description: Portion NW¼, S32, T21N, R03E, W.M., Pierce Co., WA

County: Pierce

Tax Parcel No.: 0321322021

This REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of **August 31, 2017** between the **CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power)**, a first class municipal corporation ("Seller"), and Ronald L. Coleman and Linda R. Coleman, husband and wife ("Buyer").

RECITALS

WHEREAS, Seller is the owner of certain real property more particularly described in Section 1 below.

WHEREAS, Buyer desires to preserve the property in substantially the same condition as it currently exists and has therefore agreed to accept title with a covenant restricting development of the property.

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer the real property on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

AGREEMENT

1. Real Property. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, the real property located at **543 North Stadium Way 98403** in the City of Tacoma, County of Pierce and State of Washington, more particularly described as follows:

{See attached legal description **Exhibit "A"**}

Also known as Pierce County Tax Parcel Number **0321322021** (the "Property").

2. Deposit. Buyer has delivered to Seller an earnest money deposit in the amount of Seventy-Two Thousand and One Hundred U.S. Dollars (**\$72,100.00**) (the "Deposit"), the full purchase price of the Property. The Deposit will be held by the Seller pursuant to the terms of this Agreement. Any interest that accrues on the Deposit will be for the benefit of Seller, and if Buyer forfeits the Deposit to Seller pursuant to the terms of this Agreement, then all interest accrued on the Deposit will be paid to Seller.

3. Purchase Price. The total purchase price for the Property (the "Purchase Price") will be Seventy-Two Thousand and One Hundred U.S. Dollars (**\$72,100.00**), which shall be deposited as

specified above. The Purchase Price, consisting of the Deposit, will be paid to Seller in cash at Closing.

4. Title to Property.

4.1 Conveyance. At closing Seller shall convey to Buyer fee simple title to the Property by duly executed and acknowledged quit claim deed (the "Deed") with a covenant restricting development of the Property.

4.2 Preliminary Commitment and Title Policy. Buyer, at Buyer's expense, has received a preliminary title commitment and will seek, also at Buyer's expense, to have issued an owner's policy of title insurance insuring Buyer's title to the property.

4.3 Condition of Title. Buyer hereby accepts the condition of title to be conveyed via the Deed, accepts all encumbrances to title, and waives the right to advise Seller by written notice of any disapproved encumbrances to title.

5. Conditions to Closing.

5.1 Tacoma Public Utility Board and Tacoma City Council Approval. This Agreement, and the transaction contemplated hereby, must be duly approved by the Tacoma Public Utility Board and the Tacoma City Council prior to closing. If said approvals are not obtained, this Agreement will terminate, and the Deposit, less any costs advanced or committed for Buyer as authorized herein, or other costs subsequently agreed to in writing, will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. Nothing in this Paragraph 5.1 will obligate the Seller to obtain City Council approval beyond the ordinary course of City procedure.

5.2 Buyer's Indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable costs and attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any person or entity as a result of or on account of injuries or damages to persons, entities and/or property received or sustained, arising out of, in connection with or as a result of the acts or omissions of Buyer, or its agents or employees in exercising its rights under this Agreement, except for claims caused by Seller's sole negligence.

5.3 Buyer Feasibility Study. Buyer hereby waives the right to conduct inspections or feasibility studies related to the Property and will take title to the Property on an as-is basis.

6. Condition of the Property.

6.1 "As Is" Buyer acknowledges that the Property will be purchased under this Agreement in an "AS IS" CONDITION WITH ALL FAULTS, INCLUDING, WITHOUT LIMITATIONS, THE CONDITION OR STABILITY OF THE SOILS OR GROUND WATERS, THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON OR UNDER THE PROPERTY, SOLELY IN RELIANCE ON BUYER'S OWN INVESTIGATION, EXAMINATION, INSPECTION ANALYSIS AND EVALUATION OF THE PROPERTY. As of the date this Agreement is signed by both parties, Seller has made no representations and warranties, express or implied, regarding the Property, excluding those representations and warranties expressly provided in this Agreement.

Seller shall surrender the Property in as good condition, except for normal wear and tear, as exists on the date of this Agreement. Seller agrees that it will not damage nor commit waste on the Property between the date of acceptance of this Agreement and the date of closing.

6.2 Evaluations. Buyer agrees that it will rely on its own evaluations of the Property, with the exception of written documentation, including, but not limited to any disclosures required by law, provided to it by Seller, to determine the suitability of the Property for Buyer's intended use. However, Buyer's determination of non-suitability of the Property for Buyer's intended use shall not be a bona fide reason for termination of this Agreement.

7. Closing. This transaction will be closed outside of escrow. The closing will be held at the office of the Seller on or before **November 30, 2017** (the "Closing Date"). If Closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, Seller will immediately terminate the sale and forward the Deposit to Buyer. When notified by the Seller, Buyer will deposit with Seller without delay all instruments and monies required to complete the transaction in accordance with this Agreement. "Closing," for the purpose of this Agreement, is defined as the date that all documents are executed, the sale proceeds are available for disbursement to the Seller, and legal title passes to the Buyer. Seller agrees to provide the original deed and executed excise tax affidavit, if required, to First American Title, attention Bruce Judson, 4707 South 19th Street, Suite 101, Tacoma, Washington 98405 to effect recording of the deed and filing of the excise tax affidavit.

8. Closing Costs and Prorations. Seller shall pay state of Washington real estate excise taxes, if any, applicable to the sale. Seller shall pay the cost of recording the deed. Property taxes and assessments for the current year, water and other utility charges, if any, shall be prorated as of the Closing Date unless otherwise agreed. Seller is a property tax exempt organization pursuant to R.C.W. 84.36.010, and therefore property taxes will only be due from Buyer for its ownership from and after the Closing Date.

9. Casualty Loss. Seller shall promptly notify Buyer of any event prior to the Closing Date which causes damage to or destruction of any portion of the Property. If Buyer and Seller cannot come to an agreement regarding any such damage to or destruction of the Property, including the settlement of any insurance claims, then Buyer and Seller will each have the right to terminate this Agreement by giving written notice of termination to the other party within twenty (20) days after receipt of actual notice of such casualty loss. Upon exercise of such termination election by either party, this Agreement will terminate, and the Deposit will be returned to Buyer.

10. Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date. Seller shall remove any and all personal property from the Property on or before the Closing Date, unless specifically authorized in writing by Buyer.

11. Events of Default. In the event Buyer fails, without legal excuse to complete the purchase of the Property, then that portion of the Deposit which does not exceed five percent (5%) of the Purchase Price shall be forfeited to Seller as the sole and exclusive remedy available to Seller for such failure. In the event Seller fails, without legal excuse, to complete the sale of the Property, Buyer shall be entitled to immediate return of its Deposit, and may pursue any remedies available to it in law or equity, including specific performance.

12. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Seller: Tacoma Public Utilities – Real Property Services
ABS – 2nd Floor
3628 S. 35th Street
Tacoma, WA 98409
Facsimile No.: (253) 502-8539

Buyer: Ronald L. Coleman and Linda R. Coleman
602 North Stadium Way
Tacoma, WA 98403
rcoleman@dpearson.com
Facsimile No.: (253) 238-5158

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

13. Counterparts; Faxed Signatures. This Agreement may be executed in any number of counterparts and by different parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Facsimile transmitted signatures shall be fully binding and effective for all purposes.

14. Brokers and Finders. In the event any broker or other person makes a claim for a commission or finder's fee based upon the transaction contemplated by this Agreement, the party through whom said broker or other person makes its claim shall indemnify and hold harmless the other party from said claim and all liabilities, costs and expenses related thereto, including reasonable attorneys' fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the closing of this transaction.

15. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

16. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of Closing, will be deemed to be material, and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title for a period of 6 (six) months whereupon they shall terminate. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

17. Governing Law. This Agreement will be governed and construed in accordance with the laws of the state of Washington.

18. Attorney Fees. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

19. Time of the Essence. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

20. FIRPTA. The Seller will prepare a certification or equivalent that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act ("FIRPTA"), and Seller agrees to sign this certification.
21. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.
22. Nonmerger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive, the closing of the transaction contemplated under the Agreement.
23. Assignment. Buyer shall not assign this Agreement without Seller's prior written consent, which consent may not be unreasonably withheld or delayed.
24. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.
25. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to give effect to the Agreement contemplated herein.
26. Waiver of RCW 64.06 Disclosure. Buyer and Seller acknowledge that the Property may constitute "Commercial Real Estate" or "Residential Real Property" as defined in RCW 64.06.005. Buyer waives receipt of the seller disclosure statement required under RCW 64.06 for transactions involving the sale of such real property, except for the section entitled "Environmental." The Environmental section of the seller disclosure statement (the "Disclosure Statement") will be provided to Buyer at least three business days prior to Closing.
27. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Property, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

SELLER:

BUYER:

William A. Gaines, Date
Director of Utilities / CEO

Ronald L. Coleman Date

Chris Robinson Date
Power Superintendent / COO

Linda R. Coleman Date

Approved as to form:

Office of City Attorney Date

City of Tacoma Review

TACOMA POWER

Dolores Stegeman Date
Transmission and Distribution Power Section Manager

Joseph A. Wilson Date
Transmission and Distribution Power Section Assistant Manager

Khanh Thai Date
Transmission and Distribution Power Supervisor III

Jeff Singleton Date
Chief Surveyor

FINANCE:

Andrew Cherullo Date
Director of Finance

EXHIBIT "A"

Legal Description

Commencing at the intersection of the southerly line of Stadium Way and the westerly line of North 6th Street, produced, which is the northeasterly corner of Block 3604, Map of New Tacoma, W.T.; thence running northeasterly along the westerly line of North 6th Street produced, 80 feet; thence southeasterly at right angles 55 feet along the northeasterly line of Stadium Way to the point of beginning; thence continuing southeasterly along said northeasterly line of Stadium Way, 25 feet; thence northeasterly at right angles 72 feet more or less to a point on the southwesterly line of the right of way of the Northern Pacific Railway Company; thence northwesterly along said right of way line 26 feet more or less; thence southwesterly at right angles to Stadium Way 78 feet more or less to the point of beginning.

Situate in the City of Tacoma, County of Pierce, State of Washington.

Also known as Pierce County Assessor Tax Parcel Number 0321322021.

SUBJECT TO a perpetual covenant running with the land prohibiting development and occupation with permanent structures intended for human habitation or use. Excluded from this prohibition are landscaping and utilities.

Exhibit ___

REAL PROPERTY DISCLOSURE STATEMENT

(ENVIRONMENTAL ONLY)

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur **not later than five business days**, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT 543 N. Stadium Way ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT ___.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS, OR WARRANTIES.

Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

ENVIRONMENTAL	YES	NO	DON'T KNOW
*A. Has there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*B. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*C. Are there any shorelines, wetlands, floodplains, or critical areas on the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*D. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*E. Is there any soil or groundwater contamination?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*F. Has the property been used as a legal or illegal dumping site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*G. Has the property been used as an illegal drug manufacturing site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*H. Does any part of the property contain fill dirt, waste, or other fill material?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*I. Has the property been used for commercial or industrial purposes?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*J. Are there any radio towers that cause interference with cellular telephone reception?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE: 9-19-17

SELLER

DATE: _____

SELLER

NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

Date: _____ BUYER _____

Date: _____ BUYER _____

EXHIBIT D



RESOLUTION NO. 39869

1 A RESOLUTION relating to surplus property; declaring certain real property owned
2 by the Department of Public Utilities, Light Division (d.b.a. "Tacoma Power"),
3 consisting of approximately 1,875 square feet of property located at
4 543 North Stadium Way, in Tacoma, Washington, surplus to the needs of
the City; and authorizing the negotiated sale and conveyance of said
property to Ronald L. and Linda R. Coleman for the amount of \$72,100.

5 WHEREAS the City of Tacoma, Department of Public Utilities, Light
6 Division (d.b.a. "Tacoma Power"), owns approximately 1,875 square feet of
7 property located at 543 North Stadium Way, in Tacoma, Washington ("Property"),
8 as more fully described in the documents on file in the office of the City Clerk, and
9

10 WHEREAS in 2009, pursuant to Utility Board Resolution U-10270, the
11 Property was declared surplus to Tacoma Power's needs, and

12 WHEREAS Ronald L. and Linda R. Coleman have offered to purchase the
13 Property for \$72,100, which is deemed acceptable by Tacoma Power and the
14 Department of Public Works, Real Property Services Division, and
15

16 WHEREAS a restrictive covenant will be included in the quit claim deed
17 prohibiting development of the Property, and

18 WHEREAS the Department of Public Works proceeded with the negotiated
19 disposition process pursuant to Tacoma Municipal Code ("TMC") 1.06.280.F, and
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21 WHEREAS, on October 11, 2017, by adoption of Public Utility Board
22 Resolution No. U-10961, the Property was approved for sale, pending confirmation
23 from the City Council, and
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WHEREAS, on November 7, 2017, pursuant to RCW 35.94.040 and TMC 1.06.280, the City Council conducted a public hearing on the proposed sale of said Property, and

WHEREAS, there being no foreseeable need for continued City ownership of the Property, the sale of said Property appears to be in the best interests of the City, pending final approval from the City Council; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That continued ownership of approximately 1,875 square feet of property located at 543 North Stadium Way, in Tacoma, Washington, owned by the City of Tacoma, through its Department of Public Utilities, Light Division, is not essential to the needs of the City and is hereby declared surplus pursuant to RCW 35.22.020 and Article I, Section 1.2, and Article IX of the Tacoma City Charter.

Section 2. That the proper officers of the City are hereby authorized to execute all documents necessary, including a Quit Claim Deed, to convey the

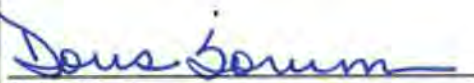


1 property to Ronald L. and Linda R. Coleman for the amount of \$72,100, said Quit
2 Claim Deed to be substantially in the form of the deed on file in the office of the
3 City Clerk.
4

5 Adopted NOV 21 2017
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7 
8 _____
9 Mayor

8 Attest:

9 
10 _____
11 City Clerk

12 Approved as to form:

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14 _____
15 City Attorney

16 Requested by Public Utility Board
17 Resolution No. U-10961
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EXHIBIT E



RESOLUTION NO. U-10973

1 A RESOLUTION relating to Tacoma Water; declaring utility-owned real
2 property surplus and authorizing the sale to Pierce County
3 Department of Parks and Recreation.

4 WHEREAS the City of Tacoma, Department of Public Utilities, Water
5 Division (d.b.a. "Tacoma Water"), requests the Board declare surplus and
6 approve the negotiated sale of approximately 106 acres, located east of the
7 McMillin Reservoirs at 13004 Reservoir Road E, Puyallup, in Pierce County,
8 Washington ("Property"), to Pierce County Department of Parks and Recreation
9 ("Pierce Co."), and

10 WHEREAS the Property is part of the McMillin Reservoir complex
11 developed in 1912 to store water from the Green River for distribution to the
12 Tacoma Water service area, and

13 WHEREAS the following steps are needed to complete this transaction:

- 14 1) At its sole expense, Pierce Co. will complete the property segregation
15 process to include preparation of associated easements as needed to
16 reconfigure that portion of Tacoma Water's Tax Parcel No. 0419141000
17 property included in the sale.
18
19 2) The property sale is expected to close by December 29, 2017. In the
20 interim, Real Property Services will proceed with approval of the
21 Declaration of Surplus and sale, and
22

23 WHEREAS the Department of Public Works Real Property Services
24 section has negotiated the price of \$2,775,100, and

25 WHEREAS Tacoma Water has determined that the Property sought by
26 Pierce Co. is not essential for continued effective utility service and has deemed



1 the Property surplus to Tacoma Water's needs pursuant to RCW 35.94.040 and
2 TMC 1.06.272-.278; Now, Therefore,

3
4 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

5 Sec. 1. That it is in the best interests of the City of Tacoma to approve
6 the negotiated sale in fee of approximately 106 acres of property located east of
7 the McMillin Reservoirs at 13004 Reservoir Road E, Puyallup, in Pierce County,
8 Washington, with reservation of identified easements, and as more fully
9 described in the documents on file with the Clerk of the Board, to the Pierce
10 County Department of Parks and Recreation.

11
12 Sec. 2. That the Property is not essential for continued effective utility
13 service by Tacoma Water and is properly declared surplus property and excess
14 to Tacoma Water's needs.

15 Sec. 3. That in order to complete the transaction, Pierce County will
16 complete the segregation process to include preparation of associated
17 easements needed to reconfigure a portion of the property included in the sale,
18 and Tacoma Water will seek Board and Council approval for a declaration of
19 surplus property and approval of sale by December 29, 2017.

20
21 Sec. 4. That the City Council is requested to hold a public hearing on this
22 matter pursuant to RCW 35.94.040, and thereafter approve this recommended
23 sale and authorize the proper officers of the City of Tacoma to execute all

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necessary documents, substantially in the same form as on file with the Clerk
and approved by the City Attorney.

Approved as to form and legality:

Wm W. [Signature]
Chief Deputy City Attorney

Monique [Signature]
Chair

[Signature]
Secretary

Charlene [Signature]
Clerk

Adopted 11-15-17

EXHIBIT F

of November 15, 2017

REQUEST FOR RESOLUTION

Date: November 3, 2017

INSTRUCTIONS: File request in the Office of the Director of Utilities as soon as possible but not later than nine working days prior to the Board meeting at which it is to be introduced. Completion instructions are contained in Administrative Policy POL-104.

1. Summary title for Utility Board agenda: (not to exceed twenty-five words)

Declare surplus and authorize the sale of approximately 106 acres of Tacoma Water property to Pierce County Department of Parks and Recreation for \$2,775,100.

2. A resolution is requested to: (brief description of action to be taken, by whom, where, cost, etc.)

Declare surplus and authorize the sale of approximately 106 acres of Tacoma Water property, identified as Pierce County Assessor Tax Parcel Nos. 0419132006 and 0419133001, and a portion of Tax Parcel No. 0419141000 located east of the McMillin Reservoirs at 13004 Reservoir Road E, Puyallup to Pierce County Department of Parks and Recreation. An easement for access will also be granted, and easements to Tacoma Water will be retained for a waste water pipeline, access road, and a depression used for waste water discharge. Consideration for the sale is \$2,775,100.

3. Summarized reason for resolution:

This property is part of the McMillin Reservoir complex developed in 1912 to store water from the Green River for distribution to the Tacoma Water service area. It has served as an open-space buffer around the formerly open McMillin Reservoirs. However, with replacement of the open reservoirs by enclosed tanks in 2012, there is no longer a need for Tacoma Water to own the property. A portion of the property had been used by Tacoma Water as a dump site for spoils and materials. The dump site was closed in 1999. An abandoned standpipe is also located on the property. The standpipe, along with on-going responsibility for monitoring and remediation, if necessary, for the closed former dump site, will be transferred to Pierce County.

The property is zoned RR, residential resource, per the Pierce County South Hill Community Plan. Tacoma Water began discussions with Pierce County in 2013 to acquire the property for use as a park and potential regional trail hub. A letter was sent in 2014 informing the neighboring property owners that Tacoma Water was considering options for disposal of the property. Two public meetings were held in 2015 to discuss options to sell the property to Pierce County, together with possible sale of an adjacent 43 acre property to the Puyallup School District. The Pierce County Council approved Resolution R-2015-95 on September 22, 2015, which provided a \$2,083,805 Conservation Futures grant toward purchase of the property. An offer was received from Pierce County Department of Parks and Recreation on September 15, 2017 to purchase the property for a total consideration of \$2,775,100. The sale proceeds will be placed in the Tacoma Water Capital Reserve Fund.

Following are the steps needed to complete the transaction:

- 1) At its sole expense, Pierce Co. will complete the property segregation process, to include preparation of associated easements, needed to reconfigure that portion of Tacoma Water's Tax Parcel No. 0419141000 property included in the sale.
- 2) The property sale is expected to close by December 31, 2017. During the interim, we will proceed to Board and Council for declaration of surplus and approval of the sale.

Tacoma Water has accepted an offer from Pierce County Department of Parks and Recreation for \$2,775,100; this figure takes into consideration the reservation of easements to Tacoma Water. Payment will be made in two installments. A payment of \$2,220,100 will be paid at closing, expected on or before December 31, 2017, with the remaining \$555,000 due and payable on or before February 28, 2018. Pierce County Department of Parks and Recreation intends to develop a park and regional trail hub on the property. The offer is subject to both Public Utility Board and City Council approval.

The terms and conditions of the purchase and sale agreement have been approved by Tacoma Water and Real Property Services and reviewed by the City's Legal Department.

4. Attachments:

- a. Director's Memo
- b. Aerial Photo
- c. Purchase and Sale Agreement
- d. CAM Request to set Public Hearing
- e. Declaration of Surplus Property


5. Funds available Proposed action has no budgetary impact

6. Deviations requiring special waivers:

Originated by:


Greg Volkhardt, Environmental Programs
Manager

Requested by:


Scott Dewhirst, Water Superintendent

Approved:


William A. Gaines, Director of Utilities / CEO



TO: Mayor and City Council
FROM: William A. Gaines, Director of Utilities/CEO
COPY: Elizabeth Pauli, City Manager, and City Clerk
SUBJECT: Resolution – Set Public Hearing – November 21, 2017
DATE: November 3, 2017

SUMMARY:

To set Tuesday, December 5, 2017, as the date for a Public Hearing regarding the declaration of surplus and sale of approximately 106 acres of Tacoma Water property for \$2,775,100.

STRATEGIC POLICY PRIORITY:

- Assure outstanding stewardship of the natural and built environment.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

This request supports the above policy priorities by allowing retention of the property in a substantially undeveloped condition for park and trail use, and offering the opportunity for public input on this real estate transaction.

BACKGROUND:

This property is part of the McMillin Reservoir complex developed in 1912 to store water from the Green River for distribution to the Tacoma Water service area. It has served as an open-space buffer around the formerly open McMillin Reservoirs. However, with replacement of the open reservoirs by enclosed tanks in 2012, there is no longer a need for Tacoma Water to own the property. A portion of the property had been used by Tacoma Water as a dump site for spoils and materials. The dump site was closed in 1999. An abandoned standpipe is also located on the property. The standpipe, along with on-going responsibility for monitoring and remediation, if necessary, for the closed former dump site, will be transferred to Pierce County.

Tacoma Water began discussions with Pierce County in 2013 to acquire the property for use as a park and potential regional trail hub. A letter was sent in 2014 informing the neighboring property owners that Tacoma Water was considering options for disposal of the property. Two public meetings were held in 2015 to discuss options to sell the property to Pierce County, together with possible sale of an adjacent 43 acre property to the Puyallup School District. The Pierce County Council approved Resolution R-2015-95 on September 22, 2015, which provided a \$2,083,805 Conservation Futures grant toward purchase of the property. An offer was received from Pierce County Department of Parks and Recreation on September 15, 2017 to purchase the property for a total consideration of \$2,775,100. The sale proceeds will be placed in the Tacoma Water Capital Reserve Fund.

Following are the steps needed to complete the transaction:

- 1) At its sole expense, Pierce Co. will complete the property segregation process, to include preparation of associated easements, needed to reconfigure that portion of Tacoma Water's Tax Parcel No. 0419141000 included in the sale.
- 2) The property sale is expected to close by December 31, 2017. During the interim, we will proceed to Board and Council for declaration of surplus and approval of the sale.



Tacoma Water has accepted an offer for \$2,775,100; this figure takes into consideration the additional grant of easement for access and reservation of easements for a waste water pipeline, access road, and a depression used for waste water discharge. Payment will be made in two installments: \$2,220,100 will be paid at closing, expected by December 31, 2017, with \$555,000 due by February 28, 2018. Pierce County intends to develop a park and regional trail hub on the property. The offer is subject to both Public Utility Board and City Council approval. The terms and conditions of the purchase and sale agreement have been approved by Tacoma Water and Real Property Services and reviewed by the City's Legal Department.

ALTERNATIVES:

The alternatives to disposing of the property through the negotiated disposition process, as allowed under TMC 1.06.280f, are to either retain ownership or to dispose via a bid/sale process. Tacoma Water does not have a need for the property, and if it were to retain ownership there would be continued management and administrative costs. The negotiated disposition process was determined to be the most efficient disposition method, since the bid/sale process would not likely return positive results for such a large property.

RECOMMENDATION:

Tacoma Water and Real Property Services recommend that the City Council set a Public Hearing in accordance with RCW 35.94.040, to be held December 5, 2017 to receive public comment regarding the proposed sale of approximately 106 acres of Tacoma Water real property located in unincorporated Pierce County, WA. Once the Public Hearing has been conducted, a separate request will be presented to the City Council for the approval of the sale and conveyance of the real property.

FISCAL IMPACT:

There is no fiscal impact to setting this public hearing.



Date: November 3, 2017

To: William A. Gaines, Director of Utilities/CEO

From: Scott Dewhirst, Water Superintendent *SD*

Subject: Disposition of Real Property – Portion of McMillin Reservoir

Recommendation: Tacoma Water requests that you declare surplus and authorize the sale of approximately 106 acres (Pierce Co. Assessor TPNs 0419132006 and 0419133001, and a portion of TPN 0419141000) located east of the McMillin Reservoirs to the Pierce County Department of Parks and Recreation. An easement for access will also be granted, and easements will be retained for a waste water pipeline, access road, and a depression used for waste water discharge. Consideration for the sale is \$2,775,100.

Background: This property is part of the McMillin Reservoir complex developed in 1912 to store water from the Green River for distribution to the Tacoma Water service area. It has served as an open-space buffer around the formerly open McMillin Reservoirs. However, with replacement of the open reservoirs by enclosed tanks in 2012, there is no longer a need for Tacoma Water to own the property. A portion of the property had been used by Tacoma Water as a dump site for spoils and materials. The dump site was closed in 1999. An abandoned standpipe is also located on the property. The standpipe, along with on-going responsibility for monitoring and remediation, if necessary, for the closed former dump site, will be transferred to Pierce County.

Tacoma Water began discussions with Pierce County in 2013 to acquire the property for use as a park and potential regional trail hub. A letter was sent in 2014 informing the neighboring property owners that Tacoma Water was considering options for disposal of the property. Two public meetings were held in 2015 to discuss options to sell the property to Pierce County, together with possible sale of an adjacent 43 acre property to the Puyallup School District. The Pierce County Council approved Resolution R-2015-95 on September 22, 2015, which provided a \$2,083,805 Conservation Futures grant toward purchase of the property. An offer was received from Pierce County Department of Parks and Recreation on September 15, 2017 to purchase the property for a total consideration of \$2,775,100. The sale proceeds will be placed in the Tacoma Water Capital Reserve Fund.

Following are the steps needed to complete the transaction:

- 1) At its sole expense, Pierce Co. will complete the property segregation process, to include preparation of associated easements, needed to reconfigure that portion of Tacoma Water's Tax Parcel No. 0419141000 included in the sale.
- 2) The property sale is expected to close by December 31, 2017. During the interim, we will proceed to Board and Council for declaration of surplus and approval of the sale

Tacoma Water has accepted an offer for \$2,775,100; this figure takes into consideration the reservation of easements. Payment will be made in two installments: \$2,220,100 will be paid at closing, expected by December 31, 2017, with \$555,000 due by February 28, 2018. Pierce County intends to develop a park and regional trail hub on the property. The offer is subject to both Public Utility Board and City Council approval. The terms and conditions of the purchase and sale agreement have been approved by Tacoma Water and Real Property Services and reviewed by the City's Legal Department.

Schedule: Upon approval from the Public Utility Board, Real Property Services will hold a Public Hearing and seek final approval of the transaction from the Tacoma City Council. If approved, the transaction is expected to close December 31, 2017.

APPROVED:



William A. Gaines, Director of Utilities/CEO

TACOMA WATER SALE TO PIERCE COUNTY - MCMILLIN RESERVOIR PROPERTY

Property to Pierce County: Dark Green – 106± Acres / Light Green – Access Easement

Easement Reserved to Tacoma Water: Blue – Waste Water Pipeline / Purple – Waste Water Discharge / Red – Access Road





City of Tacoma

Declaration of Surplus Property (DSP)

To: Purchasing Division **Date:** Nov 3, 2017
From: TPU - Tacoma Water
Contact Name: Greg Muller, R.E. Officer **Phone:** 253.502.8256

- Declaration of Surplus Personal Property
 Declaration of Surplus Real Property
 Declaration of Unusable Personal Property¹

¹ Items that are broken, unusable, have no commercial, salvage, or donation value, and have no special disposal requirements (e.g., hazardous metals), may be disposed by the owning department. Do not submit DSP Form to Purchasing for these items.


Description of Surplus Property

Describe Item or Attach List: 106+/- Acres of Tacoma Water Property Fixed Asset # N/A
 Address/Location of Items: Portion of Pierce Co. TPN 0419141000, 0419132006, and 0419133001 Accounting (for costs/proceeds):
 Estimated Commercial or Resale Value: \$ 2,775,100.00 Cost Center: N/A
 Minimum Acceptable Bid: \$ N/A General Ledger Acct: 1860030

I hereby certify the asset(s) listed have no further public use or the sale thereof is in the best interests of the City and declare these items as surplus according to sections 1.06.272 through 1.06.278 of the Tacoma Municipal Code. Items may be sold, transferred, donated or otherwise disposed of in accordance with the City's surplus property policies and the Tacoma Municipal Code.


 Department/Division Head Signature

11/6/17
 Date


 City Manager or Director of Utilities (if over \$200,000)

11-7-17
 Date

DISPOSAL REQUEST

(to be completed by department)

Requested Disposal Method(s):

- Intra City Transfer
 Name of Department _____
- Bid Solicitation (Formal / Informal)
- Vehicle Auction (attach vehicle surplus form)
 Specify Contract _____
- Online Auction Service
 (attach online auction surplus form)
- Special Advertisement (attach advertisement)
 Specify Newspaper _____
- Supplemental Mailing List (attach)
- Website Posting
- Special Disposal Requirements (e.g., environmental, regulatory)
- Salvage Services
 Specify Contract _____
- Donation
- 2-Good-2 Toss
- Other: Negotiated Sale
- Okay for Disposal: _____

DISPOSAL ACTION

Internal Use Only - Purchasing Division

- Formal Bid No. _____
 Resolution/Ordinance No. _____
- Informal Bid No. _____
- Online Auction Website Posting
- Special Advertisement Supplemental Mailings
- Contract Services Intra-City Transfer
- Salvage Services Donation
- Okay for Disposal 2-Good-2 Toss
- Date Advertised/Posted: _____
- Sale Amount: \$ _____
- Sold To: Name _____
 Address _____
- Donated To: Name _____
 Address _____
- Hold Harmless Release Received
- Recipient is: Public Agency Non-Profit serving
 General Public Employee
- Accounting, if different from above: _____

APPROVED:

Procurement and Payables Manager Date

EXHIBIT G



RESOLUTION NO. 39884

1 A RESOLUTION relating to surplus property; declaring certain real property owned
2 by the Department of Public Utilities, Water Division (d.b.a. "Tacoma
3 Water"), identified as portions of Pierce County Assessor Tax Parcel
4 Nos. 0419132006, 0419133001, and 0419141000, covering approximately
5 106 acres, located east of the McMillin Reservoirs at 13004 Reservoir Road
6 East, Puyallup, in Pierce County, Washington, surplus to the needs of the
City; and authorizing the negotiated sale and conveyance of said property to
the Pierce County Department of Parks and Recreation for the sum of
\$2,775,100.

7 WHEREAS the City of Tacoma, Department of Public Utilities, Water
8 Division (d.b.a. "Tacoma Water"), owns property identified as portions of Pierce
9 County Assessor Tax Parcel Nos. 0419132006, 0419133001, and 0419141000,
10 covering approximately 106 acres located east of the McMillin Reservoirs at
11 13004 Reservoir Road E, Puyallup, in Pierce County, Washington ("Property"), as
12 more fully described in the documents on file in the office of the City Clerk, and
13

14 WHEREAS Tacoma Water has determined the Property is no longer
15 essential for continued effective utility service, and
16

17 WHEREAS the Pierce County Department of Parks and Recreation has
18 offered to purchase the Property for \$2,775,100, which is deemed acceptable by
19 Tacoma Water and the Department of Public Works, Real Property Services
20 Division, and
21

22 WHEREAS the Department of Public Works proceeded with the negotiated
23 disposition process pursuant to Tacoma Municipal Code ("TMC") 1.06.280.F, and
24
25
26



1 WHEREAS, an easement for access will also be granted and Tacoma Water
2 will reserve easements for a waste water pipeline, access road, and a depression
3 for waste water discharge, and
4

5 WHEREAS, on November 15, 2017, by adoption of Public Utility Board
6 Resolution No. U-10973, the Property was declared surplus to Tacoma Water's
7 needs and approved for sale, pending confirmation from the City Council, and
8

9 WHEREAS, on December 5, 2017, pursuant to RCW 35.94.040 and
10 TMC 1.06.280, the City Council conducted a public hearing on the proposed sale of
11 said Property, and
12

13 WHEREAS, there being no foreseeable need for continued City ownership of
14 the Property, the sale of said Property appears to be in the best interests of the
15 City, pending final approval from the City Council; Now, Therefore,
16

17 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

18 Section 1. That continued ownership of approximately 106 acres of property
19 identified as portions of Pierce County Assessor Tax Parcel Nos. 0419132006,
20 0419133001, and 0419141000, covering approximately 106 acres of property
21 located east of the McMillin Reservoirs at 13004 Reservoir Road East, Puyallup, in
22 Pierce County, Washington, owned by the City of Tacoma, through its Department
23 of Public Utilities, Water Division, is not essential to the needs of the City and is
24 hereby declared surplus pursuant to RCW 35.22.020 and Article I, Section 1.2, and
25 Article IX of the Tacoma City Charter.
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Section 2. That the proper officers of the City are hereby authorized to execute a deed and all other documents necessary to convey the property to the Pierce County Department of Parks and Recreation, for the amount of \$2,775,100, said deed to be substantially in the form of the deed on file in the office of the City Clerk.

Adopted DEC 19 2017




Mayor

Attest:



City Clerk

Approved as to form:



Chief Deputy City Attorney

Requested by Public Utility Board
Resolution No. U-10973

EXHIBIT H

SAGE MANAGEMENT CONSULTANTS, LLC

**CITY OF TACOMA
TACOMA PUBLIC UTILITIES
2013 MANAGEMENT REVIEW**

FINAL REPORT



November 7, 2014

SAGE MANAGEMENT CONSULTANTS, LLC



Planning and Performance Management Guidance

- The TPU operating divisions have made major improvements in planning and performance management.
- The biennial budgeting process is well developed and well executed.
- The application of planning and performance management elements among the divisions is inconsistent.
- There is no formal documentation of the assumptions and forecasts made in the biennial budgeting process, which could be used as the basis of a business plan.
- TPU has not established common mission elements upon which planning and performance management can be based.
- The TPU organizational level could benefit from a roll-up of quantitative performance metrics and targets. Existing metrics should be expanded to cover all divisional mission components.
- Performance gaps do not drive strategic planning.

Click! Strategic Plan

- Click! services are priced competitively.
- Click! customer service levels are high.
- Click! competition with Comcast likely keeps the traditional cable TV rates for both providers lower than they would be otherwise.
- The telecommunications industry is evolving rapidly with resultant increasing competition for incumbent suppliers.
- In addition to the industry structural changes, Click! has a number of competitive disadvantages.
- Click! has been, and is, experiencing a steady loss of customers and resultant financial deterioration due to industry structural changes.
- It appears that Click! cannot overcome the industry structural changes and its competitive disadvantages.
- As a result of the industry changes and the competitive disadvantages, Power has been subsidizing Click! and the subsidies will likely grow over time.

Customer Services Strategic Plan

- The initial strategic plan has been followed.
- The updated Strategic Plan appropriately proposes to complete projects started under the 2010 Strategic Plan and to focus on improving customer experience and internal processes.
- Customer Services has utilized an outside consultant to develop and manage its performance measurement and reporting process.

Compensation Philosophy, Policies, and Governance

- The TPU Succession Planning program partially ameliorated the impact of planned and unplanned attrition during the pay freeze.
- The multi-year pay freeze caused significant attrition in Power.

**1. Use identified performance gaps as a major input into strategic planning.
(Refer to Finding 7)**

Once a performance gap has been identified, credible initiatives to close the gaps should be chartered. Available resources should be applied to the most important areas of under-performance.

D. CLICK! AND CUSTOMER SERVICES STRATEGIC PLANS

Click! and Customer Services were excluded from the scope of the 2013 Management Review except for two areas. The Request for Proposals project scope, as clarified in the Questions and Answers Matrix of Anticipated Assessment Areas for the 2013 Management Study, includes examining the Click! and Customer Services strategic and business plans and human resources practices. This section addresses the Click! and Customer Services strategic and business plans. The discussions of Click! and Customer Services human resources practices are included in Section E of this chapter and in the Human Resources section in Chapter VI, General Government Shared Services.

CLICK!

Background

Click! operates and maintains a hybrid fiber coaxial (HFC) telecommunications network that supports the operation of Tacoma Power's electrical transmission and distribution system, provides retail cable TV, provides wholesale high-speed internet and data transport services, and operates the City of Tacoma's INET network.

Click!'s service territory covers most of the Tacoma Power service territory, including outside of the Tacoma city limits. Click! is available to approximately 120,000 of Power's 160,000 customers.

Click! is organized as a section under the Power Division, like Generation or Transmission and Distribution. It is not an enterprise fund, but has 13 discreet Click! cost centers within the Power enterprise fund. The Click! General Manager reports to the Power Superintendent and is part of the Power management team. The Power Senior Leadership Team acts as the Click! "Board of Directors." Click! rates are approved by the Public Utility Board (Board) and City Council, the same as Power, Water, and Rail rates.

The HFC engineering and construction units that design and build the HFC network are housed in the Power Transmission and Distribution (T&D) section and are part of its budget. HFC engineering and construction is not directly charged to Click! but some costs are allocated to Click!.

Click! does not use TPU's Customer Services unit for billing and walk-in and call center customer service. It provides its own customer service call center, billing, and lobby service. TPU Customer Services does accept payments for Click! at the payment kiosks and provides call center and walk-in referrals to Click! for new customers.

Click! was originally conceived as telecommunications infrastructure to support the Power smart grid and advanced metering infrastructure (AMI) initiatives. It was also

used to compete with the perceived substandard service and high costs of the incumbent commercial cable provider in Tacoma at the time.

Planning for Click! started in about 1995. The infrastructure build started in 1997. The first customer payment was received in 1998. Most of the infrastructure construction was complete by 2009-2010. Click! is substantially an overbuild of the incumbent cable TV company's system (now owned by Comcast), and Click! directly competes with Comcast for traditional cable TV service.

Power built and owns the fiber infrastructure. Within the fiber bundles, approximately 50% of the fibers are dark (unused). The remaining fibers are divided into three network systems, with no joint use of single fibers. The Power Communications and Operations Network (PCON) is used for the smart grid (such as, communication with substations) and is operated and maintained by the Power Communications unit. The second system is the General Government's (GG's) INET network. Click! operates and maintains the INET system under a cost reimbursement agreement with the GG. The third network is the Click! commercial network used for its retail and wholesale services.

Click! operates as an open-access network and presently provides service to three local retail internet service providers (ISPs) for residential and small office, home office (SOHO) customers and five ISPs serving point-to-point and sonnet broadband service to commercial and industrial accounts. Click! wholesales network capacity to these ISPs. The Board and City Council have both consistently supported this arrangement. However, in response to industry changes, Click! has explored the possibility of entering the retail internet service market. This would likely involve buying out the ISPs' contracts. This proposal was last publicly revisited with the Board and Council in January 2012, and the incumbent ISPs prevailed in retaining their exclusive retail agent status.

The contracts with the ISPs automatically renew with a 60 day termination provision for both parties. Two of the three existing contracts have a non-compete clause, meaning Click! cannot compete with the ISPs by offering retail broadband service while the contracts are in effect.

As an organizational unit within the Power Division, Click! generally follows the Power planning and performance management process. Please see Chapter III for a description of the Power planning and performance management process.

Click! has multiple planning and performance management components, including:

- Click! Network's Playbook – a summary of strategic objectives, leadership principles, core values, aspirational values, and vision.
- Click! Network Strategy Map – a summary of Click!'s strategies from the financial, customers, internal processes, and employees perspectives.
- Click! Quarterly Balanced Scorecard Reports – status and notes on focus objectives from the Strategy Map.
- Click! Network Goals and Measurements 2014 Performance/Status Report - articulates the goals associated with the four balanced scorecard perspectives and summarizes status/performance of each one.

In addition to the Power planning and performance management process, a telecommunications consultant expert in publicly owned telecommunications enterprises assists Click! in periodically revising the draft strategic plan to adjust for changing circumstances.

Findings

1. Click! services are priced competitively.

Click! regularly compares its prices to the Comcast prices in the Tacoma area, both inside and outside of the city limits. A recent Click! market comparison performed in connection with a recent rate increase proposal had the following results.

Click! Market Price Comparison

Component	Click! Proposed Rates	Comcast Tacoma Rates	Click! Versus Comcast Tacoma	Comcast Outside Tacoma Rates	Click! Versus Outside Tacoma
29 Broadcast Channels	\$17.99	\$20.51	14% Less	\$23.01	28% Less
88 Standard Channels	\$52.99	\$52.99	Same	\$69.49	31% Less
150 Digital Channels	\$74.49	\$70.99	4.9% Higher	\$87.49	17% Less
150 Digital Channels and Two Premium Channels	\$102.49	\$110.97	8.3% Less	\$127.47	24% Less

Click! rates are lower in all cases except one. On a typical bill basis, Click! analysis has found that Click!'s costs are 3.9% lower at the "bottom of the bill."

2. Click! customer service levels are high.

A recent Click! customer satisfaction survey conducted by an independent research firm found the following:

- Almost half of Click! customers have previous experience with Comcast and most customers switched from Comcast to Click! because Click! is a local, lower-priced provider
- Overall satisfaction with Click! cable TV is quite strong
- Customers would recommend Click! 3:1 over customers who would not
- 73% of customers plan to continue to subscribe to Click!
- Customers are satisfied with all of Click!'s customer touch points: Customer Service Representative, Lobby Representative, Website, and Technician

Click! also recently engaged an independent consultant to conduct a series of focus groups with both Click! subscribers and non-subscribers. The focus groups generally confirmed the high service levels experienced by Click! customers.

3. Click! competition with Comcast likely keeps the traditional cable TV rates for both providers lower than they would be otherwise.

Virtually all of the Click! service territory is directly competitive with Comcast. The Click! strategy is to underprice Comcast in directly comparable services. This has served to keep both Click! and Comcast prices under market in the competitive service territories. The Click! Market Price Comparison table shown above validates that Click! is successful in accomplishing this strategy.

4. The telecommunications industry is evolving rapidly with resultant increasing competition for incumbent suppliers. (Refer to Recommendation 1)

Click!'s current competitors include the satellite providers, Dish and Direct TV, Comcast, and the several internet streaming services (e.g., Netflix, Hulu, iTunes, Google Play, HBO, CBS, and several free services). CenturyLink is expected to introduce its Prism product in Tacoma soon. Prism is similar to AT&T's Uverse in that it delivers internet protocol television (IPTV) over twisted pair telephone lines. Additionally, fiber to the home providers, such as, Verizon Fios and Google, could elect to enter the Tacoma market at some point.

The recent customer survey conducted by an independent customer research firm mentioned above also found that many Click! customers use their devices to stream video: desktop computers – 47%, laptop computers – 48%, web-enabled smart phones – 39%, and tablets – 55%. Most of these customers also use these devices to watch television shows as well.

The recent Click! customer survey also discovered that 59% of the Click! customers were 55 or older. Just as many young people now do not have land line telephones and only have cell phones, there is an increasing trend away from traditional cable subscribers to broadband customers who stream their videos, movies, and television shows over the internet. Most national cable companies are losing traditional cable subscribers.

While the commercial and industrial broadband business is only 2-3% of the Click! business, the Click! ISPs in this space have several other competitors.

5. In addition to the industry structural changes, Click! has a number of competitive disadvantages. (Refer to Recommendation 1)

Click!'s competitive disadvantages include the following:

Inability to Bundle Services. Because of the wholesale arrangement with the ISPs for broadband services, Click! cannot provide bundled service, like the "triple play," combining cable television, internet service, and phone service or the "quadruple play" that includes cellular service. Even CenturyLink offers the triple play by teaming with Direct TV. This is a major competitive disadvantage for Click!. This structure also makes for inefficiency because one customer may have at least two different installation forces dispatched to install or maintain service.

Programming Costs. Programming costs are a large part of cable operators' cost structure. Click! programming costs per customer are increasing even as the number of

customers is decreasing. A recent Click! programming cost analysis showed the following programming cost per customer increase over the last four bienniums.

Programming Cost per Customer

Biennium	Average Number of Customers	Percentage Cost Increase per Customer
2007-2009	24,521	Baseline
2009-2010	24,241	7.7%
2011-2012	23,000	9.6%
2013-2014	20,000	7.7%

Technology. The Click! network is traditional cable television HFC architecture. Newer technologies include the Verizon Fios fiber to the home and the AT&T Uverse, which terminates with twisted pairs but places more fiber to coaxial/copper nodes farther into the system. Wireless competitors using Wi-Fi are expected as well.

Power Cost Allocation. Since inception, it has been assumed that Power would be using the Click! infrastructure for its smart grid and AMI initiatives. As such, Power has borne a significant portion of the Click! costs. However, it now appears that Power expects to use cellular and other wireless technologies rather than the Click! system for its continued smart grid and AMI initiatives which could mean that Power will bear less of the Click! costs under such a scenario.

Employee Labor Cost. Approximately 80% of Click!'s 96 employees are represented by a bargaining unit, as are most of the other Power employees. The managers and supervisors, sales and marketing, and business system employees are not represented. Several Click! employee positions are currently "red-lined" (salary rates frozen). The wage and benefit structure and labor overhead allocations for Click! employees are the same as for Power employees. This structure may result in Click! total employee labor costs being higher than competitors not bound to a public utility cost structure.

Because the Click! workforce is largely represented, there are few opportunities to contract construction, operations and maintenance, and customer service work. This is a competitive disadvantage compared to Comcast and other competitors, who can contract some work to lower cost providers.

Also, because of Click!'s affiliation with the City of Tacoma and its pay policies, Click! cannot pay its employees commissions or incentives as its competitors can.

Governance and Scale. Click! is relatively small and shrinking business in a highly competitive, rapidly changing, and consolidating (e.g., Comcast with Time Warner and AT&T with Direct TV) industry. However, Click! is governed as a unit within a publicly-owned utility. Click! is not a separate business unit or enterprise fund. It is an organizational unit within the Power enterprise fund. The first line of Click! oversight is the Power Superintendent and the Power management team. From there, oversight is provided by the TPU CEO, the Board, and the City Council. While this governance structure has proven highly effective for public utilities, it is not optimal for a competitive telecommunications business. And, while Click! itself is staffed with telecommunications industry professionals, Click! has no telecommunications industry

experts in its governance chain. This is a disadvantage to large-scale competitors who have a depth of telecommunications industry expertise and substantial resources for marketing and research and development. Telecommunications and cable TV are not core competencies of Power.

6. Click! has been, and is, experiencing a steady loss of customers and resultant financial deterioration due to industry structural changes. (Refer to Recommendation 1)

With the exception of wholesale internet customers, the Click! customer base has been steadily declining since the peak of approximately 25,000 customers in 2010 to about 20,000 today. Click! was originally planned for 45,000 customers. Click! provides at least standard cable service to only 17.5% of the homes it passes. The number of customers is projected to continue to decline. The reductions in customers can be attributed to the declining economic well-being of some customers, the national trend of switching from cable to streaming on the internet, increasing rates, and triple play competition from Comcast. Additional competitors will likely increase the pace of customer losses.

7. It appears that Click! cannot overcome the industry structural changes and its competitive disadvantages. (Refer to Recommendation 1)

Click! has worked hard to cut costs as the revenue has decreased. It has reduced about \$5 million in costs per biennium. However, revenues continue to fall short of full cost recovery. There is no evidence that Click! will be able to turnaround its deteriorating situation. The option of raising rates to cover more costs accelerates customer losses.

8. As a result of the industry changes and the competitive disadvantages, Power has been subsidizing Click! and the subsidies will likely grow over time. (Refer to Recommendation 1)

Click! revenue should cover its total allocated cost, including direct costs, debt service, services provided by other units, and allocated overhead. It does not and Click! is losing money. Click! financial losses are covered by the Power fund. This means that Power ratepayers are subsidizing Click! customers.

Power customers who are also Click! or Comcast subscribers may benefit from lower cable costs provided by the Click! competition with Comcast. Power customers who are not cable subscribers do not receive this benefit. Also, it does not appear that the lower cable costs match the Power subsidy of Click!

In the 2013/2014 biennium, Click! costs were allocated 75% to Click! and 25% to Power, for Power use of the Click! network for smart grid and AMI. If Power decides not to use additional Click! resources for these purposes (e.g., opting instead for wireless infrastructure), the allocation would potentially change to 96% Click! and 4% Power. This would further exacerbate the Power subsidy of Click!.

The current situation in which Tacoma Power is absorbing Click! deficits is untenable and should be resolved quickly.

Recommendation

- 1. Sell, lease, or close Click! as soon as reasonably possible and within one year at the latest. (Refer to Findings 4, 5, 6, 7, and 8)**

The Power subsidy to Click! is unfair to the Power ratepayers and should not continue. Potential buyers or lessors for Click! could include its retail ISPs, Comcast, Google, and various independent operators (e.g., TDS Acquired Bend Broadband and Comcast bought Alameda Telecom). However, it is not certain that an acquirer or lessor would come forward. TPU should engage an expert firm to attempt to sell or lease Click! as soon as possible. The lease option should only be used if a creditworthy counterparty (able to sustain the lease payments) is found. If a sale or lease is not possible, TPU should close Click!.

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

EDWARD E. (TED) COATES, et. al.,

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

No. 17-2-08907-4

DECLARATION OF MICHAEL
BAILEY IN SUPPORT OF
DEFENDANT’S OPPOSITION TO
PARTIAL SUMMARY JUDGMENT

I, Michael Bailey, declare as follows:

- 1. I am over the age of 18, have personal knowledge of the facts stated herein, and am competent to testify thereto.
- 2. I am a Certified Public Accountant. I am the Technology and Information Services Director for the City of Redmond, Washington. Prior to taking this position with the City of Redmond in April 2017, I was Finance and Information Services Director for City of Redmond from May 2008 to April 2017. Prior to working for the City of Redmond, I held similar positions leading the finance departments of the cities of Renton, Lynnwood, and Everett. In summary, I have served in an accounting and budgeting role

1 for a variety of Washington cities from 1980 to the present. From 2002 to 2011, I held a
2 variety of leadership positions with the Government Finance Officers Association, the
3 nationwide organization that supports government finance officers. I was President of the
4 Washington Finance Officers Association from 1999 to 2000. I developed a two-day
5 budgeting workshop, which I lead twice a year for the Association of Washington Cities
6 and Washington Finance Officers Association. I also travel around the country regularly
7 with the Government Finance Officers Association to provide government accounting and
8 budgeting training program. Attached as Exhibit A is an accurate and complete copy of
9 my resume.

10 3. I was hired by the attorneys for the City of Tacoma in this litigation to
11 serve as an expert witness on government finance and accounting practices, revenue
12 generation, and asset management.

13 4. Every year, the finance departments of Washington cities prepare financial
14 statements for their various funds. Consistent with RCW 43.09, the Washington State
15 Auditor's Office prescribes financial reporting requirements. The State Auditor meets this
16 requirement through their publishing a "Budgeting, Accounting and Reporting System"
17 (BARS) manual. The BARS manual calls for annual financial reports to be filed either in
18 conformance with Generally Accepted Accounting Principles (GAAP) or a cash basis of
19 accounting. The City of Tacoma elects to utilize the GAAP guidance provided by the
20 BARS manual. The finance departments of Washington cities must ensure that all
21 revenue and expense transactions are appropriately recorded in the finance statements for
22 their cities' funds in accordance with GAAP (for those who choose this option) and local
23 and state regulatory requirements per the BARS manual.

24 5. Washington cities are required to have their annual financial reports
25 audited by independent auditors to ensure compliance with GAAP and Washington state

1 law. Cities present their audited financial statements each year to the Washington
2 Auditor's Office in accordance with the BARS manual.

3 6. City fund financial statements must show that the fund has a positive
4 balance. Cities also can create sub-funds within their funds for administrative and
5 performance tracking purposes. There is no requirement in state law or GAAP, however,
6 that sub-funds within a city fund must have a positive cash balance at year-end.

7 7. Municipalities sometimes have departments that provide services that
8 benefit a number of other departments. As a result, allocation formulas are developed to
9 allocate the revenues and expenses of shared services between city funds for accounting
10 purposes. For example, a city's legal department provides legal services to the city
11 council, utilities, and other city departments and agencies. The expenses for providing
12 these legal services are allocated among the city's funds, as required by GAAP.

13 8. While allocation formulas need to be based on a reasonable methodology
14 pursuant to Washington law and GAAP, considerable flexibility exists and many formulas
15 may be reasonable for the same service. For example, it might be equally reasonable to
16 allocate the expenses of a city's legal department based on the number of legal requests
17 made by each city department as it would be to allocate the expenses of a city legal
18 department based on the total budget of each city department that uses the legal
19 department.

20 9. I have been informed that Tacoma Power decided in 2002 to develop an
21 allocation formula to track what expenses and revenues generated by Tacoma Power's
22 telecommunications system could be respectively attributed to Tacoma Power's
23 generation and delivery of electricity versus Click's sale of excess capacity to the ISPs
24 and for retail cable services. I also have been informed that the expenses and revenues
25 generated by the telecommunications system are accounted for in the City's Power Fund

1 and that a sub-fund was created administratively to track the expenses and revenues
2 attributable to Click's sale of excess capacity to the ISPs and for retail cable services.
3 This differs from the situation I describe in paragraphs 7 and 8 above, for when a city has
4 costs within one government fund, it is not required or typical to allocate those costs
5 amongst sub-funds. Nor is it required that sub-funds must have a positive cash balance at
6 year-end.

7 10. In my more than 35 years working for the finance departments of cities
8 throughout Washington, I have observed numerous circumstances when the property of a
9 city department becomes surplus and the city must care for surplus property and decide
10 how and when to dispose of it. Often the best choice for a city is not to immediately sell
11 or dispose of its surplus property. The city must be deliberate and consider market
12 conditions and other issues when making the decision on how and when to dispose of
13 surplus property.

14 11. I have considered the question of whether Tacoma Power's electric
15 ratepayers would be better off if Tacoma Power was ordered or instructed to immediately
16 stop selling the telecommunications system's excess capacity to the ISPs and retail cable
17 television customers. Immediately ceasing the sale of the telecommunications system's
18 excess capacity would eliminate both the revenues and expenses attributable to Click
19 under Tacoma Power's current allocation formula for the telecommunications system.
20 However, under Tacoma Power's current allocation formula, there still would be
21 depreciation for the telecommunications system assets previously allocated to Click.
22 Even if Click's operations are immediately stopped, Tacoma Power would either need to
23 continue to depreciate those assets in the Power Fund or write them off. Either approach
24 would impact Power Fund financials and electric ratepayers.
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I declare under penalty of perjury that the foregoing is true and correct:

EXECUTED this 6th day of February, 2018, in Woodinville, Washington.



Michael Bailey

EXHIBIT A

Michael E. Bailey, CPA

PO Box 715
Woodinville, WA 98072

(425) 442-5121
baileyno6@msn.com

Objective

To continue my work in local government finance profession for the benefit of the organizations and communities I serve.

Experience

April 2017 to present City of Redmond Redmond, WA
Technology and Information Services Director

- Direct Technology Services, Risk Management and City Clerk.
- Lead strategic planning effort and created an innovation function
- Supervise a staff of 33, there are 680 total city employees

May 2008 to April 2017 City of Redmond Redmond, WA
Finance and Information Services Director

- Direct Budget, Accounting, Treasury, Purchasing, Information Services, and City Clerk.
- Lead "Priorities of Government" budget community process

Supervise a staff of 57, there are 680 total city employees

2005 to 2008 City of Renton Renton, WA
Finance and Information Services Administrator

- Direct Budget, Accounting, Treasury, Information Services.
- Lead "Priorities of Government" budget process
- Supervise a staff of 35, there were 703 total city employees

1999 to 2005 City of Lynnwood Lynnwood, WA
Finance Director

- Direct Budget, Accounting, Treasury, Purchasing, Information Services and Risk Management.
- Treasurer of South Snohomish County Public Facilities District
- City Clerk and City Treasurer for the city.
- Supervise a staff of 35, there were 350 total city employees

1992-1999 City of Everett Everett, WA
Finance Director

- Direct Accounting, Treasury, Purchasing, Information Services – advise on budgeting
- Introduced strategic budgeting and financial policies.
- Supervised a staff of 45, there were 1,000 total city employees.

1987-1992 City of Wenatchee Wenatchee, WA
Administrative Services Director

- Direct all administrative functions for the city
- Developed GFOA award winning CAFR and budget.
- Supervised 12, there were 300 total city employees

1982–1987 Metropolitan Park District Tacoma, WA

Finance Director

- Direct accounting, treasury, budget, information services
- Developed GFOA award winning CAFR and budget.
- Supervised 12, there were 350 total district employees

1980–1982 Pierce County, Community Action Tacoma, WA

Finance Programs Manager

- Direct financial accounting and budgeting
 - Developed method to track grant program activities and costs.
- Supervised 3, there were 35 total agency employees

Education

1979 University of Puget Sound Tacoma, WA

- B.A., Business Administration and Accounting.
- GPA 3.45

1981 University of Puget Sound Tacoma, WA

- M.B.A., Public Administration
- GPA 3.6

2009 Kennedy School of Government (Harvard) Cambridge, MA

- Executive Course – Driving Government Performance

Interests

Government Finance Officers Association Executive Board, Member at Large
2008 to 2011

Member, Government Finance Officers Association Standing Committee on
Budget and Management – 2002 to 2011

Chairman, Government Finance Officers Association Technology Resource
Group – 2005 to 2008

President, Washington Finance Officers Association 1999 / 2000.

Member, GFOA Budget Review Committee – In House Reviewer – since 1987

GFOA State Representative for Washington State 2000/2002

Member, Washington State Auditor's Local Government Advisory Committee

Member, Future Business Leaders of America – Professional Division

Developed and lead annual 2-day budgeting workshops held twice each year –
sponsored by Association of Washington Cities and WFOA

International and domestic travel.

Accomplishments

Certified Public Accountant, 1982, #8354

FBLA National Business Person of the Year – 1999

Authored “Budgeting for Cities and Towns in Washington State” published by the Association of Washington Cities

Authored numerous articles for Government Finance Review, Governing West, WFOA, AWC and the Municipal Research and Services Center on Budgeting and general local government topics.

Note: several professional engagements are not listed on this resume. They generally involve facilitating organizational development and process improvements for local governments and related organizations.

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

EDWARD E. (TED) COATES, et. al.,

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

No. 17-2-08907-4

DECLARATION OF STEVEN
KLEIN IN SUPPORT OF
DEFENDANT’S OPPOSITION TO
PARTIAL SUMMARY JUDGMENT

I, Steven Klein, declare as follows:

1. I am over the age of 18, have personal knowledge of the facts stated herein, and am competent to testify thereto.

2. I am an independent consultant, providing services to utilities and other entities based on my career working for municipal and publicly owned utilities. Prior to becoming a consultant in May 2015, I was General Manager and CEO of the Public Utility District #1 of Snohomish County (“Snohomish PUD”).

3. Prior to joining Snohomish PUD in April 2006, I was Superintendent of City of Tacoma, Department of Public Utilities, Light Division, commonly known as Tacoma Power. I was promoted to Superintendent in July 1993 and held that position

1 until I departed for Snohomish PUD. Prior to that, I held a variety of positions with
2 Tacoma Power.

3 4. In the mid-1990s, when I was the Superintendent of Tacoma Power, the
4 electric utility industry was undergoing significant telecommunications advances in
5 response to deregulation of the industry. These advances would enable utilities like
6 Tacoma Power to improve the operations of their generation, distribution, and
7 transmission assets.

8 5. During the mid-1990s, there was nationwide legislative and regulatory
9 interest in the introduction of retail competition that would allow customers of electric
10 utilities to choose their electricity suppliers. Retail electric utility customers would be
11 allowed to choose a company other than their electric utility to supply their electricity,
12 while their utility continued to provide the distribution and transmission system and
13 metering to deliver that electricity. Thus, many electric utilities were investing in
14 advanced technology to retain a competitive edge.

15 6. As I considered the rapidly changing face of the electric utility industry due
16 to technological developments and the potential adoption of retail electric competition, I
17 established a team at Tacoma Power to explore the possibility of using
18 telecommunications as a way to respond. After internal research and input from
19 consultants, we decided that the best option was to construct a hybrid fiber coaxial
20 telecommunications system to modernize and interconnect Tacoma Power's generation,
21 distribution, and transmission assets. The system would also support the installation of
22 "smart meters" at the residence or place of business of every Tacoma Power electric
23 customer. Smart meters would provide important benefits to Tacoma Power and its
24 customers, including providing real-time data for monitoring and billing electricity
25

1 consumption, remote meter reading, remote connection and disconnection, and pay-as-
2 you-go electricity consumption programs.

3 7. As originally designed, the coaxial part of the telecommunications system
4 would support the smart meters and the fiber part of the telecommunications system
5 would support connection of Tacoma Power's local, distributed generation, distribution,
6 and transmission assets to achieve a variety of operating efficiencies.

7
8 8. Relying on the Pierce County Superior Court's two summary judgment
9 rulings in 1996 and 1997, Tacoma Power went forward with expending money from the
10 Power Fund to build Tacoma Power's telecommunications system and to sell excess
11 capacity for internet access, data transport, and cable television services.

12 9. Attached as Exhibit A is an accurate copy of excerpts from the City of
13 Tacoma's 2005 Electric System Revenue Bond offering. The document explains to
14 potential bond purchasers the process by which Tacoma Power's and Click's rates are set
15 and Tacoma Power's ultimate responsibility of "providing electric service revenues
16 covering all operating and maintenance expenses, all debt service and a portion of capital
17 improvements and additions made to the Electric System":

18 Services or rates designed to meet the needs of one group of customers are
19 required to be accomplished without negative impacts to other Tacoma Power
20 customers. Costs that Tacoma Power incurs to provide services will be recovered
21 through the rates and prices it charges to its customers. Tacoma Power last
22 increased retail rates by an average 5.2% effective April 4, 2005. See "POWER
SUPPLY RESOURCES AND COST OF POWER—Long-Term Purchases and
Sales of Project Capability—Bonneville Power Administration Purchases."

23 The Public Utility Board establishes telecommunication service rates for Click!
24 subject to approval by the City Council. Rate ranges established for all commercial
25 products and services allow Click! the flexibility to respond to market
opportunities while recovering operating costs. Rates for analog and digital cable
TV packages were increased by an average of 6% in May 2005, with the increase

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for certain services ranging from 2% to 17%. The rate increase was the second since establishing the cable TV business line in 1998.

10. In 2002, Tacoma Power developed an allocation formula to track expenses and revenues generated by the telecommunications system that could be respectively attributed to the operations of Tacoma Power's electric system versus Click's sale of excess capacity to the ISPs, for retail cable services, and as wholesale, high capacity, point-to-point data transfer for certain large customers. Tacoma Power developed these allocations in order to make informed management decisions about the telecommunications system.

11. During the mid-2000s, Tacoma Power developed gateway meters (Tacoma Power's name for its smart meters) that could relay information from its electric customers to Tacoma Power headquarters via the telecommunications system.

12. Attached as Exhibit B is an accurate and complete copy of the 2003 Virchow, Krause & Company Review of Cost Allocations for Click! Network. Page 7 of the report lists the ways in which Tacoma Power was using the telecommunications network to deploy smart metering for Tacoma Power's residential, commercial, and industrial customers.

13. Since the late 1990s, the excess capacity on Tacoma Power's telecommunications system has been sold for internet access, data transport, and cable television services. Click's customers include cable television customers as well as ISPs and other companies that wanted to purchase wholesale internet and data transport.

14. At the time of its construction, the telecommunications system was a state-of-the-art hybrid fiber coaxial system.

15. Shortly after the telecommunications system was constructed, Tacoma Power and the electric utility industry was sent into a financial tailspin by the California

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Electricity Crisis in 2000-01. This financial crisis in the electric utility industry delayed Tacoma Power's deployment of its gateway meters and delayed Tacoma Power's full and robust use of its new telecommunications system.

16. While Tacoma Power was recovering from the financial crisis, telecommunications technology continued to evolve at a rapid rate.

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

EXECUTED this 7th day of February, 2018, in Tacoma, Washington.



Steven J. Klein

EXHIBIT A

**NEW ISSUE
FULL BOOK-ENTRY**

RATINGS: See "Ratings" herein.

In the opinion of Preston Gates & Ellis LLP, Bond Counsel, assuming compliance with certain covenants of the City, interest on the 2005 Bonds is excluded from the gross income of the owners of the 2005 Bonds for federal income tax purposes under existing law. Interest on the 2005 Bonds is not an item of tax preference for purposes of either individual or corporate alternative minimum tax. Interest on the 2005 Bonds may be indirectly subject to corporate alternative minimum tax and certain other taxes imposed on certain corporations. See "TAX EXEMPTION" herein for a discussion of the opinion of Bond Counsel.



CITY OF TACOMA, WASHINGTON

**\$93,480,000
Electric System Revenue
Bonds, 2005 Series A**

**\$156,425,000
Electric System Revenue Refunding
Bonds, 2005 Series B**

Dated: Date of Delivery

Due: January 1, as shown on the inside cover

The 2005 Bonds will be issued as fully registered bonds under a book-entry-only system, initially registered in the name of Cede & Co. (the "Registered Owner"), as nominee for The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the 2005 Bonds. Individual purchases of the 2005 Bonds will be made in the principal amount of \$5,000 or any integral multiple thereof within a single maturity. Purchasers of the 2005 Bonds (the "Beneficial Owners") will not receive certificates representing their interest in the 2005 Bonds. Principal and interest are payable by the Fiscal Agency of the State of Washington, currently The Bank of New York, New York, New York (the "Bond Registrar").

Principal is payable as set forth on the inside cover. Interest on the 2005 Bonds is payable on January 1, 2006, and semiannually thereafter on each July 1 and January 1 to maturity or earlier redemption, by the Bond Registrar to DTC, which in turn is obligated to remit that principal and interest to its broker-dealer participants for subsequent disbursement to Beneficial Owners of the 2005 Bonds. See APPENDIX D—"BOOK-ENTRY SYSTEM."

The 2005 Bonds are subject to optional redemption by the City of Tacoma, Washington (the "City") prior to their stated maturities as described under "DESCRIPTION OF THE 2005 BONDS—Redemption."

The 2005 Bonds are being issued to finance capital improvements to the Electric System and to refund certain outstanding Electric System Revenue Bonds, as described under "PURPOSE OF THE 2005 BONDS AND APPLICATION OF 2005 BOND PROCEEDS." The 2005 Bonds are payable solely from a special fund of the City known as the Electric System Revenue Bond Fund and from the Revenues of the Electric System, after payment of Operating Expenses (including Contract Resource Obligations as more fully described herein), on a parity with the outstanding Electric System Revenue Bonds and other Electric System Revenue Bonds hereafter issued on a parity therewith. See "SECURITY FOR THE 2005 BONDS."

The 2005 Bonds are not general obligations of the City, and neither the full faith and credit nor the taxing power of the City or of the State of Washington, nor any revenues of the City derived from sources other than the Electric System, are pledged to the payment thereof.

MATURITY SCHEDULES — See Inside Cover

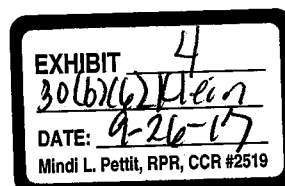
Payment of the principal of and interest on the Series A Bonds maturing in the years 2010 through 2017, inclusive, and the Series B Bonds maturing in the years 2006 through 2016, inclusive (collectively, the "Insured Bonds") when due will be insured by bond insurance policies to be issued by Financial Guaranty Insurance Company simultaneously with the delivery of the 2005 Bonds. See "BOND INSURANCE" herein.



This cover page includes certain information for reference only and is not a summary of matters set forth herein. Investors should read the entire Official Statement to obtain information essential to the making of an informed investment decision.

The 2005 Bonds are offered for delivery when, as and if issued, subject to the approval of legality by Preston Gates & Ellis LLP, Bond Counsel, Seattle, Washington. It is expected that the 2005 Bonds will be available for delivery at the facilities of The Depository Trust Company in New York, New York, by Fast Automated Securities Transfer (FAST) on or about October 4, 2005.

Dated: September 20, 2005



TAC_PRA_HF_0020632

Tacoma Power
Customers, Energy Sales and Revenues from Sales(1)

	2000	2001	2002	2003	2004
Average Number of Customers					
Residential	132,693	133,954	137,792	141,783	145,462
Small Commercial(2)	12,726	13,180	13,469	14,024	14,338
Industrial(3)	2,101	2,228	2,288	2,347	2,529
Other(4)	<u>323</u>	<u>369</u>	<u>406</u>	<u>456</u>	<u>523</u>
Total Customers	147,843	149,731	153,955	158,610	162,852
Energy Sales (MWh)					
Residential	1,840,902	1,715,877	1,785,165	1,720,706	1,764,814
Small Commercial(2)	332,098	314,687	321,567	314,958	322,575
Industrial(3)	3,291,400	2,564,843	2,398,636	2,318,861	2,521,795
Other(4)	<u>33,942</u>	<u>30,627</u>	<u>35,590</u>	<u>32,129</u>	<u>35,538</u>
Subtotal	5,498,342	4,626,034	4,540,958	4,386,654	4,644,722
Sales for Resale	<u>656,236</u>	<u>629,213</u>	<u>1,738,020</u>	<u>1,676,572</u>	<u>1,432,596</u>
Total Energy Sales	6,154,578	5,255,247	6,278,978	6,063,226	6,077,318
Revenue From Energy Sales					
Retail Sales:					
Residential	\$ 81,642,403	\$ 103,418,213	\$ 105,553,870	\$ 105,104,401	\$ 110,897,060
Small Commercial(2)	15,407,556	20,138,485	20,226,644	20,113,985	21,182,573
Industrial(3)	130,545,580	143,812,077	104,399,796	100,675,224	105,779,586
Other(4)	1,254,274	1,552,848	1,783,451	1,697,929	1,861,629
Subtotal Retail Sales	<u>\$ 228,849,813</u>	<u>\$ 268,921,623</u>	<u>\$ 231,963,761</u>	<u>\$ 227,591,539</u>	<u>\$ 239,720,848</u>
Change in Unbilled(5)	415,121	8,265,647	(4,685,986)	7,312,550	(3,417,063)
Sales for Resale:					
Bulk Power(6)	\$ 35,854,270	\$ 25,624,495	\$ 34,844,972	\$ 63,396,385	\$ 62,362,512
Total Revenue From Energy Sales	<u>\$ 265,119,204</u>	<u>\$ 302,811,765</u>	<u>\$ 262,122,747</u>	<u>\$ 298,300,474</u>	<u>\$ 298,666,297</u>

- (1) Years ending December 31.
- (2) Consists of Small General customer class.
- (3) Includes the following rate classes: General, High Voltage General, and Contract Industrial.
- (4) Includes Street Lighting and Traffic Signals and Private Off-Street Lighting customer classes.
- (5) Change from year-to-year in the amount of electric service consumed but not yet billed as of year-end.
- (6) Includes Non-Portfolio market sales in 2000 and 2001. The market-based Non-Portfolio program ended in 2001. See "POWER SUPPLY RESOURCES AND COST OF POWER—Wholesale Energy Market Purchases and Sales."

Rates

The Public Utility Board establishes electric rates for Tacoma Power, subject to approval by the City Council. Tacoma Power has been able to maintain low rates in comparison to the national average, while at the same time providing electric service revenues covering all operating and maintenance expenses, all debt service and a portion of capital improvements and additions made to the Electric System.

Tacoma Power's rates and charges are free from the jurisdiction and control of the Washington Utilities and Transportation Commission and FERC. With certain exceptions, rates must be set to include a 3.873% tax Tacoma Power pays on its gross revenues to the State of Washington prior to debt service and a 6% (8% for Click! Network) tax Tacoma Power pays on gross revenues to the City subordinate to debt service.

Tacoma Power's services, including rates and prices for those services, are designed to meet customer needs and provide the flexibility needed to respond to changing conditions in the electric utility industry. Tacoma Power expects to both unbundle and offer a greater variety of services to its customers who desire to make more of their own choices. The rate setting policy provides that rates for new non-traditional energy-related services may be set at times other than the general rate-setting process. In 2000 Tacoma Power launched EverGreen Options, a green power program that offers customers the opportunity to support renewable and environmentally friendly power.

The revenue from the program supports the generation of more green power resources and the restoration of fish and wildlife habitats in Washington and Oregon. In 2002 Washington began requiring all but very small utilities in the state to offer green pricing programs for their retail customers. Tacoma Power's EverGreen Options program complies with this law.

Services or rates designed to meet the needs of one group of customers are required to be accomplished without negative impacts to other Tacoma Power customers. Costs that Tacoma Power incurs to provide services will be recovered through the rates and prices it charges to its customers. Tacoma Power last increased retail rates by an average 5.2% effective April 4, 2005. See "POWER SUPPLY RESOURCES AND COST OF POWER—Long-Term Purchases and Sales of Project Capability—Bonneville Power Administration Purchases."

The Public Utility Board establishes telecommunication service rates for Click! subject to approval by the City Council. Rate ranges established for all commercial products and services allow Click! the flexibility to respond to market opportunities while recovering operating costs. Rates for analog and digital cable TV packages were increased by an average of 6% in May 2005, with the increase for certain services ranging from 2% to 17%. The rate increase was the second since establishing the cable TV business line in 1998.

The average revenue per kWh sold and average monthly bills at selected consumption levels for typical residential, commercial and industrial customers of Tacoma Power, based on rates presently in effect, are shown below. In addition, both revenue and bill information representing a typical load factor for a Contract Industrial customer is presented.

**Tacoma Power
Typical Revenue and Monthly Bills
at Selected Usage Levels**

	Typical Revenue (cents per kWh)	Monthly Bill
<u>Residential(1)</u>		
500 kWh per month	7.3¢	\$ 37
1,000 kWh per month	6.8	68
2,000 kWh per month	6.5	130
<u>Commercial(2)</u>		
7,500 kWh per month (30 kW)	6.4	482
12,300 kWh per month (49 kW)	6.4	786
<u>General(3)</u>		
200,000 kWh per month (500 kW)	4.7	9,457
400,000 kWh per month (1,000 kW)	4.7	18,868
1,800,000 kWh per month (5,000 kW)	4.9	87,608
<u>Contract Industrial(4)</u>		
26,280,000 kWh per month (40,000 kW at 90% load factor)	3.5	926,822

- (1) Residential rates based on 3.1081 cents per kWh for energy, 3.0981 cents per kWh for delivery, and a basic monthly charge of \$5.50 per customer.
- (2) Commercial rates based on 3.2132 cents per kWh for energy, 3.0999 cents per kWh for delivery, and a basic monthly charge of \$9 per customer.
- (3) Industrial rates based on 3.2729 cents per kWh for energy, \$5.73 per kW for delivery and a basic monthly charge of \$46 per customer.
- (4) Tacoma Power currently serves two large Contract Industrial customers under specific contracts established to meet those customers' needs. Contract Industrial rates are based on 2.3564 cents per kWh for power supply

EXHIBIT B

Review of Cost Allocations

For

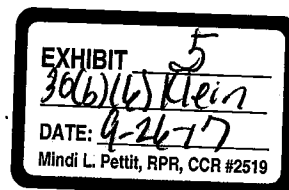
**Click! Network
Tacoma Power
Tacoma, Washington**



**Virchow Krause
& company**

Virchow, Krause & Company, LLP
Ten Terrace Court
P.O. Box 7398
Madison, WI 53707-7398

July 23, 2003



Foreword

Tacoma Power contracted Virchow, Krause & Company, LLP to assess the reasonableness of its method of allocating the capital investment and operating expenses of Click! Network between power and commercial applications. Power applications are uses of the Click! Network infrastructure that support electric transmission and distribution operations. Commercial applications are cable TV, Internet, and data transport services sold to wholesale and retail customers. This report provides background information, our opinion of the allocation method, and the basis for that opinion.

The scope of this project is limited to a review of the reasonableness of the allocation method. The scope does not include an audit or an opinion of Click! Network's accounts and records or of the projected benefits of automation.

1. Summary

Based upon our review, the method used by Click! Network (Click!) to allocate costs between power and commercial operations appears to be reasonable given the unique characteristics of Tacoma Power.

1.1 Overview of Allocation Method

Click! Network takes an incremental cost approach to allocate both capital dollars and expenses. Power applications are identified as the primary motivation and use of the telecommunications infrastructure. Investments and activities that are made necessary by the existence of cable TV, Internet, or broadband services are allocated to commercial operations.

1.2 Reasonableness Test

To test the reasonableness of the cost allocation done by Click!, we calculated the allocations with an alternative approach. This approach uses the present value of the projected customer automation benefits. With the present value approach it is appropriate to allocate 100% of the fiber portion of the network to the power applications. The coaxial portion, however, needs to be divided between the commercial and power applications.

To determine how to divide the costs, we calculated the present value of the projected customer automation benefits. The present value of the projected benefits is then allocated to the power application and the difference between the total coaxial network cost and the present value of the benefits is then applied to the commercial applications. This approach yields a 28/72 allocation between the commercial and power applications. Given this result, we feel the 27/73 cost allocation used by Click! is reasonable.

1.3 Operational Expenses

We also concur with Click! Network's expense allocation. This opinion is based upon past experience and is supported by the present value approach described above. We have provided financial and business advisory services for over 50 municipalities that are considering offering voice, video, and data services.

2. Cost Allocation Methods

2.1 Allocation of Capital Investment

To allocate total capital investment and estimate depreciation for the two business categories, Click! staff evaluated each of the original 32 Telecommunications Project work orders to determine their commercial and power related portions. The team asked itself:

"Would these investments have been made if Tacoma Power was not offering Cable TV, Internet, or other commercial broadband services?"

If the answer was no, the investment costs were allocated to Commercial Applications.

The work orders used to develop the breakdown are shown on Table 2.1. The Commercial Applications investment was found to account for \$23.5 million of the total project investment of \$85.8 million as of September 2000. To allocate depreciation between business lines, the Finance Department multiplied the total depreciation by the ratio of business line investment to total investment – 27.4 percent for commercial services and 72.6 percent for power applications.

A few of the original work orders were still open when the allocation ratios were developed. All are now closed, with a final total of \$90.6 million. Click! continued to use the 27.4 percent and 72.6 percent ratios for these work orders.

Starting with the 2001/2002 Biennium, however, all new work orders have been designated as either Commercial or Power, so that investments can be tracked separately. Open work orders (as of February of 2003) total \$14 million, of which \$9.5 million are for commercial applications and \$4.7 million are power related.

2.1 Allocation of Capital Investment (cont.)

Table 2.1: Cost Allocation Summary

Description	WO NBR	LTD Total Capital Spending	Commercial Applications	Allocation to Commercial
SE Hub Construction - Hub 1	17000	\$ 18,017,341	\$ 180,173	1.00%
NW Hub Construction - Hub 3	17001	9,539,585	95,396	1.00%
Headend Construction	17002	4,196,540	3,432,128	81.78%
HFC Network Design	17003	1,241,467	12,415	1.00%
SONET Network	17004	3,703,911	3,703,911	100.00%
Telecom Make Ready	17005	8,179,229	-	0.00%
Telecom Tools & Equipment	17006	873,398	148,717	17.03%
Set Top Receivers / 2000	17007	6,475,591	6,475,591	100.00%
Telecommunications Vehicles	17008	2,177,211	250,000	11.48%
Materials & Supplies	17009	180,908	180,908	100.00%
Marketing	17010	-	-	-
Additions & Betterments	17011	1,186	-	0.00%
Business Overhead Costs	17012	234,112	163,900	70.01%
Administrative Costs	17013	1,549,743	416,416	26.87%
NE Hub Construction - Hub 2	17014	9,211,239	92,112	1.00%
SW Hub Construction - Hub 4	17015	3,635,515	36,355	1.00%
Worldgate	17017	645,252	645,252	100.00%
Internet Access	17018	900,443	-	0.00%
Multi-Dwelling Units	17019	4,603,399	3,682,719	80.00%
Commercial Installations	17020	3,057,623	3,057,623	100.00%
1999 Equipment	17021	53,783	-	0.00%
Purchase - J Mux Equipment	17022	814,670	-	0.00%
Vehicles 1999/2000	17023	446,211	-	0.00%
Monitoring Equipment	17024	176,994	-	0.00%
Headend 1999	17025	78,578	-	0.00%
Administrative Fees & Costs	17026	96,845	75,670	78.14%
Capitalized Drops	17027	1,516,132	827,808	54.60%
Headend 2000	17028	86,218	-	0.00%
NW Hub-1 Construction - A&B	17029	263,964	2,640	1.00%
SE Hub-3 Construction - A&B	17030	646,900	6,469	1.00%
NE Hub-2 Construction - A&B	17031	1,341,026	13,410	1.00%
SW Hub-4 Construction - A&B	17032	1,879,122	18,791	1.00%
Total		\$ 85,824,135	\$ 23,518,404	
Total Hub Construction & Design (see bold items)		\$ 44,534,691	\$ 445,346	
		Commercial Allocation	27.40%	
		Power Allocation	72.60%	

2.2 Allocations of Operating Expenses

Prior to the 2001/2002 Biennium, most of Click!'s labor hours were coded under one Organizational Unit - 5511, and one task number - 820.1. This practice, which began when Click! was initially formed, made it hard to separate operating expenses between power and commercial activities. It also made it difficult to hold managers and supervisors accountable for their performance. With these problems in mind, the Section Manager reorganized Click! in the fall of 2000 into Organization Units (Orgs) - each with distinct and easily identifiable roles in daily operations. Along with work delivery and quality control, front-line managers and supervisors were given responsibility for budgeting and cost control within their "Org."

2.2 Allocations of Operating Expenses (cont.)

Org and Org Name	Description
5511 General Manager	- Overall administration of the section
5521 Marketing and Business Operations	- Administration of 5520 series Orgs
5522 Sales and Marketing	- Marketing of commercial services
5523 Video Services	- Non-labor org; includes video revenues and programming costs
5524 ISP Advantage	- Non-labor org; includes Internet costs
5525 Customer Care	- Customer care department
5526 Business Systems	- Billing and operations reports
5527 Broadband Services	- Engineering and maintenance of equipment and circuits sold to large business customers
5532 Technical Operations	- Administration of 5535, 5536, 5537 Orgs
5535 Service Installations	- Service technicians installing cable drops; and wiring homes and small businesses for CATV and Internet
5536 Network Operations Center	- 24 X 7 monitoring of SONET and HFC networks; dispatch functions
5537 Inventory Control	- Provisioning and control of set-top receivers
5533 Network Operations	- HFC network operations and maintenance
5534 Network Applications	- Engineering and maintenance of digital fiber network
5541 Field Operations	- Non labor org; administration of 5542, 5546
5542 Engineering Services	- HFC network design; management of cable installations in multiple dwelling complexes
5546 Construction	- Network construction; underground drops

To divide operating expenses, each Org was analyzed and costs assigned using the same logic applied to capital investment. Orgs 5521 through 5527, and 5537, are assigned 100 percent to Commercial operations. Orgs 5533, 5534, and 5536 are assigned 100 percent to Power, and Orgs 5511, 5532, and 5535 are split 50/50. Most labor hours and materials associated with the Field Operations Orgs are assigned to specific capital work orders. Items that are expensed are assigned to Power.

3. Network Overview

The original construction consisted of 770 miles of plant, of which 140 miles are fiber and 630 miles are coaxial cable. The network is a Hybrid Fiber Coaxial (HFC) design and each fiber node (total of 88) passes an average of 1,000 homes. The network:

- Links 30 of Tacoma Power's 65 substations (plans are in place to expand this to the majority of Tacoma Power's substations. Substations not supported by fiber will have a microwave connection).
- Provides cable television service to over 22,000 customers (approximately 76,000 homes passed, of which 66,000 customers represent Click! Network's cable TV market).
- Passes approximately 49% of customers served by Tacoma Power (assumes 154,000 total customers).
- Supplies cable Internet services (on an open access basis) to 7,000 end users.
- Provides fiber based high-speed data transport to area businesses.

Future plans call for expanding the network's reach to more substations and expanding the use of customer automation for residential and commercial customers.

The authorization to build the telecommunication network was given in April of 1997. The stated purpose was to enhance electric service reliability, reduce operating costs, and diversify the utilities' revenue base.

¹ The difference is due to Multiple Dwelling Units with exclusive contracts with the incumbent cable provider and with master antenna satellite systems.

4. Review of Allocation Method

The allocation method used by Click! was based upon the question:

"Would these investments have been made if Tacoma Power was not offering Cable Television, Internet, or other commercial broadband services?"

If the answer was no, the investment costs were allocated to commercial operations.

In review, the allocated costs (see Table 2.1); with the exception of the Hub construction and Network Design Costs,^{2 3} each appear to have a clear distinction between the power and commercial applications. In addition, the Hub construction and Network design cost allocation has a high impact on the end conclusion. For example:

- A 1% allocation to the commercial application results in 27.40% of costs to commercial and 72.60% to power.
- A 99% allocation to the commercial application results in 79.67% of costs to commercial, and 20.33% to power.
- A 50% allocation to the commercial application results in 53.54% of costs to commercial and 46.46% to power.

Given this sensitivity and the clear distinction with the other costs, our reasonableness test focused on the Hub construction and Network Design cost allocation.

To initiate our reasonableness test, we asked some additional questions.

1. Has the electric utility pursued use of the HFC network?
2. What alternative network options were available in 1997?
3. Is the cost allocation percentage the same between the fiber portion of the network and the coaxial segments?
4. What network costs (for power applications) are reasonable, given the projected benefits to power operations?

The first step in answering the above questions is to review how Tacoma Power has leveraged the availability of the HFC network.

² Work orders: 17000, 17001, 17003, 17014, 17015, 17029, 17030, 17031, and 17032. These work orders represent 53% of the total costs (\$45,776,158).

³ The Make-Ready costs (work order #17005) are also substantial (\$8,179,229) and are often charged to the organization that is requesting an attachment. The electric utility does however; obtain a substantial benefit since the lifetime of the utility plant is extended.

4.1 Use of the HFC Network by Tacoma Power

Tacoma Power has active customer premises and facility management applications that are based upon the availability of the HFC network. Current and planned applications include:

- SCADA and Distribution Automation Support
 - + Uses the fiber portion of Network
 - + Is a mature application
 - + Click! supports SCADA at 32 locations (and more to follow, see Section 3)
- Residential Gateway Project
 - + Leverages availability of the HFC network
 - + In process of implementing a 10,000 home trial
 - + Supports Automated Meter Reading (AMR), time-of-use rates, outage detection, service connect/disconnect, and prepaid metering programs
- Commercial/Industrial Customer Automatic Meter Project
 - + Eliminates need for a telephone (landline or cellular) for communications with meters
 - + Customer trial at 250 locations
 - + Supports AMR, Time-of-Use (TOU) rates, outage detection, and other customer automation activities

Tacoma Power, although it is not using the full capabilities of the HFC network, has shown a strong intent to continue and expand its use.

4.2 Responses to Questions

1. Has the electric utility pursued the use of the HFC Network?

Yes, as indicated above, Tacoma Power is using and plans to expand the use of the HFC Network.

2. What alternative network options were available in 1997?

In 1997, a variety of vendors claimed to have a solution. In reality, most were in the early development stage, not proven in a wide scale deployment or on the verge of bankruptcy. The vendor community proposed a variety of media including:

- PLC
- Radio
- Telephone
- Fiber/Coax
- Leased

Given the desire for electric service connect/disconnect reliance on the telephone or other leased circuits is ill-advised. In addition:

- The radio systems were not proven (many of the vendors promoting two-way applications have disappeared or have abandoned their plans).
- The PLC vendors were primarily one-way which supported AMR. Two-way applications, although showing promise in 1997, had consistency issues to overcome.

4.2 Responses to Questions (cont.)

- The HFC plant was proven for reliable two-way communication, but vendor hardware for the customer premises was limited.

Given the above, assuming Tacoma Power could justify the network expense (i.e., sufficient benefits existed), pursuit of an HFC network was reasonable.

3. Is the cost allocation percentage the same between the fiber portion of the network and the coaxial segments?

Clearly, the majority of the cost of the fiber network can be allocated to power applications. This allocation is based upon the need for communication at the substation to support SCADA and Distribution Automation. In fact, many electric utilities have implemented fiber to their substations and key field device sites.

The allocation of the coaxial network can be based on the net present value of residential and commercial customer automation (see question 4).

4. What network costs are reasonable, given the projected benefits to power operations?

Click! has estimated the annual benefit for residential and commercial automation is approximately \$11.5 million. Given that the HFC network passes 49% of customers, the gross-benefit applicable to the existing coax portion of the network is \$5.6 million.

These benefits are driven by Tacoma Power's unique characteristics. For example, Tacoma Power:

- Sees an annual customer churn of 30,000 (20 percent of customers).
- Receives a high volume of customer calls per day.
- Has a large number of its customers at or below poverty level (increases benefit of pay-as-you-go programs).

As a result, the benefits of customer automation may be greater for Tacoma Power than for the typical municipal utility.

5. Reasonableness Test – Network Cost Allocation

To determine the allocation based upon benefits, we need to answer three more questions.

1. What was the percentage of coaxial costs for hub construction and design?
2. What additional customer premises implementation costs (beyond the HFC network) are required to realize the customer automation benefits?
3. What is the present value of the customers' automation benefits attributable to the coaxial portion of the HFC network?

The answers to these questions follow:

5.1 Allocation Based Upon Benefits

1. What was the percentage of coaxial costs?

Assuming the per mile construction for fiber and coaxial cable (with active elements) is similar⁴, the coaxial network segment cost is estimated by:

$$\text{Coaxial Network Cost Estimate} = \frac{\$45,776,158^5 \times 630 \text{ miles of coax}}{770 \text{ miles of cable}}$$

$$\text{Coaxial Network Cost Estimate} = \$37,536,450$$

The average cost per homes passed for the coaxial portion of the network is \$494 (\$37,536,450 divided by 76,000).

2. What additional customer premium implementation costs (beyond the HFC network) are required to realize the customer automation benefits?

From Click! August 2002 Business Plan, it is indicated that the approximate customer premises cost will be \$202 to \$313 per meter location (mid-point of \$258).

3. What is the present value of the customer automation benefits attributable to the coaxial portion of the HFC network?

As indicated in Section 4, question 4, an annual benefit of \$5.6 million. If we assume that 15% of these annual benefits are applied to a funded depreciation account, the remaining benefit is \$4,824,026 per year.

⁴ Based upon our experience with other implementations, this assumption is supportable.

⁵ See total Hub construction and design costs from Table 2.1.

5.1 Allocation Based Upon Benefits (cont.)

This net benefit of \$4,824,026 then can be allocated between the average coax cost per customer and the mid-point of the customer's premises costs. This results in:

$$\begin{array}{rcl} \text{Annual net benefit applied} & & \$ 4,824,026 \\ \text{to coaxial portion of network} & = & \frac{\text{Net benefit} \times 494}{(494 + 258)} \end{array}$$

$$\begin{array}{rcl} \text{Annual net benefit applied to the} & & \\ \text{coaxial portion of the Network} & = & \$ 3,168,975 \end{array}$$

Assuming a 20-year lifetime and a 6% discount rate, the resulting present value of the annual net benefit is \$36,347,894.

5.2 Allocation Calculation

Given the above present value of the customer automation benefits attributable to the coaxial portion of the network, the resulting allocation between the commercial and power application is made:

Power Application Allocation	\$ 8,239,708	Fiber portion of Network (100%)
		Net present value of customer automation benefits attributable to coax portion
	plus	<u>36,347,894</u>
		<u>\$ 44,587,602</u>
		Power Application Allocation
Commercial Application Allocation	\$ 45,776,158	Total Hub construction and design
	less	<u>44,587,602</u>
		<u>\$ 1,188,556</u>
		Power Application Allocation
		Commerce Application Allocation

The results yield an allocation of 2.6 percent of the Hub construction and design to commercial applications. This is an increase over the 1% indicated in Table 2.1. This results in increasing the total allocation to commercial applications by \$732,418 to \$24,250,822. The resulting overall allocation is:

- 28% to commercial applications
- 72% to power applications

Assuming that Tacoma Power pursues full customer automation and that the projected benefits are realized, this method supports the allocation method developed by Click! Network.

6. Operation Expenses – Reasonableness

In Section 2.2, the list of Organizational Units (Orgs) and the allocations were presented. From review of the "orgs", and our general experience gained from review of other systems, we concur with the allocations between the power and commercial applications for:

Orgs 5521 through 5527	100% to commercial
Org 5537	100% to commercial
Org 5534	100% to power
Org 5532	50/50
Org 5535	50/50

For Org 5511, General Manager, based upon experience with other systems, the 50/50 allocation appears to be heavy towards the power application. Our experience base, however, is largely with smaller organizations that are in the cable television business. With the smaller systems, the general manager tends to have a high degree of customer contact and the attention required to be paid to the cable television business is substantial. Given the size of Tacoma Power, the 50/50 allocation may be appropriate.

We also concur with the assignment of the HFC Network operation and maintenance to the power applications. The calculation made in section 5 supports the allocation of the operation and maintenance expenses to the power applications.

7. References

"2002 Business Plan," Click! Network – Tacoma Power, August 2002.

"2002 Financial Report," Tacoma Power, December 31, 2002.

"Benefits from Residential and Commercial Implementation of the Electronic Initiatives," Gateway Project, July 3, 2002.

"Commercial Capital Costs," October 9, 2000.

"Information Requested on Click! Business Plan," memo from S. Klein & D. Touison, August 12, 2002.

"Tacoma Power Substations and RTU Installations," May 19, 2003.

Honorable Susan K. Serko

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

EDWARD E. (TED) COATES, et. al.,

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

No. 17-2-08907-4

DECLARATION OF TENZIN
GYALTSSEN IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PARTIAL SUMMARY JUDGMENT

I, Tenzin Gyaltzen, declare as follows:

1. I am over the age of 18, have personal knowledge of the facts stated herein, and am competent to testify thereto.

2. I am the Click! General Manager and have served in that capacity since October 3, 2011.

3. Tacoma Power consists of six units, one of which is Click! ("Click").

4. Click utilizes the excess capacity on Tacoma Power's telecommunications system to sell data transport and Internet Access services to telecommunications companies and ISPs, and cable television services to Tacoma Power's electric customers who want cable television service.

1 5. All retail customers of the ISPs and Click's cable television customers are
2 also Tacoma Power electric customers because the telecommunications system is limited
3 to Tacoma Power's service territory. As a result of customer choice and the fact that the
4 system does not extend to the residences and businesses of all electric ratepayers,
5 Click/ISP customers are a subset of Tacoma Power's customer base.

6 6. Since the late 1990s, the excess capacity on Tacoma Power's
7 telecommunications system has been utilized by Click to sell data transport and Internet
8 Access services to telecommunications companies and ISPs, and cable television services
9 to Tacoma Power customers who want cable television service. Tacoma Power continues
10 to utilize excess capacity on the telecommunications network to sell services to
11 telecommunications companies, ISPs and Tacoma Power customers.

12 7. At the time of its construction, the telecommunications system was a state-
13 of-the-art hybrid fiber coaxial system.

14 8. In 2015, Tacoma Power received an offer from WaveDivision Holdings,
15 LLC to lease capacity on Tacoma Power's telecommunications system. The TPU Board
16 and City Council ultimately concluded that this offer should not be accepted.

17 9. In 2016 and 2017, the TPU Board and City Council explored whether the
18 telecommunications system could be enhanced using Tacoma Power or City funds to
19 allow Click to offer more robust internet and cable services -- referred to as the "All-In
20 Plan."

21 10. Attached as Exhibit A is an accurate and complete copy of City Council
22 Resolution 39930, which was adopted by the City Council on January 30, 2018.

23 11. Attached as Exhibit B is an accurate and complete copy of Tacoma Public
24 Utilities ("TPU") Board Resolution U-10988, which was adopted by the TPU Board on
25 January 24, 2018.

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12. Click has thousands of customers and considerable goodwill, but would quickly lose both if it has to curtail or end operations due to a lack of funds. An immediate loss of Click's customers in the event of a ordered shutdown would in turn impede or derail the City's imminent search for a partner entity for future System use, as authorized by the TPU Board through Resolution U-10988 on January 24, 2018, and as authorized by the City Council through Resolution 39930 on January 30, 2018.

13. Attached as Exhibit C is an accurate and complete copy of a report prepared by the consultants at CTC Technology & Energy that was provided to the TPU Board and City Council at their January 23, 2018 joint study session prior to their votes on TPU Board Resolution U-10988 on January 24, 2018, and City Council Resolution 39930 on January 30, 2018. CTC discusses Click's goodwill among its customers at Section 2.3 of the report.

14. Depriving Click of revenue it has always relied upon as a unit of Tacoma Power would likely lead to employee layoffs and the interruption or cessation of cable and internet services to Click and ISP customers. This is particularly true if the disruption were immediate. The affected customer base for Click and the ISPs includes elderly and low income individuals, as well as public schools, local universities and government offices.

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

EXECUTED this 7th day of February, 2018, in Tacoma, Washington.



Tenzin Gyaltzen

EXHIBIT A



RESOLUTION NO. 39930

1 BY REQUEST OF MAYOR WOODARDS

2 A RESOLUTION relating to Click! Network; establishing a vision and next steps for
3 maximizing the value of Click! Network.

4 WHEREAS the 1997 business plan contemplated that the revenues
5 associated with telecommunications services related to city government
6 communications, cable television ("CATV") service, transport of signals to service
7 providers offering telecommunications services, and internet access services would
8 pay for the costs of such services and may provide an additional revenue stream to
9 Tacoma Power to help offset the construction and operation costs associated with
10 the telecommunications system, and
11

12 WHEREAS the City Council of Tacoma delegated authority to the Public
13 Utility Board ("Board") and the Department of Public Utilities ("TPU"), Light Division
14 (d.b.a. "Tacoma Power"), to implement and manage a broadband
15 telecommunications system ("Click! Network" or "Click!," as authorized through City
16 Council Substitute Resolution No. 33668, approved April 8, 1997, and Public Utility
17 Board Amended Substitute Resolution U-9258, approved April 9, 1997), and
18

19 WHEREAS many of the functions of the telecommunications system
20 envisioned in the 1997 business plan have been achieved since the infrastructure
21 improvements were completed in 1999, including: conventional substation
22 communication functions, City government communications functions, CATV
23 service, and transport of signals for service providers offering telecommunications
24 services, through Click; and internet access services, through third-party providers,
25
26 and



1 WHEREAS other contemplated functions have been partially achieved
2 through the Gateway meter program, which include: remote turn on/off for electric
3 customers, automated meter reading (electric), and provision of information to
4 customers that is relevant to their energy purchasing decisions, and

5 WHEREAS it is recognized that a portion of Tacoma Power's
6 telecommunication infrastructure in part used by the Click! Network was funded
7 through Click! customer revenues as well as the City of Tacoma (specifically, the
8 Institutional-Net fiber), and

9 WHEREAS, at the time of construction, Click!'s infrastructure and equipment
10 were state-of-the-art and allowed customers of Click! to experience exceptional
11 access to the internet, and

12 WHEREAS the construction of Click! has increased competition for CATV
13 and telecommunications products which, in turn, enhanced customer service,
14 capital improvements to existing telecommunication provider systems and products,
15 and greater access to CATV and telecommunication services, and

16 WHEREAS the telecommunications system continues to provide
17 interconnectivity, advanced control, and power management between electrical
18 substations, which provides safe, reliable, and efficient use of electrical resources
19 for the benefit of all Tacoma Power customers; nevertheless, not all of the original
20 contemplated uses of the telecommunication system by Tacoma Power for power
21 purposes have come to fruition, and

22 WHEREAS much of the existing telecommunications system and equipment
23 will not be needed by Tacoma Power for power purposes in the future, and
24



1 consequently, Tacoma Power does not intend to update and improve those parts of
2 the telecommunication system and equipment to the latest technology in the future,
3 making telecommunication services offered to customers less competitive in the
4 current commercial telecommunication market, and

5 WHEREAS the existing business plan associated with Click!
6 telecommunication services offered to customers does not generate sufficient
7 revenues to fully fund current expenses (in particular, those expenses related to
8 CATV/cable television services), nor can existing revenues fully fund capital
9 improvement costs related to these functions, and
10

11 WHEREAS the Board sought policy direction from the City Council on how to
12 remedy the current financial situation by recommending two potential alternative
13 paths: (1) U-10828, requesting approval to adopt a business plan where Click!
14 would provide retail telecommunications services (along with CATV services) to its
15 customers paid for by Click! customers and electric utility funds; or (2) U-10829,
16 requesting approval to solicit lease and property sale proposals for a third-party
17 operation to use and maintain Click! to provide telecommunication services, and
18

19 WHEREAS, on December 12, 2015, the City Council, pursuant to Amended
20 Resolution No. 39347, approved the first alternative path and requested the Board
21 to direct Tacoma Power to prepare an all-in retail services plan related to Click!
22 operations, and
23

24 WHEREAS, on September 28, 2016, pursuant to Amended
25 Resolution U-10879, the Board approved a high-level business plan requiring Click!
26



1 to offer retail services to customers paid for by electric utility funds and forwarded
2 the plan to the City Council for review and concurrence, and

3 WHEREAS, since referring the high-level plan for review, customers of
4 Tacoma Power have filed a claim for damages and lawsuit related to
5 implementation of an all-in retail services plan paid for in part by electric utility
6 funds, specifically challenging that the plans required the use of Tacoma Power
7 revenues generated from electricity sales to fund potential deficits in Click!
8 operating expenses and capital improvement costs related to implementing the all-
9 in retail services plan, and

10 WHEREAS no action on the high-level plan was taken by the City Council,
11 and it is now apparent that Click! revenues alone will not support completion of an
12 all-in retail services (including internet, CATV, and voice over internet protocol)
13 plan, nor are such revenues sufficient to make necessary capital improvements
14 related to implementing such a retail services plan, and

15 WHEREAS the City Council and the Board have re-examined the long-
16 standing community policy goals for providing Click! telecommunications services
17 (television, internet, telephone, etc.) to customers, and the City Council and the
18 Board remain deeply committed to Click! and continue to support community
19 policy goals related to the purposes for and use of Tacoma Power's assets
20 comprising Click!, including the following community policy goals:

21 (1) Continuing public ownership of the telecommunications assets,
22 especially those assets necessary for Tacoma Power operations;
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1 (2) Ensuring geographically, economically, and technologically equitable
2 access;

3 (3) Creating low-income affordable access to telecommunication services;

4 (4) Enforcing net neutrality principles for all customers;

5 (5) Allowing open access to telecommunication assets by other
6 telecommunication providers, to the extent such access benefits customers;

7 (6) Preserving competition among telecommunication providers that benefits
8 customers (such as high-quality, technologically up-to-date, and reasonably priced
9 telecommunication services), including restricting transfer of ownership or
10 operations that reduce competition;

11 (7) Safeguarding the use of telecommunications services by Tacoma Power,
12 the City, and other local governments;

13 (8) Maintaining financial stability of the telecommunications business
14 operations utilizing the Click! assets;

15 (9) Promoting economic development and educational opportunities;

16 (10) Providing job options and security for Click! staff and protecting the
17 intellectual capital of the system;

18 (11) Protecting customer privacy; and

19 (12) Preserving Click!'s goodwill, including via its market-leading customer
20 service for telecommunications customers, and

21 WHEREAS an independent consultant on municipal broadband has
22 reviewed Click!'s assets, operations, the current and future state of technology, and
23 market conditions, and has determined that the City cannot meet some of the
24
25
26



1 community's policy goals related to Click! using an all-in retail services plan that is
2 paid for in part by electric utility funds, and

3 WHEREAS the City Council and the Board met in a joint study session on
4 January 23, 2018, to discuss the community policy goals and proposed Board
5 Resolution U-10988, related to next steps and a new vision for Click!, and

6 WHEREAS, on January 24, 2018, after accepting comment from the public,
7 the Board approved Resolution U-10988, and

8 WHEREAS, due to the above factors, it is now deemed to be in the best
9 interests of the customers of Tacoma Power, including Click! customers and
10 residents of the City of Tacoma to pursue alternative courses which do not involve
11 Click! directly providing all-in retail services to customers that are paid for in part by
12 electric utility funds, and
13

14 WHEREAS, instead, the above policy goals will be utilized in shaping a new
15 course for the use and preservation of the assets of Click!; Now, Therefore,
16

17 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

18 Section 1. That the Public Utility Board's ("Board") decision pursuant to
19 Board Resolution U-10988, to rescind Board Resolution U-10879, passed
20 September 28, 2016, which approved a high-level business plan requiring Click! to
21 offer all-in retail services to customers paid for in part by electric utility funds, is
22 accepted by the City Council.
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24 Section 2. That the City Council's Amended Resolution No. 38347,
25 requesting the Board to develop such a plan paid for in part by electric utility funds,
26 is also rescinded.



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Section 3. That the community policy goals listed above in the recitals and approved by the Board are approved by the City Council.

Section 4. That requests for information, proposals, or qualifications from any and all entities (with a working knowledge of the assets and the business of Click!) will be sought to determine how, and to what extent, the community policy goals can be achieved through collaboration and/or restructuring of Click!.

Section 5. That the Interim Director of Utilities shall work jointly with the City Manager to detail next steps, including the preparation of requests for information, proposals, or qualifications, and may retain the services of a consultant to assist in such efforts, to be jointly funded by the City and Department of Public Utilities. It is expected that such requests shall be submitted to any and all entities no later than the end of February 2018. The Board and City Council are expected to take action within three of months of receipt of the proposals.

Adopted JAN 30 2018

M Woodards
Mayor

Attest:
Doris Sarum
City Clerk

Approved as to form:
William Foster
City Attorney

EXHIBIT B



RESOLUTION NO. U-10988

1 A RESOLUTION relating to Click! Network; establishing a vision and next steps for
2 maximizing the value of Click! Network.

3 WHEREAS the 1997 business plan contemplated that the revenues
4 associated with telecommunications services related to city government
5 communications, cable television ("CATV") service, transport of signals to service
6 providers offering telecommunications services, and internet access services would
7 pay for the costs of such services and may provide an additional revenue stream to
8 Tacoma Power to help offset the construction and operation costs associated with
9 the telecommunications system, and
10

11 WHEREAS the City Council of Tacoma delegated authority to the Public
12 Utility Board ("Board") and the Department of Public Utilities ("TPU"), Light Division
13 (d.b.a. "Tacoma Power"), to implement and manage a broadband
14 telecommunications system ("Click! Network" or "Click!," as authorized through City
15 Council Substitute Resolution No. 33668, approved April 8, 1997, and Public Utility
16 Board Amended Substitute Resolution U-9258, approved April 9, 1997), and
17

18 WHEREAS many of the functions of the telecommunications system
19 envisioned in the 1997 business plan have been achieved since the infrastructure
20 improvements were completed in 1999, including: conventional substation
21 communication functions, City government communications functions, CATV
22 service, and transport of signals for service providers offering telecommunications
23 services, through Click; and internet access services, through third-party providers,
24
25 and
26



1 WHEREAS other contemplated functions have been partially achieved
2 through the Gateway meter program, which include: remote turn on/off for electric
3 customers, automated meter reading (electric), and provision of information to
4 customers that is relevant to their energy purchasing decisions, and

5 WHEREAS, it is recognized that a portion of Tacoma Power's
6 telecommunication infrastructure in part used by the Click! Network was funded
7 through Click! customer revenues as well as the City of Tacoma (specifically the
8 Institutional-Net fiber), and

9 WHEREAS, at the time of construction, Click!'s infrastructure and equipment
10 were state-of-the-art and allowed customers of Click! to experience exceptional
11 access to the internet, and
12

13 WHEREAS the construction of Click! has increased competition for CATV
14 and telecommunications products which, in turn, enhanced customer service,
15 capital improvements to existing telecommunication provider systems and products,
16 and greater access to CATV and telecommunication services, and
17

18 WHEREAS the telecommunications system continues to provide
19 interconnectivity, advanced control, and power management between electrical
20 substations, which provides safe, reliable, and efficient use of electrical resources
21 for the benefit of all Tacoma Power customers. Nevertheless, not all of the original
22 contemplated uses of the telecommunication system by Tacoma Power for power
23 purposes have come to fruition, and
24

25 WHEREAS much of the existing telecommunications system and equipment
26 will not be needed by Tacoma Power for power purposes in the future, and



1 consequently, Tacoma Power does not intend to update and improve those parts of
2 the telecommunication system and equipment to the latest technology in the future,
3 making telecommunication services offered to customers less competitive in the
4 current commercial telecommunication market, and

5 WHEREAS the existing business plan associated with Click!
6 telecommunication services offered to customers does not generate sufficient
7 revenues to fully fund current expenses (in particular, those expenses related to
8 CATV/cable television services), nor can existing revenues fully fund capital
9 improvement costs related to these functions, and

10
11 WHEREAS the Board sought policy direction from the City Council on how
12 to remedy the current financial situation by recommending two potential
13 alternative paths: (1) U-10828, requesting approval to adopt a business plan
14 where Click! would provide retail telecommunications services (along with CATV
15 services) to its customers paid for by Click! customers and electric utility funds; or
16 (2) U-10829, requesting approval to solicit lease and property sale proposals for a
17 third-party operation to use and maintain Click! to provide telecommunication
18 services, and

19
20 WHEREAS, on December 12, 2015, the City Council, pursuant to
21 Amended Resolution No. 39347, approved the first alternative path and requested
22 the Board to direct Tacoma Power to prepare an all-in retail services plan related
23 to Click! operations, and

24
25 WHEREAS, on September 28, 2016, pursuant to Amended Resolution
26 U-10879, the Board approved a high-level business plan requiring Click! to offer



1 retail services to customers paid for by electric utility funds and forwarded the plan
2 to the City Council for review and concurrence, and

3 WHEREAS, since referring the high-level plan for review, customers of
4 Tacoma Power have filed a claim for damages and lawsuit related to
5 implementation of an all-in retail services plan paid for in part by electric utility
6 funds, specifically challenging that the plans required the use of Tacoma Power
7 revenues generated from electricity sales to fund potential deficits in Click!
8 operating expenses and capital improvement costs related to implementing the
9 all-in retail services plan, and

10 WHEREAS no action on the high-level plan was taken by the City Council,
11 and it is now apparent that Click! revenues alone will not support completion of an
12 all-in retail services (including internet, CATV, and voice over internet protocol)
13 plan, nor are such revenues sufficient to make necessary capital improvements
14 related to implementing such a retail services plan, and

15 WHEREAS the City Council and the Board have re-examined the long-
16 standing community policy goals for providing Click! telecommunications services
17 (television, internet, telephone, etc.) to customers. The City Council and the
18 Board remain deeply committed to Click! and continue to support community
19 policy goals related to the purposes for and use of Tacoma Power's assets
20 comprising Click!, including the following community policy goals:

21 (1) Continuing public ownership of the telecommunications assets,
22 especially those assets necessary for Tacoma Power operations;
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- (2) Ensuring geographically, economically, and technologically equitable access;
- (3) Creating low-income affordable access to telecommunication services;
- (4) Enforcing net neutrality principles for all customers;
- (5) Allowing open access to telecommunication assets by other telecommunication providers, to the extent such access benefits customers;
- (6) Preserving competition among telecommunication providers that benefits customers (such as high-quality, technologically up-to-date, and reasonably priced telecommunication services), including restricting transfer of ownership or operations that reduce competition;
- (7) Safeguarding the use of telecommunications services by the Tacoma Power, City, and other local governments;
- (8) Maintaining financial stability of the telecommunications business operations utilizing the Click! assets;
- (9) Promoting economic development and educational opportunities;
- (10) Providing job options and security for Click! staff and protecting the intellectual capital of the system;
- (11) Protecting customer privacy; and
- (12) Preserving Click!'s goodwill, including via its market-leading customer service for telecommunications customers, and

WHEREAS an independent consultant on municipal broadband has reviewed Click!'s assets, operations, the current and future state of technology,



1 and market conditions, and has determined that the City cannot meet some of the
2 community's policy goals related to Click! using an all-in retail services plan that is
3 paid for in part by electric utility funds, and

4 WHEREAS, due to the above factors, it is now deemed to be in the best
5 interests of the customers of Tacoma Power, including Click! customers, and
6 residents of the City of Tacoma to pursue alternative courses which do not involve
7 Click! directly providing all-in retail services to customers that are paid for in part
8 by electric utility funds, and

9 WHEREAS, instead, the above policy goals will be utilized in shaping a
10 new course for the use and preservation of the assets of Click!; Now, Therefore,

11 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

12 Section 1. That Board Amended Resolution U-10879, passed September
13 28, 2016, approving a high-level business plan requiring Click! to offer all-in retail
14 services to customers paid for in part by electric utility funds is rescinded, and the
15 City Council is requested to concur in the rescission and is requested to likewise
16 rescind the direction given to the Board through City Council Amended Resolution
17 No. 39347, which requested the Board to develop such a plan.

18 Section 2. That the community policy goals listed above in the recitals are
19 approved by the Board, and the Board requests the City Council to concur in this
20 approval at the City Council's January 30, 2018, meeting.

21 Section 3. That the Board and City Council will meet jointly on January 23,
22 2018, to describe and detail the community policy goals related to maximizing the
23 use and preservation of Tacoma Power's telecommunications assets in a meeting
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open to the public. The Public will be invited to give comment and input on the proposed policy goals at the Board's January 24, 2018, regular meeting, and again at the City Council's January 30, 2018, regular meeting.

Section 4. That requests for information, proposals, or qualifications from any and all entities (with a working knowledge of the assets and the business of Click!) will be sought to determine how, and to what extent, the community policy goals can be achieved through collaboration and/or restructuring of Click!.

Section 5. That the Interim Director of Utilities shall work jointly with the City Manager to detail next steps, including the preparation of requests for information, proposals, or qualifications, and may retain the services of a consultant to assist in such efforts, to be jointly funded by the City and Department of Public Utilities. It is expected that such requests shall be submitted to any and all entities no later than the end of February 2018. The Board and City Council are expected to take action within three of months of receipt of the proposals.

Approved as to form and legality:

Maria W. Smith
Chief Deputy City Attorney

Morgan J. Jankovits
Chair

Arena Jankovits
Secretary

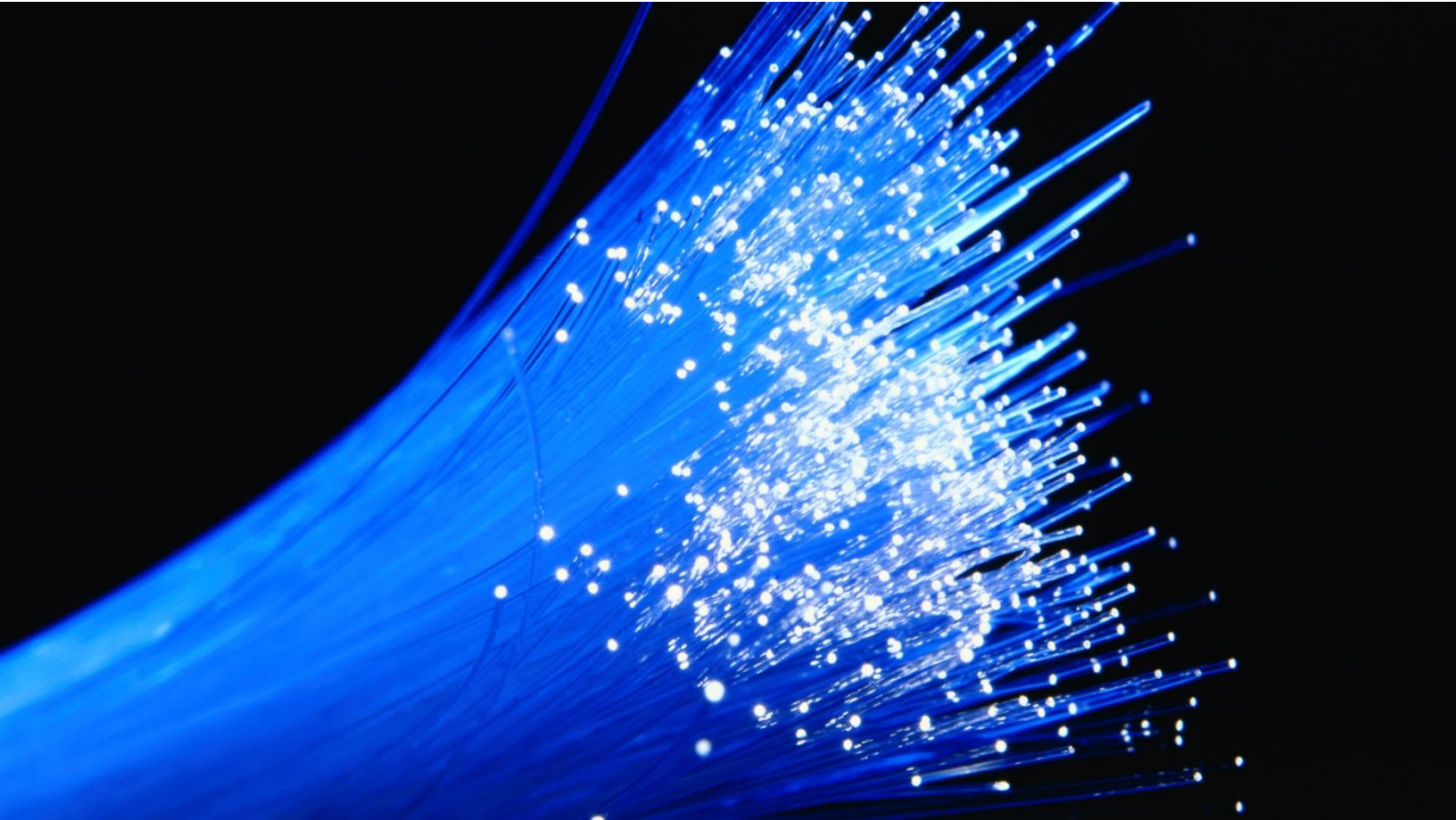
Charlene Jacobs
Clerk

Adopted 1-24-18

EXHIBIT C

ctc technology & energy

engineering & business consulting



Strategy Alternatives for Tacoma Click: Framework of Options to Preserve Policy Achievements While Reducing Losses

January 2018

Columbia Telecommunications Corporation

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1 Introduction

This document was prepared by CTC Technology & Energy in January 2018 at the request of outside litigation counsel for the City of Tacoma. The purpose of this document is to provide a preliminary framework of alternative business strategies to reduce Tacoma Power’s approximately \$5 million in annual operating losses on the commercial uses of its telecommunications system (“Click”).¹ The document is further intended to describe briefly how these strategies may advance or hinder each of the key policy goals that Click’s commercial operations were designed to effectuate and that are summarized in TPU Board Resolution U-10988. This document is not a comprehensive technical or financial analysis of these options. Rather, it is an overview summary of some of the options that might be considered for Click’s next phase of operations based on our experience with other efforts around the country.

Just as importantly, this document also takes stock of Click’s significant accomplishments to date. Click gives the City of Tacoma and TPU opportunity to further goals of equity, neutrality, privacy, and affordability. At the same time, Click provides competition—the holy grail of communications policy—and competition is critical to improve service and pricing in broadband. Thanks to its investment in Click, the Tacoma community has developed a competitive broadband environment that offers a level of competition that is available only in a relative handful of American communities.

At the same time, it’s important to acknowledge the key challenges that TPU faces in attempting to improve Click’s financial results. These challenges are faced by most small broadband companies, whether public or private, in the current era. For example, changing consumer behavior (that entails consumption of video through streaming and “over-the-top” services) is decreasing video take rate and revenues in almost every market in the country. At the same time, video programming costs for small providers are increasing and far outpace the rate of inflation; the result of this increase in costs is that most smaller providers are fortunate to break even on video—and many are not able to do so. In addition, as incumbents have consolidated over the past decades and grown dramatically in size, they have realized scale advantages that small providers cannot hope to replicate—advantages that enable them to spread fixed costs over very large subscriber bases. In contrast, for small providers like Click, ever-increasing fixed costs must be spread over a small subscriber base that is limited to Tacoma Power’s service footprint.

¹ This report is focused on the commercial uses of Tacoma Power’s telecommunications system (referred to as Click). The primary reason for the construction of Tacoma Power’s telecommunications system in the late 1990s was to provide a platform for more efficient use and control of Tacoma Power’s generation, transmission, and distribution assets and to allow for the installation of smart meters for electric ratepayers. Click’s use of the telecommunications system was authorized to potentially provide additional revenue for Tacoma Power. All Click customers are a subset of Tacoma Power’s electric customers. This report does not address the historical and ongoing benefits the telecommunications system provides with respect to Tacoma Power’s delivery of electricity.

Tacoma Click: Framework of Options

Relatedly, as incumbent phone and cable companies have grown in size, they have increased their ability to compete aggressively with smaller providers, including by leveraging wireline and wireless products (which have become a competitive product to wireline in some cases, particularly for price-sensitive consumers). And some public providers, which appropriately answer to elected and appointed bodies, lack the flexibility in governance to respond quickly to dramatically fast-changing market conditions and tend to be tied to legacy business models that hamper market positioning.

Given the need to address ongoing operating losses and these and other challenges, our preliminary view is that TPU has five general strategic options to consider:

- Continue finding ways to reduce costs and streamline operations
- Become a retail internet service provider (ISP) and potentially eliminate cable TV operations
- Upgrade the Click network to fiber-to-the-premises in an effort to better compete with incumbents in the market
- Cease internet and cable operations and abandon the related parts of the network
- Seek a partner willing to take on operating and other obligations and costs while agreeing to conditions that would preserve Click's significant policy achievements

Each of these approaches will impact the City's key policy goals in different ways and to different degrees. This document summarizes the approaches briefly and comments on how they would relate to each of the City's key policy goals as outlined in Resolution U-10988.

We note also that the City has considered change in governance as a potential tool for addressing the ongoing losses. We caution that, while control and responsibility for Click can be certainly moved out of Tacoma Power and into another entity, that action by itself does not change anything about the business plan, revenue streams, or ongoing losses. A change in governance and responsibility can be paired with any of the strategies discussed below but changing that element of the organizational structure will not change financial results unless the broader business strategy is changed as well.

2 The Substantial Policy Achievements of Click

It is important for community members, policymakers, and other stakeholders to recognize what has been achieved in the creation and development of Click. These achievements are of enduring value to TPU, the City, surrounding communities, and their residents and businesses. Moreover, these benefits are uncommon—only the 100 or so U.S. cities that have built broadband networks have accomplished what TPU has with its Click investment.

2.1 Click Provides Competition

Without Click, Tacoma would have only one cable company and one telephone company providing internet access in the residential and small business markets. By creating Click, TPU created competition in the cable TV market and the increasingly-crucial internet market. As a general statement, markets with a more vibrant set of choices reward customers with better customer service, better pricing, and improved services from all players. The importance of this outcome cannot be overstated; only a small fraction of American communities has more than two robust internet competitors, placing Tacoma in an exceptional position of which it should be appropriately proud.

The benefits of competition are manifold. First, competition results in better consumer choices (including clearer terms). For example, a limited comparison of terms offered by Click’s ISPs and Comcast suggests that competition has given Tacoma consumers a range of options on items such as cost of installation and contract cancellation. We conducted spot checks of online advertised pricing at addresses in Tacoma and found that Click’s ISPs promised flat fees of \$30 to \$50 for installation. Comcast’s website, by contrast, did not show a precise installation fee, but said its 30-day money back guarantee “applies to one month’s recurring service charge and standard installation up to \$500.” Comcast’s installation costs are generally determined on a case-by-case basis. Comcast requires a two-year contract for customers wanting to lock in promotional prices, and imposes an early termination fee if consumers cancel between one and 24 months. Click’s providers offer promotional prices that last 12 months and do not impose any early termination fee for early cancellation. In Tacoma, consumers have real choices.

Second, competition provides a check on the vagaries of national ISP pricing. For example, around the country, Comcast charges different prices for the same service in different regions; advertises monthly prices as a range where the high and low numbers are sometimes \$15 apart; and uses many different types of promotional rates that hide the actual effective rates charged to consumers. The existence of Click provides a hedge against such pricing uncertainties. And TPU staff report that they have long received communications from Tacoma residents and businesses that Click has enabled them to secure more transparent and fair pricing than was otherwise available.

2.2 Click Provides Equity in Broadband

With Click, the City of Tacoma and TPU developed a broadband platform that reached residents of Tacoma without consideration of factors such as demographics and profitability. Rather, TPU built the network to the entire community. This equitable approach to buildout and service is increasingly uncommon in the internet market. Phone companies in particular only upgrade their networks in select areas where the return is highest.

2.3 Click Provides Excellent Customer Service

One of the achievements of TPU's investment has been Click's well-regarded customer service. In an industry that is infamous for poor customer service, ongoing consumer feedback demonstrates that TPU has consistently delivered better customer service than the large cable television companies. This is a considerable achievement that has delivered value to the community for all the years of Click's existence and generated significant goodwill for TPU's telecommunications assets.

2.4 Click Allows Tacoma to Set and Enforce Local Policies

TPU's ownership of Click means the City is in a relatively rare position: it can set policies about how its network will be governed and it can choose to ensure such goals as respect for consumer data. This means the City can, among other things, decide what levels of consumer privacy and net neutrality it wants to guarantee for its citizens. Ownership of the asset affords continued leverage to ensure that the network continues to be used in ways that are consistent with the community's goals.

3 Strategic Alternatives for Click to Address Policy Goals in Varying Ways

The question presented to CTC was this: What are the general options for eliminating ongoing operating losses of more than \$5 million per year? To what extent do these options protect or interfere with Tacoma’s policy goals (and policy achievements to date), as outlined in Resolution U-10988?

Resolution U-10988 outlines 12 goals. We have consolidated that list slightly into ten goals. We merged the fourth and fifth goals (“open access” and “competition”) into a single goal because these concepts are tightly related. We also merged the first and seventh goal (“continued public ownership” and “safeguarding the network’s use [by public agencies]”) given that the spirit of these goals are essentially the same, and that sale of the network is not among the five options summarized in this report.

Here is the resulting list of ten goals:

- 1: Public ownership and use:** Continuing public ownership of the telecommunications assets, especially those assets necessary for TPU operations, and safeguarding the network’s use for public purposes.
- 2: Equitability:** Ensuring geographically, economically, and technologically equitable access to services.
- 3: Affordability:** Creating low-income affordable access to telecommunication services.
- 4: Net Neutrality:** Enforcing net neutrality principles for all customers.
- 5: Open Access/Competition:** Preserving competition and allowing open access to telecommunication assets by other providers to the extent such access benefits customers with high-quality, technologically up-to-date, and reasonably priced telecommunication services, including restricting transfer of ownership or operations that reduce competition.
- 6: Financial stability:** Maintaining financial stability of the telecommunications business operations.
- 7: Community Opportunities:** Promoting economic development and educational opportunities.
- 8: Employment:** Providing job options and security for Click staff and protecting the intellectual capital of the system.
- 9: Privacy:** Protecting customer data privacy.
- 10: Customer Service:** Preserving market-leading customer service for telecommunications.

For each of the five alternative scenarios presented below, we briefly summarize the possible impact on these ten goals.

3.1 Scenario One: Reduce Operating Expenses

In the first scenario, Click would seek to realize substantial operating efficiencies and thereby to reduce costs and losses for TPU. TPU already has taken steps to reduce expenses. For example, TPU is evaluating outsourcing of Click's network operations center (NOC), outsourcing of the cable headend, and reducing the number of job classifications to increase operational and staffing efficiency. In addition, TPU could consider additional measures such as outsourcing video or shifting video to a lower cost platform. Options here include outsourcing to a remote IP-based provider and offering over-the-top services with a consumer-owned streaming device. These strategies could reduce staffing by as many as 23 FTEs, and perhaps many more if video costs were reduced. In our view, these approaches would enable TPU to trim annual losses by \$1.5 million to \$1.7 million.

3.1.1 Impacts on policy goals

3.1.1.1 Public Ownership and Use

This option retains public ownership of the network and the long-term opportunities that accompany it.

3.1.1.2 Equitability

This option makes no change in terms of equitable access. Click has already secured the benefits of equity by deploying service broadly and without reference to demographics or profitability.

3.1.1.3 Affordability

This option makes no change with respect to affordability. Pricing is likely to remain consistent, particularly for internet service.

3.1.1.4 Net Neutrality

This option makes no change with respect to Click's ability to set and adhere to net neutrality principles.

3.1.1.5 Financial stability

The reduction in costs by \$1.5 million to \$1.7 million would go partway to restoring financial stability, but may not go far enough to forestall the need for a later and more significant strategic change in direction.

3.1.1.6 Community Opportunities

This option presents no change in terms of Click's ability to promote economic development and educational opportunities. At a high level, the extent to which Click can achieve these goals is a function of Click's overall health as a business.

3.1.1.7 Employment

Reducing staffing by 23 FTEs would still preserve most existing jobs. In the larger view, however, if this strategy does not solve Click's financial problems, it merely puts off tougher decisions for a later date. If losses end up widening, more jobs will be threatened.

3.1.1.8 Competition

This option makes no change in terms of the existing level of competition.

3.1.1.9 Privacy

This option makes no change with respect to Click's privacy policies.

3.1.1.10 Customer Service

While this option makes no change regarding the level of service Click provides, a reduction in staffing and operating costs could potentially affect the capacity of Click to provide the same level of customer service.

3.2 Scenario Two: Become a Retail ISP and Try to Increase Revenues

In the second scenario, Click would become a retail ISP rather than solely a wholesaler, and thus would no longer be reliant on the capabilities and success of private ISPs. This strategy would enable TPU to bundle services to potentially increase its cable television take rate.

(One idea that has been discussed in this context is that of dropping cable service. We would note that while cable might not be profitable, many consumers want a bundled service. It would be important to do a market study to test whether cable, even though it does not result in any profits in and of itself, is important for attracting and retaining internet customers and thus building take rate.)

The challenge in this approach is that it requires Click to directly compete with its current wholesale ISP customers. This approach also does not address Click's disadvantages in scale and platform relative to Comcast and other providers, and will require increased staffing for sales, marketing and customer service, increasing annual losses in the short and medium term. Losses could be reduced if these efforts resulted in a dramatic increase in revenues by adding internet products to Click's existing cable television offerings.

3.2.1 Impacts on policy goals

3.2.1.1 Public Ownership and Use

This option retains public ownership of the network.

3.2.1.2 Equitability

This option makes no change in terms of equitable access.

3.2.1.3 Affordability

This option may improve affordability by adding TPU as a competitive retail ISP, though the need to increase revenues would suggest that price decreases would not be advisable.

3.2.1.4 Net Neutrality

This option makes no change with respect to Click's ability to set and adhere to net neutrality principles.

3.2.1.5 Financial stability

The approach requires an increase in operating expenses to enable substantial new marketing and sales efforts. There is no guarantee, however, that revenue would increase enough to justify the extra expense. If revenue does not increase substantially, financial stability will suffer.

3.2.1.6 Community Opportunities

This option presents no change in terms of Click's ability to promote economic development and educational opportunities. At a high level, the extent to which Click achieves these goals is a function of Click's overall health as a business.

3.2.1.7 Employment

This strategy will result in increased employment to carry out new marketing and sales efforts. If this strategy does not solve Click's financial problems, then these increases may be temporary.

3.2.1.8 Competition

This option changes the competitive landscape in significant ways, in that Click itself would be directly competing with existing providers. In this way, it potentially enhances competition.

3.2.1.9 Privacy

This option makes no change with respect to Click's privacy policies.

3.2.1.10 Customer Service

This option retains Click's ability to provide high-quality customer service.

3.3 Scenario Three: Upgrade the Network to Fiber-to-the-Premises

Upgrading from its existing hybrid fiber-coaxial platform to fiber would give Click a platform advantage relative to Comcast. Click could provide symmetrical 1 Gigabit service and have an upgrade path to higher speeds in anticipation of future growth in demand.

This approach would, however, entail a very high new capital expense to upgrade the network and would not address the structural challenges of Click's scale disadvantages relative to competitors like Comcast. Additionally, Click would still be operating in a competitive market.

Such an approach would entail a significant increase in both internal and contract staffing for construction and equipment installation. There would likely be a dramatic increase in the near to medium-term losses from high debt service and increased operating expenses. Reducing these losses over time would require an extremely high take rate.

3.3.1 Impacts on policy goals

3.3.1.1 Public Ownership and Use

This option retains network ownership.

3.3.1.2 Equitability

This option makes no change in terms of equitable access, and may increase the types and speeds of available services, given fiber's capacity and scalability.

3.3.1.3 Affordability

This option makes no change in terms of affordability.

3.3.1.4 Net Neutrality

This option makes no change in terms of net neutrality.

3.3.1.5 Financial stability

The sharp increase in costs in the near to medium term comes with no guarantee that a high take rate will result in financial stability over the longer term. A very high take rate would be required to cover the existing losses as well as the new debt service and operating costs. Insufficient take rate and revenues could greatly increase the current level of operating losses. There is no guarantee, however, that revenue would increase enough to justify the extra expense.

3.3.1.6 Community Opportunities

Alone among the five alternative scenarios, this option could significantly expand community opportunities over the long term. A fiber platform would enable enhanced business and educational opportunities thanks to symmetrical gigabit service. Cable is particularly limited in its ability to deliver fast file uploads. A fiber platform would remove this limitation and allow ultra-high-resolution video conferencing, ultrafast delivery of large files, and a variety of potential future applications and services.

3.3.1.7 Employment

This approach would result in an expansion in the number and types of TPU jobs, particularly during the construction and deployment state. Following construction and deployment, Click's staffing level is likely to return to the current level or see a modest increase for operations of the fiber platform.

3.3.1.8 Competition

This option could change the competitive landscape in significant ways. With fiber to the premises, Click would possess a superior technology platform to that of the incumbent providers. It is conceivable that more providers could offer more and new kinds of service through Click through a fiber network, depending on how it was managed. Over time, new consumer demands could also be effectively met by competitors. It is also possible that the phone company would respond by building fiber deeper into its own network in response, though this is likely only if Click's take rate grows and it proves a capable competitor.

3.3.1.9 Privacy

This option makes no change with respect to Click's privacy policies.

3.3.1.10 Customer Service

This approach preserves Click's ability to provide superior customer service, and given that the take rate would need to be very high for this business to be viable, this high-quality service would reach more people. However, it is not certain that this approach will result in the necessary high take rate.

3.4 Scenario Four: Shut Down Internet and Cable Service, and Abandon Plant

In this scenario, Click would cease providing wholesale service to the internet ISPs, would cease offering cable television services, and would stop maintaining the outside plant and equipment associated with the public-facing internet and cable products. The fiber that serves the City and TPU would be maintained and would continue in its current functions.

This scenario would successfully eliminate all operating losses associated with serving Click's customers and would thus address the immediate financial challenge. This savings would be achieved by reducing substantially Click staff, retaining only approximately 14 out of 102 currently budgeted FTEs. In this way, this approach would almost entirely eliminate telecom-related costs other than those associated solely with City and Tacoma Power functions.

This strategy solves the financial problem by sacrificing the policy achievements Click has delivered for so long. It would also mean that TPU would forgo the existing value of the network and a significant portion of TPU's telecommunications assets.

A variation on this approach would be to allow the two existing ISPs to lease, operate and maintain the network at cost so that they could continue operating but without the current level of support they get from Click.

3.4.1 Impacts on policy goals

3.4.1.1 Public Ownership and Use

This option abandons network ownership and forgoes the ongoing value of the consumer-facing network. The fiber optic portions of the network would be retained and supported in order to meet utility and City needs, but the portions of the network that support cable and internet service to homes and businesses would no longer be maintained and supported.

3.4.1.2 Equitability

This option negates the value of Click in terms of equitable access to services.

3.4.1.3 Affordability

Exiting the market leaves the question of affordability to the existing incumbents in the market and would remove some of the competitive factors that are likely to constrain future growth in pricing.

3.4.1.4 Net Neutrality

Exiting the market will mean the City and Tacoma Power lose their ability to themselves offer net neutral products or to use the Click asset as leverage to secure net neutrality benefits.

3.4.1.5 Financial stability

This option would eliminate the ongoing financial losses by eliminating the costs of staffing and supporting the internet and cable TV services, but also forgoes the ongoing value of the network.

3.4.1.6 Community Opportunities

This option would all but end Tacoma's ability to influence how the City's communications network aids economic development or educational opportunity.

3.4.1.7 Employment

This approach would result in the loss of most existing jobs associated with Click, retaining approximately 14 out of 102 currently budgeted FTEs according to Click staff.

3.4.1.8 Competition

This option would forgo the value Click provides in terms of providing competition.

3.4.1.9 Privacy

Exiting the market will mean the City and Tacoma Power lose their ability to themselves offer privacy-respecting internet products or to use the Click asset as leverage to secure privacy benefits.

3.4.1.10 Customer Service

This approach would mean Tacoma Power no longer provides any customer service to residential or business consumers.

3.5 Scenario Five: Collaborate with a Partner and Offset Risk

In this scenario, TPU would share with a select partner the operating effort that is currently causing the operating losses. This approach would involve using a competitive process to identify a partner that is qualified to deliver competing internet and cable services to Tacoma Power's customers – and that is also willing to meet many of the City's policy requirements. In such an arrangement, Tacoma Power would allow the partner to operate the network assets for a fee, such that TPU's obligations would extend only to maintaining the infrastructure while the partner's obligations would focus on providing high quality services to the public.

Depending on market conditions and the terms of an agreement, this option could enable TPU to address some or all of the City's important goals while eliminating some or all operating losses. Potentially, the right deal could even result in net revenues.

This approach is contingent on finding a partner entity that is amenable (and, ideally enthusiastic) about these policy goals and interested in a business model in which it will take operating risk in return for access to TPU's considerable network assets. Projects in multiple states in recent years suggest that win-win scenarios are possible and viable. Indeed, we suspect that several companies would be interested, and that the City may have multiple options in selecting a partner, subject to negotiations. That said, market conditions and larger national and global economic trends will impact the potential to secure a partner that meets the City's goals.

The City and TPU can consider testing the market for a partner through an information-seeking process (such as an RFI) or through a competitive RFP process. Such an effort would enable the City and Tacoma Power to determine whether there is a partner willing to make commitments that address the City's policy goals and TPU's revenue needs in return for access to the Click assets.

3.5.1 Impacts on policy goals

3.5.1.1 Public Ownership and Use

This option retains network ownership and, crucially, leverages that ownership into significant potential ongoing public policy benefits, including those discussed below.

3.5.1.2 Equitability

The partner would ideally be willing to commit to ensuring equity by agreeing to offer the same services at the same prices throughout the community. If the partner is amenable to expanding the network over time, the partner would ideally be willing to do so based on equitable factors to be negotiated with TPU and the City. So long as the overall financial package is attractive to a potential partner, we believe that this goal is achievable.

3.5.1.3 Affordability

The partner would ideally be willing to commit to providing a low-cost but high-quality product to lower-income members of the community. In our experience, there are multiple potential partners that are willing to work with cities to develop programs that support affordability and enhance digital inclusion. In one city, we've seen a partner commit to match contributions from the city that reduce pricing for low-income consumers. In others, we have seen partners commit to adding a lower-cost product to a higher-end service offering. In others, we have seen partners who are willing to make annual contributions to city-managed funds to support digital training and literacy.

3.5.1.4 Net Neutrality

In this scenario, TPU and the partner would mutually agree to adhere to the same principles of net neutrality that guide TPU today. While this requirement might reduce the number of interested potential partners, we do know of a small group of private entities that are amenable to this condition and, indeed, have chosen to be net neutral as a matter of policy and branding.

3.5.1.5 Financial stability

Subject to the terms of any agreement, this strategy addresses the first order of business: restoring financial stability. The agreement would ideally minimize or eliminate losses and perhaps produce revenue.

3.5.1.6 Community Opportunities

By preserving ownership and competition, this option should maintain the same level of economic development and educational benefits provided by Click today. In addition, we believe that some private entities would be open to providing modest financial support for community opportunity. In other markets, we have seen private entities fund maker spaces, sponsor local technology efforts, and support technology incubators, among other community contributions.

3.5.1.7 Employment

The employment impact of such a move would be akin to the impact of shutting down service, but with the possibility that some employees could be retained or that the partner could fund severance. A remaining internal telecom staffing level of 14 FTEs appears probable according to Click staff.

3.5.1.8 Competition

This option would retain competition in Tacoma. By preserving a viable, financially stable platform for cable TV and internet services, the hard-won competitive market created by the Click investment would be preserved. Crucially, it will be important to select a technically and financially viable entity as a partner to ensure long-term security of competition. Further, and similarly importantly, in our experience there do exist a number of potential partners that are

willing to commit not to sell or transfer their interests in the partnership to incumbents in that same market. The importance of this to Tacoma is that such an agreement, assuming it is enforceable, would eliminate the potential for competition to be reduced at some point through sale of the partner company to Comcast or CenturyLink (or one of their successors).

3.5.1.9 Privacy

The partner would ideally be willing to commit to maintaining a privacy policy that is consistent with City goals. As with net neutrality, we anticipate that this requirement would reduce the number of interested partners and thus carries a cost for Tacoma, but there do exist entities that might be willing to make this commitment because it's already part of their business and marketing strategies.

3.5.1.10 Customer Service

This approach would likely mean Click no longer directly provides customer service, which would be handled by the partner. However, incentives built into the deal could result in high quality service and TPU and the City could choose to prioritize in the competitive process a strong customer service ethic and track record.