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KEVIN STOCK
COUNTY CLERK
NO: 17-2-08907-4

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SUPERIOR COURT 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,

v.

CITY OF TACOMA,

Defendant.

NO.

COMPLAINT FOR DECLARATORY,
INJUNCTIVE, AND MANDAMUS
RELIEF

Plaintiffs allege as follows:

I. PARTIES

1.1. Plaintiff Edward E. (Ted) Coates resides in Tacoma, Pierce County, Washington. He is a former Director of Utilities for the City of Tacoma, and is a Tacoma Power electric ratepayer. As an electric utility ratepayer, he has standing to sue for the relief requested in this complaint.

1.2. Plaintiff Michael Crowley resides in Tacoma, Pierce County, Washington. He is a former Mayor of the City of Tacoma and a former member of the Tacoma City Council. He

1 is a Tacoma Power electric ratepayer. As an electric utility ratepayer, he has standing to sue for
2 the relief requested in this complaint.

3 1.3. Plaintiffs Mark Bubenik and Margaret Bubenik are husband and wife and do
4 business as Steele Manor Apartments in Tacoma, Pierce County, Washington. Mr. Bubenik is
5 a former Chief Assistant City Attorney for Tacoma Public Utilities. Mr. and Mrs. Bubenik
6 d/b/a Steele Manor Apartments are Tacoma Power electric ratepayers. As electric utility
7 ratepayers, they have standing to sue for the relief requested in this complaint.
8

9 1.4. Plaintiff Thomas H. Oldfield resides in Tacoma, Pierce County, Washington.
10 He is a Tacoma Power electric ratepayer. As an electric utility ratepayer, he has standing to sue
11 for the relief requested in this complaint.
12

13 1.5. Plaintiff Industrial Customers of Northwest Utilities (“ICNU”) is an Oregon
14 nonprofit association of large industrial users of electricity in the Pacific Northwest, including
15 industrial electric ratepayers of Tacoma Power. ICNU has associational standing to sue on
16 behalf of its members, including those who are electric ratepayers of Tacoma Power, for the
17 relief requested in this complaint.
18

19 1.6. Defendant City of Tacoma (the “City”) is a Washington municipal corporation
20 located in Pierce County, Washington. The Light Division, doing business as Tacoma Power,
21 of the City’s Department of Public Utilities (the “Department” or “TPU”) operates the City’s
22 proprietary electric utility, including facilities for the generation, transmission and distribution
23 of electricity to electric utility customers (ratepayers). Tacoma Power also operates a business
24 unit known as the Click! Network (“Click”), which provides retail cable television and
25

1 wholesale high-speed internet services to residential and business customers. Many of Tacoma
2 Power's electric utility customers are located in geographic areas that are not served by Click.

3 4 **II. JURISDICTION AND VENUE**

5 2.1. This Court has subject matter jurisdiction over this action.

6 2.2. Venue is properly laid in this Court because the City transacts business and has
7 its principal place of business in this county and because all or a substantial part of the events
8 giving rise to the claims set forth in this complaint occurred in this county.

9 2.3. Plaintiffs filed a Claim for Damages with the City on February 21, 2017 on a
10 form prescribed by the City pursuant to RCW 4.96.020, and have satisfied any prerequisites
11 under that statute or otherwise for the commencement and prosecution of this action.
12

13 2.4. The City has not responded to the Claim for Damages.

14 2.5. The filing of the Claim for Damages suspended for sixty calendar days the
15 running of any limitations period applicable to the claims set forth in the Claim for Damages.

16 2.6. On April 21, 2017 the parties entered into a Tolling Agreement which further
17 tolled the running of any such limitations period while the Agreement was in effect. The
18 Tolling Agreement was to remain in effect until July 31, 2017, unless terminated earlier upon
19 seven calendar days notice as provided in the Tolling Agreement. As of the date of filing this
20 Complaint, the Tolling Agreement remains in effect.
21

22 **III. FACTS**

23 3.1. The City utilizes a council-manager form of government, administered by a City
24 Council. The City Council is composed of an elected Mayor and eight elected
25

1 Councilmembers. The Mayor is the presiding officer of the City Council. The City Council
2 appoints a City Manager who is the chief executive officer of the City and who serves at the
3 pleasure of the City Council. The City Manager is responsible to the City Council for the
4 administration of all departments of the City except TPU.
5

6 3.2. TPU is governed by a five member Public Utility Board (the "Board"). The
7 Board is responsible for general utility policy, and its members are appointed by the Mayor and
8 confirmed by the City Council. TPU's budget is presented to the Board for review and
9 approval and then forwarded to the City Council for approval and inclusion in the City's
10 budget.
11

12 3.3. TPU consists of the Light Division ("Tacoma Power"), Water Division
13 ("Tacoma Water"), and Belt Line Railroad Division ("Tacoma Rail"). The Board serves as the
14 sole policy board for the approval of most TPU business. In the case of budgets, rates, bond
15 issues, and additions and betterments to the system and system expansions, actions approved by
16 the Board must also be approved by the City Council.
17

18 3.4. The Board appoints the Director of Utilities who is chief executive officer of the
19 Department and serves at the pleasure of the Board. The Director of Utilities, with the
20 concurrence of the Board, has the power to appoint division superintendents.
21

22 3.5. Utility rates and charges initiated by the Board and adopted by the City Council
23 are not subject to review or approval by any other governmental agency.
24

25 3.6. The City Charter provides that the revenues of utilities owned and operated by
the City shall never be used for any purposes other than the necessary operating expenses

1 thereof, including a reasonable gross earnings tax imposed by the City Council for the benefit
2 of the general fund of the City, interest on and redemption of the outstanding debt thereof, the
3 making of additions and betterments thereto and extensions thereof, and the reduction of rates
4 and charges for supplying utility service to consumers. The funds of any utility may not be used
5 to make loans to or purchase the bonds of any other utility, department, or agency of the City.
6

7 3.7. As stated in a non-confidential Memorandum dated July 16, 2015 to the Mayor,
8 City Council and Public Utility Board from then-City Attorney (now City Manager) Elizabeth
9 A. Pauli and then-Chief Deputy City Attorney (now City Attorney) William C. Fosbre, electric
10 utility revenues may not be used to pay for costs directly associated with providing commercial
11 telecommunications services (such as cable television and internet service) to the public,
12 because such costs are not sufficiently related to providing electricity to electric utility
13 customers and thus must be paid for from non-utility revenues such as rates or charges to the
14 telecommunication services customers or general government tax dollars. Costs incurred to
15 operate or maintain portions of the telecommunication system used to serve both electric utility
16 customers and commercial telecommunication services to the public must be distributed based
17 on a reasonable allocation methodology. If a portion of the telecommunication system is no
18 longer used to provide electric service, but is still used to provide telecommunication services,
19 then the costs of operating or maintaining that portion of the telecommunication system must
20 be paid from rates or charges for such telecommunication services or from general government
21 tax dollars or other funds, but not from electric utility revenues.
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1 3.8. As summarized in the aforesaid Memorandum, administration of the commercial
2 telecommunication system “requires separate accounting of costs and revenues associated with
3 the commercial telecommunication services provided to [the] public as state law and the City
4 Charter prohibits the use of electric utility rate payer revenues to pay for the costs solely
5 associated with providing these commercial telecommunication services. Telecommunication
6 system costs associated with providing both electricity to utility customers and commercial
7 telecommunications services to the public must be allocated and then paid separately by the
8 two enterprises. Whenever the electric utility no longer needs a specific portion of the
9 telecommunication system, which the commercial side is still using, then the maintenance costs
10 associated with this specific portion of the system can no longer [be] paid with electric utility
11 revenues.”
12
13

14 3.9. Pursuant to actions and resolutions of the Mayor, City Council and Public
15 Utility Board, the Tacoma Power electric utility has been subsidizing both the capital expenses
16 and the operational and maintenance (O&M) expenses of the Click commercial
17 telecommunications business, by using electric utility revenues to pay for expenses benefiting
18 or properly allocable to Click’s commercial telecommunication services rather than to electric
19 utility services. Those subsidies were and are unlawful, and in clear violation of Tacoma City
20 Charter Section 4.5, RCW 43.09.210, and well-established legal principles as set forth in *City*
21 *of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679 (1987), *Okeson v. City of Seattle*, 150
22 Wn.2d 540 (2003), and their progeny.
23
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1 3.10 By causing, authorizing, or allowing the Tacoma Power electric utility to
2 provide unlawful subsidies for Click's commercial telecommunications business, the Mayor,
3 City Council and Public Utility Board have acted and are acting contrary to legal advice
4 provided to them by the City Attorney and Chief Deputy City Attorney in the aforesaid
5 Memorandum dated July 16, 2015. Thus, they have acted and are acting knowingly and
6 willfully in wrongfully causing, authorizing, or allowing such violations of law.
7

8 3.11. The unlawful subsidies include unreimbursed capital expenditures for facilities
9 and equipment benefiting or properly allocable to Click rather than to the electric utility,
10 unreimbursed expenditures for O&M expenses benefiting or properly allocable to Click rather
11 than the electric utility, and the provision of facilities or services for Click without receiving
12 payment therefor at its true and full value (for example, allowing Click wires or equipment to
13 be attached to electric utility power poles without adequate payment therefor, and paying for
14 audits or studies for Click's benefit without adequate reimbursement therefor).
15

16 3.12. According to TPU's own financial records, Click's O&M expenses exceeded its
17 revenues by more than \$1.4 million in 2014, by nearly \$2.9 million in 2015, and by more than
18 \$5.7 million in 2016. Those losses were covered by unlawful subsidies from electric utility
19 revenues. Click's under-recovery of O&M expenses from revenues is projected to amount to
20 approximately \$14.95 million for the 2017/2018 biennium. When Click's capital expenses and
21 depreciation are added to its O&M expenses, its losses since 2014 are even greater, and the
22 amount of unlawful subsidies paid by the electric utility for Click's commercial
23 telecommunication services is many millions of dollars greater than the figures for under-
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25

1 recovery of O&M expenses.

2 3.13. The amount of unlawful subsidies from the electric utility for Click commercial
3 telecommunication expenses since 2014 is well in excess of \$21 million, and increasing annual
4 subsidies are projected for the foreseeable future.
5

6 3.14. On December 15, 2015 the City Council adopted Resolution 39347, which
7 required Tacoma Power to develop a business, financial, and marketing plan to provide Click
8 customers with retail cable television, voice telephone, and internet services.

9 3.15. A committee was formed to develop such a plan, and eventually it proposed a
10 so-called "All-In Complete Business Plan" (the "All-In Plan"), calling for substantial
11 improvements and expansion of Click facilities for providing retail telecommunication
12 services, to be funded in large part by further and increased subsidies from the electric utility.
13

14 3.16. On September 28, 2016 the Utility Board adopted Resolution No. U-10879,
15 approving the All-In Plan. Under the All-In Plan, the unlawful subsidies from the electric
16 utility for Click are projected to increase by an additional \$6-10 million per year for the
17 foreseeable future.
18

19 3.17. The unlawful subsidies described above have resulted, and will result, in
20 wrongfully inflated rates paid for electricity by all ratepayers of the Tacoma Power electric
21 utility, including but not limited to ratepayers who do not have access to Click services.
22

23 **IV. CLAIM FOR RELIEF**

24 4.1. There is an actual, present, and existing dispute between the parties as to the
25 legality of using electric utility revenues to pay for Click O&M and capital expenses that are

1 attributable or properly allocable to Click for commercial telecommunication services rather
2 than electric utility service and about the amount of unlawful subsidies that have been provided
3 to date for Click expenses from electric utility revenues.

4
5 4.2. Electric utility ratepayers have a legally cognizable interest in preserving and
6 protecting electric utility funds from being unlawfully diverted to pay for expenses attributable
7 or properly allocable to Click commercial telecommunication services rather than electric
8 utility service, and in obtaining recovery for the electric utility of previous unlawful subsidies
9 of Click expenses.

10
11 4.3. Plaintiffs are without an adequate remedy at law to protect their aforesaid
12 interests in preserving, protecting and obtaining recovery for electric utility funds, and are
13 entitled to declaratory, injunctive and mandamus relief (i) declaring that electric utility
14 revenues and funds may not be used to pay for Click expenses or capital improvements that are
15 attributable or properly allocable to commercial telecommunication services rather than electric
16 utility service, (ii) prohibiting TPU from using electric utility revenues or other electric utility
17 funds to subsidize or pay for Click expenses or capital improvements that are attributable or
18 properly allocable to commercial telecommunication services rather than electric utility service,
19 (iii) prohibiting TPU from including expenses or capital investments that are attributable or
20 properly allocable to Click commercial telecommunication services, rather than electric utility
21 service, in the calculation of electric rates, and (iv) requiring TPU or the City to cause Click or
22 the City's general fund to reimburse the Tacoma Power electric utility for previous subsidies of
23 or payments for Click expenses or capital improvements attributable or properly allocable to
24
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1 commercial telecommunication services rather than electric utility service, together with
2 prejudgment and postjudgment interest thereon at the rate of 12% per annum until fully paid.

3 4.4. The unlawful acts or omissions of the City described above were willful within
4 the meaning of RCW 80.04.440. Accordingly, plaintiffs are entitled to an award of attorney
5 fees against the City, to be taxed and collected as part of the costs in this case.
6

7 4.5. Plaintiffs are also entitled to an award of attorney fees under the common fund
8 theory, to be paid from the electric utility funds preserved, protected or enhanced by this action.

9 **V. PRAYER FOR RELIEF**

10 WHEREFORE, plaintiffs pray for judgment against the City as follows:

11 (1) Declaring that electric utility revenues and funds may not be used to pay for
12 Click expenses or capital improvements that are attributable or properly allocable to
13 commercial telecommunication services rather than electric utility service;
14

15 (2) Enjoining and prohibiting TPU from using electric utility revenues or other
16 electric utility funds to subsidize or pay for Click expenses or capital improvements that are
17 attributable or properly allocable to commercial telecommunication services rather than electric
18 utility service;
19

20 (3) Enjoining and prohibiting TPU from including expenses or capital investments
21 that are attributable or properly allocable to Click commercial telecommunication services,
22 rather than electric utility service, in the calculation of electric rates;

23 (4) Ordering TPU or the City to cause Click or the City's general fund to reimburse
24 the Tacoma Power electric utility for previous subsidies of or payments for Click expenses or
25

1 capital improvements attributable or properly allocable to commercial telecommunication
2 services rather than electric utility service, in an amount to be proven at trial, together with
3 prejudgment and postjudgment interest thereon at the rate of 12% per annum until fully paid;

4 (5) Awarding attorney fees and costs under RCW 80.04.440 and under the common
5 fund theory; and
6

7 (6) Awarding such other and further relief as the Court may deem just, equitable
8 and proper under the circumstances.

9
10 Dated this 2nd day of June, 2017.

11 HELSELL FETTERMAN LLP

12
13 By 

14 FOR

15 David F. Jurca, WSBA No. 2015
16 Andrew J. Kinstler, WSBA No. 12703
17 Emma Kazaryan, WSBA No. 49885
18 Attorneys for Plaintiffs
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June 22 2017 12:28 PM

KEVIN STOCK
COUNTY CLERK
NO: 17-2-08907-4

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SUPERIOR COURT 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,

v.

CITY OF TACOMA,

Defendant.

No.

SUMMONS [20 DAYS]

TO: CITY OF TACOMA, Defendant.

A lawsuit has been started against you in the above-entitled court by the above-named Plaintiffs. Plaintiffs' claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the undersigned

SUMMONS - 1

HELSELL
FETTERMAN

Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

1 attorney for the Plaintiffs within 20 days (60 days if served outside the State of
2 Washington) after the service of this Summons, excluding the day of service, or a
3 default judgment may be entered against you without notice. A default judgment
4 entitles the Plaintiffs to what they ask for because you have not responded. If you
5 serve a notice of appearance on the undersigned attorney, you are entitled to
6 notice before a default judgment may be entered.
7

8 You may demand that Plaintiffs file this lawsuit with the court. If you do
9 so, the demand must be in writing and must be served upon the person signing
10 this Summons. Within 14 days after you serve the demand, the Plaintiffs must
11 file this lawsuit with the court, or the service on you of this Summons and
12 Complaint will be void.
13

14 If you wish to seek the advice of an attorney in this matter, you should do
15 so promptly so that your written response, if any, may be served on time.
16

17 This Summons is issued pursuant to Rule 4 of the Superior Court Civil
18 Rules of the State of Washington.

19 DATED this 20th day of June, 2017.

20 **HELSELL FETTERMAN, LLP**

21
22 By 

23 FOR David F. Jurca, WSBA No. 2015
24 Andrew J. Kinstler, WSBA No. 12703
25 Emma Kazaryan, WSBA No. 49885
Attorneys for Plaintiffs

July 19 2017 12:11 PM

KEVIN STOCK
COUNTY CLERK
NO: 17-2-08907-4

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

EDWARD E. (TED) COATES; MICHAEL)	
CROWLEY; MARK BUBENIK and)	No. 17-2-08907-4
MARGARET BUBENIK d/b/a Steele Manor)	
Apartments; THOMAS H. OLDFIELD; and)	ANSWER AND ADDITIONAL
INDUSTRIAL CUSTOMERS OF)	DEFENSES
NORTHWEST UTILITIES, an Oregon)	
nonprofit corporation,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CITY OF TACOMA,)	
)	
Defendant.)	
)	

Defendant City of Tacoma, a Washington municipal corporation (“Defendant”), by and through its attorneys of record, K&L Gates, LLP, and Elizabeth Thomas, Mark Filipini, and Kari Vander Stoep, answers the Complaint for Declaratory, Injunctive, and Mandamus Relief (the “Complaint”) filed by Plaintiffs 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 (“Plaintiffs”), as follows:

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I. PARTIES

1.1. Defendant admits that Plaintiff Edward E. Coates resides in Tacoma, Washington, is a former Director of Utilities for the City of Tacoma, and is a Tacoma Power electric ratepayer. The remainder of Paragraph 1.1 is a legal conclusion that requires no response. To the extent a response is required, Defendant denies the same.

1.2. Defendant admits that Plaintiff Michael Crowley resides in Tacoma, Washington, is a former Mayor of the City of Tacoma and a former member of the Tacoma City Council, and is a Tacoma Power electric ratepayer. The remainder of Paragraph 1.2 is a legal conclusion that requires no response. To the extent a response is required, Defendant denies the same.

1.3. Defendant admits that Plaintiff Mark Bubenik is a former Chief Assistant City Attorney for Tacoma Public Utilities. Defendant is without knowledge or information sufficient to form a belief as to the allegations that Plaintiffs Mark and Margaret Bubenik do business as Steele Manor Apartments or that they, d/b/a as Steele Manor Apartments, are Tacoma Power electric ratepayers, and on that basis Defendant denies these allegations. The remainder of Paragraph 1.3 is a legal conclusion that requires no response. To the extent a response is required, Defendant denies the same.

1.4. Defendant admits that Plaintiff Thomas H. Oldfield resides in Tacoma, Washington, and is a Tacoma Power electric ratepayer. The remainder of Paragraph 1.4 is a legal conclusion that requires no response. To the extent a response is required, Defendant denies the same.

1 3.6. Defendant answers that the City Charter speaks for itself, and, therefore,
2 denies allegations inconsistent with the City Charter itself. To the extent Plaintiffs'
3 allegations interpret the City Charter, Defendant states that those allegations are legal
4 conclusions. Defendant states that no response is required to these or any other legal
5 conclusions in Paragraph 3.6, and to the extent a response is required, Defendant denies
6 the same.
7

8 3.7. Defendant answers that the Memorandum discussed in Paragraph 3.7
9 speaks for itself, and, therefore, denies allegations inconsistent with the Memorandum
10 itself. To the extent Plaintiffs' allegations interpret the Memorandum, Defendant states
11 that those allegations are legal conclusions. Defendant states that no response is required
12 to these or any other legal conclusions in Paragraph 3.7, and to the extent a response is
13 required, Defendant denies the same.
14

15 3.8. Defendant admits that the quoted language is from the aforesaid
16 Memorandum. To the extent Plaintiffs' allegations interpret the Memorandum, Defendant
17 states that those allegations are legal conclusions. Defendant states that no response is
18 required to these or any other legal conclusions in Paragraph 3.8, and to the extent a
19 response is required, Defendant denies the same.
20

21 3.9. Defendant denies the allegations in Paragraph 3.9.

22 3.10. Defendant denies the allegations in Paragraph 3.10.

23 3.11. Defendant denies the allegations in Paragraph 3.11.

24 3.12. Defendant denies the allegations in Paragraph 3.12.

25 3.13. Defendant denies the allegations in Paragraph 3.13.

1 3.14. Defendant answers that Resolution 39347 speaks for itself, and, therefore,
2 denies allegations inconsistent with the Resolution itself. To the extent Plaintiffs'
3 allegations interpret the Resolution, Defendant states that those allegations are legal
4 conclusions. Defendant states that no response is required to these or any other legal
5 conclusions in Paragraph 3.14, and to the extent a response is required, Defendant denies
6 the same.
7

8 3.15. Defendant states that a committee was formed as required by resolutions of
9 the Board and City Council to review the future of Click, but denies that the committee
10 created or proposed any particular plan. Defendant denies the remaining allegations of
11 Paragraph 3.15, including but not limited to the allegation that there were any “subsidiaries”
12 provided to Click.
13

14 3.16. Defendant answers that Resolution No. U-10879 speaks for itself, and,
15 therefore, denies allegations inconsistent with the Resolution itself. To the extent
16 Plaintiffs' allegations interpret the Resolution, Defendant states that those allegations are
17 legal conclusions. Defendant states that no response is required to these or any other legal
18 conclusions in Paragraph 3.16, and to the extent a response is required, Defendant denies
19 the same. Defendant denies the remaining allegations of Paragraph 3.16, including but
20 not limited to the allegation that there were any “subsidiaries” provided to Click.
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22 3.17. Defendant denies the allegations in Paragraph 3.17.
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IV. PLAINTIFFS' CLAIM FOR RELIEF

4. The allegations contained in Section IV of the Complaint are legal conclusions which require no response. To the extent a response is required, Defendant denies the same.

V. PLAINTIFFS' PRAYER FOR RELIEF

5. Plaintiffs' prayer for relief in Section V of the Complaint does not require a response. To the extent a response is required, Defendant denies that Plaintiffs are entitled to any of the relief requested in Section V of the Complaint or to any other relief.

6. Defendant denies each and every allegation of the Complaint that is not specifically admitted herein.

VI. ADDITIONAL DEFENSES

BY WAY OF FURTHER ANSWER AND DEFENSE, Defendant alleges as follows:

7. The Court lacks subject matter jurisdiction over the claims raised in the Complaint.

8. The Complaint fails to state a cause of action upon which relief may be granted.

9. The claims in the Complaint are barred in whole or in part by the doctrine of sovereign immunity and the Defendant's authority to operate an electric utility and telecommunications system as a first-class charter city.

10. The claims in the Complaint are barred in whole or in part by failure to exhaust administrative remedies.

1 11. The claims in the Complaint are barred in whole or in part by the failure of
2 Plaintiffs to bring their claims or grievances before or within the correct forum.

3 12. The claims in the Complaint are barred in whole or in part by the doctrine
4 of primary jurisdiction.

5 13. The relief sought in the Complaint is barred in whole or in part by the
6 political question doctrine.

7 14. The claims in the Complaint are barred in whole or in part by the doctrines
8 of laches, waiver, estoppel, and unclean hands.

9 15. The claims in the Complaint are barred in whole or in part by the filed rate
10 doctrine and the prohibition against retroactive ratemaking.

11 16. The claims in the Complaint are barred in whole or in part by relevant
12 statutes of limitations or limitations periods.

13 17. The claims in the Complaint are barred in whole or in part by the doctrines
14 of collateral estoppel, res judicata, accord and satisfaction, and/or ratification.

15 18. The claims in the Complaint are barred in whole or in part by the fact that
16 the requested relief is inequitable and unlawful.

17 19. The claims in the Complaint are barred in whole or in part because City
18 and TPU officials acted within a range of reasonableness and did not act in an arbitrary or
19 capricious manner.

20 20. Plaintiffs' request for attorney fees is barred by the American rule and to
21 the extent that fees are not reasonable or required.
22

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 19, 2017, I electronically filed the foregoing Answers
3 and Additional Defenses with the Clerk of the Court which will send notification of such
4 filing to the following:

5 David F. Jurca
6 djurca@helsell.com
7 Andrew J. Kinstler
8 akinstler@helsell.com
9 Emma Kazaryan
10 ekazaryan@helsell.com
11 Helsell Fetterman
12 1001 Fourth Avenue, Suite 4200
13 Seattle, WA 98154-1154
14 (206) 292.1144
15 Attorneys for Plaintiffs

16 And a true and correct copy of same sent via email and U.S. Mail, First Class

17 Postage prepaid to:

18 David F. Jurca
19 djurca@helsell.com
20 Andrew J. Kinstler
21 akinstler@helsell.com
22 Emma Kazaryan
23 ekazaryan@helsell.com
24 Helsell Fetterman
25 1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154

DATED this 19th day of July, 2017.

K&L GATES LLP

By: s/ Anita Spencer

Anita Spencer, Practice Assistant
K&L Gates LLP
925 4th Ave., Suite 2900
Seattle, WA 98101
Tel: (206) 623-7580
Fax: (206) 623-7022
E-mail: anita.spencer@klgates.com

December 28 2017 2:40 PM

KEVIN STOCK
COUNTY CLERK

Honorable Susan K. Serkis ~~NO: 17-2-08907-4~~

Hearing Date: February 23, 2018

Hearing Time: 9:00 a.m.

SUPERIOR COURT 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,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
GRANTING DECLARATORY RELIEF

Helsell Fetterman LLP
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1 **I. Nature of This Action**

2 This lawsuit is about the City of Tacoma’s use of Tacoma Power electric utility
3 revenues to subsidize a city-owned, money-losing commercial telecommunications (internet
4 and cable television) business known as the Click! Network (“Click”). The plaintiffs are a
5 former Director of Utilities for the City of Tacoma, a former Tacoma mayor and city
6 councilman, a former Chief Assistant City Attorney for Tacoma Public Utilities, a prominent
7 lawyer in Tacoma, and an association of large industrial customers of Tacoma Power and other
8 Pacific Northwest utilities. They (or in the case of the association, ICNU, a number of its
9 members) are electric ratepayers of Tacoma Power.¹ The plaintiffs contend that Tacoma Power
10 is expressly prohibited by both state and city law from using electric utility revenues to
11 subsidize Click’s commercial telecommunications business. If the City wants to provide such
12 telecommunications service to its citizens, it can certainly do so, but it must use Click’s own
13 revenues or general government funds to pay for Click’s capital and O&M (operation and
14 maintenance) expenses, rather than imposing that burden on electric utility ratepayers.
15

16
17 An interesting feature of this case is that the City Attorney and senior management of
18 the utility essentially agree with the plaintiffs. In a non-confidential legal memorandum dated
19 July 16, 2015 from the City Attorney to the mayor, city council, and public utility board, the
20 City Attorney explained the difference between the City’s legal authority for operating an
21 electric utility and its authority for providing cable television and internet service. The
22 memorandum distinguished between expenses attributable to providing electric service and
23
24

25 _____
¹ See defendant’s Answer, ¶¶1.1 – 1.4, and Declarations of Mark Bubenik and Tyler Pepple, submitted herewith.

1 those attributable to providing commercial telecommunications service, and concluded as
2 follows:

3 Administration of [the electric utility] function requires separate accounting of
4 costs and revenues associated with the commercial telecommunication services
5 provided to the public, as state law and the City Charter prohibit the use of
6 electric utility ratepayer revenues to pay for costs solely associated with providing
7 these commercial telecommunication services. Telecommunication system costs
8 associated with providing both electricity to utility customers and commercial
9 telecommunications services to the public must be allocated and then paid
10 separately by the two enterprises. Whenever the electric utility no longer needs a
11 specific portion of the telecommunication system, which the commercial side is
12 still using, then the maintenance costs associated with this specific portion of the
13 system can no longer [be] paid with electric utility revenues.

14 City Attorney Opinion Memo. (Jurca Declaration, Ex. 1), at 7 (emphasis added).²

15 Despite these clear requirements, the City of Tacoma has been using electric utility
16 revenues to subsidize Click's telecommunications service since its inception in 1997. *See*
17 below at pp. 7-11.³ Unless they are stopped by this lawsuit, the subsidies will continue and
18 will likely increase. *See* below at pp. 9-10; Ex. 2 at 9100. The subsidies result in increased
19 electric rates for all ratepayers, whether they are Click customers or not. *See* below at pp. 8-11;
20 Ex. 3 at 17081.

21 In 2014 a management consultant report mandated by the city charter concluded that the

22 ² All exhibits and deposition excerpts cited in this motion are attached to the Declaration of David F. Jurca,
23 submitted herewith. Page citations refer to a document's internal page numbers or, if the document's pages are not
24 numbered internally, to the ending digits of the Bates numbers added as part of the document production process.

25 ³ The city's witnesses were evidently advised to avoid using the word "subsidy" in their deposition testimony, but
they readily admitted that Click's capital expenses and operating losses were paid out of electric utility funds. For
example, the city's Director of Utilities testified that Click's financial losses have been covered by electric
revenues, but when asked about a "subsidy" for Click he said that "for some reason that word seems to have a lot
of hair on it, I'm not sure why. But to say it another way, yeah, I mean there's – if the telecom commercial
business is not recovering its costs, then there's only one other source and it's the electric ratepayers." Gaines
Dep. at 15-16.

1 electric utility subsidy for Click was unfair to electric ratepayers “and should not continue,” and
2 recommended that Click should be sold or leased to another telecommunications company or, if
3 a sale or lease was not possible, “TPU should close Click!” Ex. 2 at 9101. In 2015 the Director
4 of Utilities and his senior management team proposed that Click’s assets be leased to another
5 telecommunications company. See below at p. 11. Instead of following the utility experts’
6 recommendation to end the subsidies by selling, leasing or closing Click, and in blatant
7 disregard of the City Attorney’s legal advice that the subsidies were unlawful, the city council
8 directed the utility to develop a business plan for upgrading and expanding Click’s cable TV
9 and internet service (the “All-In Plan”), with vastly increased subsidies by the electric utility.
10 Ex. 4; see below at pp. 11-12. The City’s Director of Utilities has testified that in his view the
11 All-In Plan “was not in the interest of Tacoma Power electric ratepayers.” Gaines Dep. at 38.
12

13
14 In this lawsuit, the plaintiffs are in essence asking the Court to declare judicially what
15 the City Attorney has already told the mayor and city council about the unlawfulness of electric
16 utility subsidies for Click’s telecommunications business. While not the subject of this motion,
17 the plaintiffs’ complaint also seeks reimbursement of the electric utility for the unlawful
18 subsidies that have been imposed on it during the applicable limitations period, *i.e.*, since
19 February 21, 2014.
20

21 II. Nature of This Motion for Partial Summary Judgment

22 This motion for partial summary judgment seeks only declaratory relief. Plaintiffs ask
23 the Court to rule, as a matter of law, that electric utility revenues and funds may not be used to
24 pay for Click expenses or capital improvements that are attributable or properly allocable to
25

1 commercial telecommunication services rather than electric utility service. That is essentially
2 what City Attorney (now City Manager) Elizabeth Pauli and Chief Deputy City Attorney (now
3 City Attorney) Bill Fosbre told the mayor and city council in their memorandum of July 16,
4 2015, quoted above. *See* Ex. 1.

5
6 In his deposition taken recently in this action, Mr. Fosbre testified as follows:

7 Q. (By Mr. Jurca) Would you agree that according to the financial statements of
8 the Click! Network, it has had substantial losses every year in recent years?

9 MR. FILIPINI: Object to the form.

10 A. Correct. It has not generated sufficient revenues to cover what they're
11 calling Click! expenses.

12 Q. (By Mr. Jurca) Would you agree that those losses are being covered by
13 revenues of the electric utility?

14 A. Yes.

15 Q. In your opinion, is it lawful for revenues of the electric utility to be used to
16 cover the losses of the Click! commercial telecommunications services?

17 MR. FILIPINI: Object to the extent it calls for a legal conclusion.

18 A. Well, under the current state of the law, I'd say that there is substantial risk
19 that might be considered unlawful. But there's yet to be a definitive answer.

20 Q. (By Mr. Jurca) Do you have an opinion on that issue?

21 MR. FILIPINI: Same objection.

22 A. I would have to see what the losses are that are being paid for with the
23 electric revenues, meaning if the revenues weren't sufficient to cover items such
24 as cable programming, set top boxes, I would probably believe that there's, once
25 again, substantial risk that the court would find that's not a proper expenditure of
electric revenues. If it's for equipment or components of the system that are
currently used by both, the Click! Network and other parts of Power, I don't
know, because I would have to wait for the court to tell me.

1 Fosbre Dep. at 12-13.

2 This motion for partial summary judgment is an opportunity for the Court to accept Mr.
3 Fosbre's invitation and tell the city council that the City Attorney's July 16, 2015 Legal
4 Opinion was correct and that electric utility revenues cannot lawfully be used to pay for
5 commercial telecommunications expenses. Hopefully the Court's ruling on this motion will
6 prevent further electric utility subsidies for Click and will prevent the inclusion of such
7 subsidies in setting electric rates. Issues involved in determining the amount of the unlawful
8 subsidies since February 2014 and fashioning an appropriate monetary remedy, including
9 reimbursing the electric utility for past subsidies, can be addressed in subsequent motions or at
10 the trial.
11
12

13 III. Background Facts

14 A. The Tacoma Power Electric Utility

15 Tacoma Power (formally named the "Light Division of the Tacoma Department of
16 Public Utilities," and formerly known as "Tacoma City Light") was formed in 1893 when the
17 City of Tacoma purchased the electric and water utility properties of the former Tacoma Water
18 and Light Company. Ex. 5 at 16. It is one of three divisions of Tacoma Public Utilities
19 ("TPU"), the others being Tacoma Water and Tacoma Rail. *Id.* TPU is governed by the City's
20 public utility board, whose five members are appointed by the mayor and confirmed by the city
21 council. *Id.* at 14; Ex. 6 (City Charter), §4.8. Utility budgets and rates are subject to approval
22 by the city council. Ex. 5 at 15; Ex. 6, §§4.11, 4.12.
23
24

25 Tacoma Power's electric utility service area includes the City of Tacoma and a number

1 of surrounding cities and unincorporated areas of Pierce County. In 2016 the electric utility had
2 157,540 residential customer accounts and 19,244 business, industrial and other customers. Ex.
3 5 at 16, 20. Tacoma Power is organized into six business units. Five of them (Generation;
4 Power Management; Transmission and Distribution; Rates, Planning and Analysis; and Utility
5 Technology Services) involve the generation, transmission and distribution of electricity to
6 utility customers and are integral parts of the electric utility. *Id.* at 15. The sixth business unit
7 is Click. Although Click is organized administratively as part of Tacoma Power, as explained
8 below its cable TV and internet business is legally and functionally separate and apart from the
9 electric utility.
10

11 B. Click

12 In 1996 the city council adopted an ordinance creating “a separate system of the City’s
13 Light Division to be known as the telecommunication system” for the purposes set forth in
14 Exhibit A to the ordinance. Ex. 7 at 5 (emphasis added). Exhibit A to the ordinance referred to
15 construction of a hybrid fiber coax (“HFC”) wired network allowing telecommunications
16 signals to be sent between electric utility substations and also providing for wired
17 telecommunications connections to utility customers’ homes and businesses. The HFC network
18 was to be used for purposes of performing “some or all” of various functions listed in Exhibit A
19 to the ordinance, including communications between substations, automated meter reading,
20 cable television, internet access, and transport of signals for other telecommunications
21 companies. *Id.* at Ex. A. Thus, as originally contemplated the HFC infrastructure was to be
22 used both for electric utility purposes (like communications between substations and automated
23
24
25

1 meter reading) and for non-utility purposes (like cable television and internet service).

2 The next year, the city council adopted a follow-up resolution expressing a desire “to
3 create greater revenue diversification through new business lines (i.e. internet transport, cable
4 TV, etc.)” and authorizing the Light Division to “proceed to implement said proposal for a
5 broad band telecommunication system.” Ex. 8 at 1, 2 (emphasis added).
6

7 Over the ensuing years, the HFC telecommunications network was built out, at a cost of
8 more than \$200 million. The money to pay for construction of the network came primarily
9 from funds of the electric utility. Ex. 9 at 3-4; Fosbre Dep. at 50. The network presently
10 consists of about 400 miles of fiber optic cable and 1,200 miles of coaxial cable. Ex. 11 at
11 23771. Parts of the new HFC network were used to support the electric utility function of
12 providing electricity to customers, and parts were used to support the new cable TV and
13 wholesale internet business lines.⁴ The cable TV and wholesale internet business was referred
14 to as “commercial telecommunications service” to distinguish it from electric utility service,
15 and it came to be called the Click! Network. See Ex. 5 at 47, Ex. 14 at 17088-89.
16

17 About 34% of the households in Tacoma Power’s electric service territory are located in
18 geographic areas not reached by the HFC network and where Click cable television and internet
19 service is not available. Ex.5 at 47; Robinson Dep. at 177. Even in areas where Click service is
20 available, most households choose to get their cable TV or internet service from other providers
21 or choose not to get such service at all or cannot afford it. See, e.g., Ex. 11 at 23780. Yet all
22
23
24

25 ⁴ “Wholesale internet” service refers to Click’s making its HFC network infrastructure available to other telecommunications companies who provide “retail internet” service to homes and businesses.

1 electric ratepayers help pay for Click’s capital investments and operating losses through
2 increased electric rates, whether they are Click customers or not. As Click Manager Tenzin
3 Gyaltzen explained in a January 31, 2017 memorandum in response to questions from city
4 councilmember McCarthy:

5
6 An estimated \$14.7 million in Click!’s net operating loss for the 2017-2018
7 Biennium is covered by electric rate revenues. As such, the \$14.7 million is
8 already factored into the proposed Tacoma Power electric rates.

9 . . . [If a proposed cable TV rate increase is not passed], then any resulting
10 deficiency in Click! revenues . . . will increase Click!’s net operating loss and
11 require additional financial support from Tacoma Power electric rate revenues.

12 In such an event, Tacoma Power’s electric customers, whether a Click! customer
13 or a non-Click! customer, would ultimately pay for the increase in Click!’s net
14 operating loss through higher electric rates.

15 Ex. 3 at 17081 (emphasis added).

16 C. The Electric Utility’s Subsidies for Click

17 A few years after Click was created, in April 2000 PriceWaterhouseCoopers, an
18 independent accounting and consulting firm, performed a review of Click’s financial
19 performance. It recommended that capital and operating expenses be segregated between those
20 that supported commercial telecommunications functions and those that supported electric
21 utility functions. Ex. 12; see Ex. 13 at 20483. Tacoma Power subsequently hired the
22 consulting firm of Virchow, Krause & Company in 2003 to assess the reasonableness of the
23 methods being used to allocate Click’s capital and operating expenses between “power” and
24 “commercial” applications. “Power” applications were defined as “uses of the Click! Network
25 infrastructure that support electric transmission and distribution operations.” “Commercial”

1 applications were described as “cable TV, Internet and data transport services sold to wholesale
2 and retail customers.” Ex. 14 at 17088.

3 Over the ensuing years technological and other changes, including a gradual transition
4 from wired connections between substations and for automated meters to wireless connections,
5 led to a need to review the allocation of expenses between power applications and commercial
6 applications. Gaines Dep. at 20-21; Ex. 15 at 23-24 (18775-18776), 27, 49; Ex. 2 at 9099.
7 After a thorough review of its allocation methods, in August 2015 Tacoma Power adopted
8 updated allocations, which were made retroactive to January 1, 2015. See Ex. 12 at 3798;
9 Gyaltsen Dep. at 95; Gaines Dep. at 26. These allocations were designed to account separately
10 for Click’s expenses attributable to supporting the electric utility and those attributable to
11 supporting the commercial telecommunications business.
12

13
14 According to financial reports prepared by the city’s Finance Department, the net
15 operating losses of Click’s commercial telecommunications business were \$1,406,192 for
16 calendar year 2014 (based on the old allocation system), \$5,267,364 for 2015 (based on the
17 updated allocations), and \$5,742,857 for 2016. Ex. 16 at 4284-85, 4286-87, 4288-89. Those
18 losses were covered by using money from the electric utility. Ex. 15 at 44, 46-49; Ex. 2 at
19 9100; Gaines Dep at 15-16; Fosbre Dep. at 12; Gyaltsen Dep. at 27; Robinson Dep. at 38; Berry
20 Dep. at 27. In 2015 it was estimated that electric rates would be reduced by 2 to 3% if the Click
21 subsidy were removed. Ex. 17 at 18179; Ex. 9 at 5; Gyaltsen Dep. at 84-85; Gaines Dep. at 28.
22

23 Section 4.15 of the Tacoma City Charter requires that at least every ten years the city
24 council must cause a competent consulting firm to perform a “general management review” of
25

1 all utilities under the jurisdiction of the public utility board. Ex. 6. In 2014 Sage Management
2 Consultants, LLC was hired to perform that review. Gaines Dep. at 29; Berry Dep. at 43. It
3 issued its report on November 7, 2014. Among other things, the consultant concluded that:

4 “Power has been subsidizing Click! and the subsidies will likely grow over time.”

5
6 Ex. 2 at 9094; 9100;

7 “Click! revenue should cover its total allocated cost, including direct costs, debt
8 service, services provided by other units, and allocated overhead. It does not and
9 Click! is losing money. Click! financial losses are covered by the Power fund.
This means that Power ratepayers are subsidizing Click! customers.”

10 *Id.* at 9100; and

11 “The Power subsidy to Click! is unfair to the Power ratepayers and should not
12 continue. Potential buyers or lessors [*sic*] for Click! could include its retail ISPs,
13 Comcast, Google, and various independent operators However, it is not
14 certain that an acquirer or lessor [*sic*] would come forward. TPU should engage
15 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!”

16 *Id.* at 9101. The City’s Director of Utilities, Bill Gaines, testified that he agreed with the
17 consultant’s conclusions that the electric utility’s increasing subsidies for Click were unfair to
18 electric ratepayers and that Click should be sold, leased or closed. Gaines Dep. at 29-32.

19
20 In response to a city councilmember’s question whether there might be “different
21 accounting practices that will show Click! in the black,” Mr. Gaines explained in a May 6,
22 2015 memorandum to the city council and public utility board that

23 Tacoma Power ratepayers have been absorbing all the telecommunication
24 network related costs that are not recovered through telecommunication revenues,
25 so until revenues start exceeding costs there will continue to be subsidization by
Tacoma Power rate payers. Therefore, the adoption of different accounting

1 practices (i.e. cost allocation methodology) will not solve the overarching
2 subsidization issue.

3 Ex. 9 at 7.

4 In 2015 another telecommunications company in the cable TV and internet business
5 (Wave Broadband) offered to buy or lease Click's assets. In a series of presentations to the
6 public utility board and city council, the Director of Utilities and Tacoma Power's entire senior
7 executive team, together with another utility consulting firm named CCG Consulting,
8 recommended that Click's assets be leased to Wave, as a way to end or reduce the electric
9 utility's subsidies for Click. Gaines Dep at 34-35, 46; Fosbre Dep. at 28.

11 D. The All-In Plan

12 Despite the City Attorney's legal advice that electric revenues cannot lawfully be used
13 to pay for commercial telecommunications expenses that are not properly allocable to the
14 electric utility, and despite the virtually unanimous opinions of the utility management
15 professionals and consultants that the subsidies for Click were unfair to electric ratepayers and
16 should be ended, in December 2015 the public utility board and city council adopted resolutions
17 directing Tacoma Power to develop a business, financial and marketing plan (the "All-In Plan")
18 to provide customers with enhanced and upgraded telecommunications service, including new
19 retail gigabit internet service. Exs. 10, 4; Gaines Dep. at 37-38; Fosbre Dep. at 47-48, 55. The
20 new plan was developed over the next several months, and on September 28, 2016 the public
21 utility board voted 3-2 to adopt Amended Resolution No. U-10879, approving the All-In Plan
22 and directing TPU staff to implement it upon approval by the city council. Ex. 18, §§1 and 2.
23
24
25 Section 4 of the Resolution provided that Tacoma Power was to transfer a minimum of \$6

1 million per year, and if necessary up to an additional \$10 million per year, from electric
2 revenues to pay for Click's capital improvements and other expenses of implementing the new
3 All-In Plan.

4 According to a refined and more detailed version of the All-In Plan prepared by Click in
5 March 2017, in consultation with CCG Consulting, the cumulative subsidies from electric
6 revenues to cover Click's capital investments and operating losses from 2016 forward under the
7 All-In Plan were projected to amount to about \$19.5 million by 2017, from \$38.6 million to
8 \$39.5 million by 2020, and from \$58.7 to \$65.6 million by 2025. Ex. 11 at 23780. It is
9 unsurprising that Director of Utilities Bill Gaines testified that in his view "it was not in the
10 interest of Tacoma Power electric ratepayers to proceed with the All-In approach." Gaines Dep.
11 at 38. Moreover, as Tacoma Power Superintendent Chris Robinson testified at his deposition,
12 proceeding with the All-In Plan would be "inconsistent" with the legal advice set forth in the
13 City Attorney's July 16, 2015 memorandum, cited above. Robinson Dep. at 123-124.

14 Plaintiffs filed a pre-litigation administrative claim against the City on February 21,
15 2017 pursuant to RCW 4.96.020, challenging the legality of the electric utility's subsidies for
16 Click's commercial telecommunications business. Ex. 19. The filing of the administrative
17 claim suspended for sixty days the running of any statute of limitations applicable to plaintiffs'
18 claims. On April 21, 2017 the parties entered into a Tolling Agreement further tolling the
19 running of any limitations periods. Ex. 20. The complaint in this action was filed on June 22,
20 2017.

21 The further implementation of the All-In Plan has been suspended because of the filing
22
23
24
25

1 of this lawsuit. Gaines Dep. at 61. Thus, before proceeding with further implementation of the
2 All-In Plan, the City is apparently waiting for a ruling from the Court on whether it is legal to
3 use electric utility revenues to pay for capital improvements for, and to cover the ongoing and
4 increasing financial and operating losses of, Click’s commercial telecommunications business.
5 Mr. Fosbre testified at his deposition that it was “our hope” that this lawsuit would lead to a
6 declaratory judgment resolving the issue. Fosbre Dep. at 52-53.

8 IV. Argument and Authority

9 A. Plaintiffs Have Standing to Sue for the Requested Relief

10 As electric ratepayers, the plaintiffs have standing to sue to prevent electric utility
11 revenues from being wrongfully diverted for unlawful purposes, such as paying for Click’s
12 commercial telecommunications services that do not have a sufficiently close nexus to the
13 electric utility’s primary purpose of providing electricity to its customers.⁵ As a leading case in
14 Washington on ratepayer standing has explained:
15

16 Appellant, being a resident and taxpayer of the city of Centralia and a user of
17 electric current furnished by the city, is interested in the fund which had
18 accumulated from the operation of the power distribution system owned by the city
19 and has the right to wage an action to prevent any unlawful diversion of the
20 moneys in this fund, in the disposition of which, as a property owner, taxpayer and
21 user of power, he has some interest.

22 *Jones v. City of Centralia*, 157 Wash. 194, 203-204, 289 P. 3 (1930). Plaintiffs also have
23

24 ⁵ In the case of ICNU, it has associational standing to sue on behalf of its members who are electric ratepayers of
25 Tacoma Power. See, e.g., *Pugh v. Evergreen Hosp. Medical Center*, 177 Wn. App. 363, 365-366, 312 P.3d 665
(2013); *Int’l Ass’n of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 218, 34 P.3d 186 (2002);
Riverview Cmty. Grp. v. Spencer & Livingston, 181 Wn.2d 888, 894, 337 P.3d 1076 (2014), citing *Five Corners
Family Farmers v. State*, 173 Wn.2d 296, 304, 268 P.3d 892 (2011).

1 express statutory standing to sue under RCW 80.04.440 and RCW 7.24.020.

2 B. Using Electric Utility Revenues to Subsidize Click's Commercial Telecommunications
3 Service Is Unlawful.

4 The City Attorney's July 2015 memorandum to the mayor, city council and public
5 utility board (Ex. 1) sets forth adequate legal authority for granting the relief sought by this
6 motion for partial summary judgment. We ask the Court to review that memorandum
7 thoroughly and to consider it as part of the legal support for this motion. The Court should also
8 keep in mind that for purposes of this motion it is unnecessary to determine what kinds of
9 expenses are attributable or allocable to the electric utility ("power applications") or to Click's
10 commercial telecommunications expenses ("commercial applications"), or in what amounts or
11 proportions. Tacoma Power and the City's Finance Department have already made those
12 determinations, and for purposes of this motion the plaintiffs are not challenging the City's
13 allocation methods or financial accounting.
14

15
16 As pointed out in the City Attorney's memorandum, the people of the City of Tacoma
17 have resolved that a municipal utility's revenue may only be used for that utility's own
18 expenses. Tacoma City Charter, § 4.5:

19 The revenue of utilities owned and operated by the City shall never be used for
20 any purposes other than the necessary operating expenses thereof, including the
21 aforesaid gross earnings tax, interest on and redemption of the outstanding debt
22 thereof, the making of additions and betterments thereto and extensions thereof,
23 and the reduction of rates and 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.

24 That principle is well founded: it ensures that utility ratepayers are not exploited as a source of
25 general revenue for the City or for other, non-utility purposes. When utility revenue is used

1 only for necessary utility expenses, rates remain reasonably tied to actual costs, making
2 essential utility services like water and electricity accessible and affordable.

3 The public policy underlying the Charter provision is well-recognized in Washington
4 law. As the Washington Supreme Court explained a century ago, “The object of municipal
5 ownership [of utilities] is to give the citizen the best possible service at the lowest possible
6 price... [otherwise] there can be no virtue in public ownership.” *Uhler v. City of Olympia*, 81
7 Wash. 1, 14, 151 P. 117 (1915). The “lowest possible price” is one that covers the utility’s
8 necessary costs and nothing more. Thus, a municipal electric utility may not impose on
9 ratepayers the costs of activities that do not have a “sufficiently close nexus” to the utility’s
10 primary purpose of “supplying electricity to the municipal corporation and its inhabitants.”
11 *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 695-696, 743 P.2d 793 (1987); *see*
12 *Okeson v. City of Seattle*, 159 Wn.2d 436, 450, 150 P.3d 556 (2007) (“*Okeson III*”).⁶ In *Okeson*
13 *III* the Court held that Seattle City Light could not impose on ratepayers costs associated with
14 paying other parties for mitigating their greenhouse gas emissions, because “combating global
15 warming is a general government purpose, albeit a meritorious one, and not a proprietary utility
16 purpose.” *Id.* at 439. Since the emissions mitigation program did not have a sufficiently close
17 nexus to supplying electricity to utility customers, the Court held that “mitigation expenses
18 must be borne by general taxpayers rather than utility ratepayers.” *Id.*

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⁶ *Okeson* was multifaceted litigation with separate appellate decisions on different phases of the case. *Okeson I*, 150 Wn.2d 540 (2003), held that electric utility revenues could not be used to pay for public street lighting; *Okeson II*, 130 Wn. App. 814 (2005), held that electric utility revenues could not be used to pay for public art not directly related to the utility; and *Okeson III* held that electric utility revenues could not be used to pay other parties for mitigating their greenhouse gas emissions, as part of the city’s program to combat global warming.

1 As explained in the City Attorney’s July 2015 legal memorandum, City Charter §4.5
2 also echoes the public accounting principles set forth in RCW 43.09.210, sometimes referred to
3 as the state accountancy act or the local government accounting statute. That statute requires,
4 among other things, that

5
6 All service rendered by, or property transferred from, one department, public
7 improvement, undertaking, institution, or public service industry to another, shall
8 be paid for at its true and full value by the department, public improvement,
9 undertaking, institution, or public service industry receiving the same, and no
10 department, public improvement, undertaking, institution, or public service
11 industry shall benefit in any financial manner whatever by an appropriation or
12 fund made for the support of another.

13 The statute prohibits one governmental entity or “undertaking” from receiving services from
14 another for free or at a reduced cost absent a specific statutory exemption. *Okeson v. City of*
15 *Seattle*, 150 Wn.2d 540, 557 (2003) (“*Okeson I*”). Under that statute, Click’s cable television
16 and internet business cannot lawfully receive subsidies from the electric utility without
17 reimbursing the utility for those subsidies at “true and full value.”

18 The fact that Click’s telecommunications business is a separate “undertaking” from the
19 electric utility has been clear from its inception. The 1996 ordinance creating Click explicitly
20 established it as “a separate system” of the Light Division. Ex. 7, §2.1. The follow-up
21 ordinance in 1997 described the new, separate system’s internet transport and cable TV services
22 as “new business lines,” *i.e.*, as different business lines from the electric utility’s traditional
23 business of supplying electricity to customers. Ex. 8 at 20290. As the City Attorney’s July
24 2015 legal memorandum points out, the legal authority for the City’s operation of the Click
25 telecommunications business is entirely different from its authority for operating the electric

1 utility. Ex. 1 at 1 & 3-5. Even the state and city taxes and tax rates payable by the electric
2 utility are separate and apart from the taxes payable by the telecommunications business. *See*
3 Ex. 21 at 27.⁷ The fact that the City chose, for whatever reasons of administrative convenience,
4 to organize the Click commercial telecommunications business as part of Tacoma Power, has
5 no more legal significance than the city’s decision to organize both the electric utility and the
6 city’s rail business as part of the Department of Utilities (TPU).

8 For the reasons set forth in the City Attorney’s July 2015 legal opinion, state law and
9 the city charter prohibit the City’s electric utility from subsidizing the City’s commercial
10 telecommunications business, and “telecommunication system costs associated with providing
11 both electricity to utility customers and commercial telecommunications services to the public
12 must be allocated and then paid separately by the two enterprises.” Ex. 1 at 7. Tacoma Power
13 and the City’s Finance Department have been making those allocations, but the City has been
14 wrongfully, unfairly and illegally allowing the burden of Click’s financial losses to be imposed
15 on electric ratepayers, whether they are Click customers or not.

17 Rejecting the recommendation of utility professionals, and in stubborn defiance of good
18 legal advice from the City Attorney, the public utility board (by the slimmest possible vote
19 margin) and the city council began implementing the so-called “All-In Plan,” which would
20 make the situation worse by greatly increasing the amounts of illegal subsidies for the
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23
24 ⁷ See RCW 82.04.250, .257 & .290 (state B&O tax on cable TV service); RCW 82.04.270 (state B&O tax on
25 wholesale internet service); RCW 82.16.010(4), 82.16.020(1)(b), 82.02.030, WAC 458-20-119 (state public utility
tax on electric business); Tacoma Municipal Code 6A.100.010 (7.5% city earnings tax on electric revenues and 8%
on cable TV revenues), 6A.40.050 (city tax on cable service), 6A.30.050 (city B&O tax on cable TV service and
wholesale internet service), 16A.03.050 (city franchise fee on cable TV service).

1 foreseeable future. Although further implementation of the All-In Plan has apparently been
2 suspended as a result of the filing of this lawsuit, the electric utility continues to pay for Click's
3 ongoing commercial telecommunications losses. The Court should put an end to these unlawful
4 subsidies by confirming the City Attorney's July 2015 legal advice, and should declare
5 judicially that electric utility revenues cannot be used to pay for expenses attributable or
6 properly allocable to Click's commercial telecommunications business.

8 C. There Are Also Good Policy Reasons for Granting the Requested Declaratory Relief.

9 The law, the equities and good policy align in this case. Electricity is a fundamental
10 human need in the modern world. People need electricity to warm their homes and prepare
11 food to feed their families. It is unfair and bad policy to force electric ratepayers to bear
12 extraneous costs that do not have a "sufficiently close nexus" to the provision of electric service
13 -- especially in a city like Tacoma, where there are many people living in poverty or just barely
14 scraping by. The misappropriation of electric utility revenue results in higher rates for electric
15 service for all ratepayers, whether Click customers or not. This defeats "[t]he object of
16 municipal ownership [of utilities] [which] is to give the citizen the best possible service at the
17 lowest possible price...[otherwise] there can be no virtue in public ownership." *Uhler v. City of*
18 *Olympia, supra*, 81 Wash. at 14.

21 Even if publicly owned cable TV and internet service is a good idea that should be
22 subsidized by the government, electric utility revenue is not a legal or appropriate source for the
23 subsidy. If the City considers Click to be an important service for Tacoma residents, the City
24 can subsidize Click by using the City's general fund or other revenue sources. As the
25

1 Washington Supreme Court stated so succinctly in *Lane v. City of Seattle*, 164 Wn.2d 875, 884,
2 194 P.3d 977 (2008) (holding that municipal water utility revenues cannot lawfully be used to
3 pay for fire hydrants, since fire protection is a general governmental purpose not a proprietary
4 utility purpose), “The question is not whether there will be...hydrants, but who must pay for
5 them.” Here, the issue presented is not whether there should be municipal ownership of a
6 telecommunications business, but who should pay for it. The answer may be that the customers
7 of that business or perhaps the City’s general fund should pay for it, but it is unfair, illegal and
8 bad policy to impose those costs on electric utility ratepayers.
9

10 **V. CONCLUSION**

11 For the foregoing reasons, the Court should grant plaintiffs’ motion for partial summary
12 judgment declaring that electric utility revenues and funds may not be used to pay for Click
13 expenses or capital improvements that are attributable or properly allocable to commercial
14 telecommunications service rather than electric utility service.
15

16 Respectfully submitted this 28TH day of December, 2017.
17

18 HELSELL FETTERMAN LLP

19 By David F. Jurca
20 David F. Jurca, WSBA No. 2015
21 Andrew J. Kinstler, WSBA No. 12703
22 Emma Kazaryan, WSBA No. 49885
23 Attorneys for Plaintiffs
24
25

December 28 2017 2:40 PM

KEVIN STOCK
COUNTY CLERK
HONORABLE SUSAN BERRY
NO. 17-2-08907-4

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4

DECLARATION OF TYLER PEPPE
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT GRANTING
DECLARATORY RELIEF

Tyler Pepple declares as follows:

1. I am an attorney for Industrial Customers of Northwest Utilities ("ICNU"). I have personal knowledge of the matters set forth below.
2. ICNU is a plaintiff in this action, and I am authorized to submit this declaration on its behalf.
3. ICNU is an incorporated, non-profit association of large industrial customers of electric utilities in the Pacific Northwest. A list of ICNU members is attached hereto as Exhibit A. A number of members of ICNU are electric ratepayers of Tacoma Power.

DECLARATION OF TYLER PEPPE IN SUPPORT OF
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
GRANTING DECLARATORY RELIEF - 1

Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

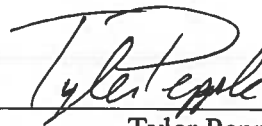
1 4. ICNU is the leading advocate for Northwest industry on issues related to the use
2 and affordability of electric energy. ICNU supports sustainable and strong economic growth
3 within the region. ICNU accomplishes its mission by representing members' interests before
4 regulatory agencies and policymakers at the utility, state, regional, and federal levels. ICNU's
5 actions are based on the fundamental belief that a healthy, growing industrial base promotes a
6 rich and vibrant Northwest economy.
7

8 5. Members of ICNU that are Tacoma Power electric ratepayers have an interest in
9 preventing unlawful diversions of Tacoma Power electric revenues for purposes that do not
10 have a sufficiently close nexus to the electric utility's primary purpose of supplying electricity
11 to its customers. Even members of ICNU that are not customers of the Tacoma Power electric
12 utility have an interest in preserving and enforcing general legal principles prohibiting unlawful
13 diversions of electric utility revenues.
14

15 6. Under well established principles of associational standing, ICNU is authorized
16 to serve as a plaintiff in this action to protect its members' interests as described above.
17

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

20 Signed and dated this 19th day of December, 2017, at Portland, Oregon.

21
22 

23 Tyler Pepple
24
25

EXHIBIT A

ICNU Members

Airgas USA, LLC
Air Liquide
Air Products
AzkoNobel
Alcoa
Amcors Rigid Plastics
Axiall, LLC
Boeing
Boise Cascade, Inc.
Columbia Steel
Darigold
Dyno Nobel, Inc
Emerald Performance Materials
Evraz, Inc
Freres Lumber
Georgia-Pacific
Inland Empire Paper Co.
Intel Corp.
International Paper
JR Simplot
Kapstone Kraft Paper
Lamb Weston
Legacy Health
Linde, Inc
Microsoft Corporation
Nippon Dynawave Packaging Co.
NORPAC Foods
North Pacific Paper Company
Northwest Hardwoods
Packaging Corp. of America
Ponderay Newsprint
Precision Castparts
REC Solar Grade Silicon
Schnitzer Steel Industries
Shell Oil Products US
Solvay Chemicals
Tesoro Refining & Marketing Co.
Timber Products
Wah Chang
West Linn Paper Co.
WestRock
Weyerhaeuser NR Co.

December 28 2017 2:40 PM

KEVIN STOCK
COUNTY CLERK

Honorable Susan K. Serkis **NO: 17-2-08907-4**

Hearing Date: February 23, 2018

Hearing Time: 9:00 a.m.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4

DECLARATION OF DAVID F. JURCA
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT GRANTING
DECLARATORY RELIEF

David F. Jurca declares as follows:

I am an attorney for the plaintiffs in this action. I have personal knowledge of the matters set forth below.

1. Attached hereto as Exhibit 1 is a copy of a memorandum dated July 16, 2015 from then-City Attorney Elizabeth Pauli (now City Manager) and then-Chief Deputy City Attorney William Fosbre (now City Attorney) to the City of Tacoma's mayor, city council, and public utility board. It was marked as deposition exhibit 7 and was identified in deposition testimony of Tacoma Power Superintendent Chris Robinson at 119-120, in deposition

DECLARATION OF DAVID F. JURCA
IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT GRANTING DECLARATORY RELIEF - 1

Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

1 testimony of Director of Utilities William Gaines at 39-40, and in deposition testimony of City
2 Attorney William Fosbre at 37. Pertinent excerpts from the transcripts of all depositions
3 referenced in this declaration are attached hereto as Exhibits 22-28.

4
5 2. Attached hereto as Exhibit 2 is a copy of an excerpt regarding the Click!
6 Network (“Click”) from a management review report dated November 7, 2014 prepared by
7 Sage Management Consultants, LLC, pursuant to a requirement in Tacoma’s City Charter for
8 periodic management reviews of the City’s utilities. It was marked as deposition exhibit 44 and
9 was identified in the Robinson Dep. at 64-65, 88-89, the Gaines Dep. at 28-32, and the Fosbre
10 Dep. at 15-16.

11
12 3. Attached hereto as Exhibit 3 is a copy of Click General Manager Tenzin
13 Gyaltzen’s January 31, 2017 written response to a city council member’s questions. It was
14 marked as deposition exhibit 41 and was identified in the Gyaltzen Dep. at 136.

15
16 4. Attached hereto as Exhibit 4 is a copy of Resolution No. 39347 adopted by the
17 Tacoma City Council on December 15, 2015. It was marked as deposition exhibit 64 and was
18 identified in the Fosbre Dep. at 55.

19
20 5. Attached hereto as Exhibit 5 is a copy of pertinent excerpts from an Official
21 Statement for an issuance in 2017 of City of Tacoma Electric System Revenue Bonds. The
22 Official Statement was marked as deposition exhibit 51 and was identified in the Robinson Dep.
23 at 170-171.

24
25 6. Attached hereto as Exhibit 6 is a copy of pertinent excerpts (§§3.5, 3.6, and 4.1 –
4.23) of the Tacoma City Charter, as downloaded from the City’s website.

1 7. Attached hereto as Exhibit 7 is a copy of Ordinance No. 25930 adopted by the
2 Tacoma City Council on July 23, 1996. It was marked as deposition exhibit 2 and was
3 identified in deposition testimony of former Tacoma Power Superintendent Steven Klein at 42-
4 43.

5
6 8. Attached hereto as Exhibit 8 is a copy of Substitute Resolution No. 33668
7 adopted by the Tacoma City Council on April 8, 1997, as produced by the City in response to a
8 public records request by plaintiffs' counsel.

9 9. Attached hereto as Exhibit 9 is a copy of a memorandum dated May 6, 2015
10 from Director of Utilities William Gaines to the City's mayor and city council. It was marked
11 as deposition exhibit 20 and was identified in the Gaines Dep. at 34.

12
13 10. Attached hereto as Exhibit 10 is a copy of Amended Resolution U-10828
14 adopted by the City's public utility board on December 3, 2015. It was marked as deposition
15 exhibit 62 and was identified in the Fosbre Dep. at 47-48.

16 11. Attached hereto as Exhibit 11 is a copy of pertinent excerpts from the Click
17 Network Business Plan as revised March 20, 2017. The Plan was marked as deposition exhibit
18 43 and was identified in the Gyaltzen Dep. at 139-140.

19
20 12. Attached hereto as Exhibit 12 is a copy of the April 24, 2000 Click! Network
21 Financial Performance Review prepared by PriceWaterhouseCoopers. It was marked as
22 deposition exhibit 3 and was identified in the Klein Dep. at 53-54.

23 13. Attached hereto as Exhibit 13 is a copy of a March 18, 2013 summary of Click's
24 asset and expense allocations prepared by Tacoma Power's Rates, Planning & Analysis section.
25

1 It was marked as deposition exhibit 10 and was identified in the Gyaltsen Dep. at 32-33.

2 14. Attached hereto as Exhibit 14 is a copy of the July 23, 2003 Review of Cost
3 Allocations for Click! Network prepared by Virchow Krause & Company. It was marked as
4 deposition exhibit 5 and was identified in the Klein Dep. at 75-76.

5 15. Attached hereto as Exhibit 15 is a copy of pertinent excerpts from a PowerPoint
6 slide presentation given on May 20, 2015 to the Tacoma City Council by various executives of
7 Tacoma Power and the Moss Adams, LLC accounting firm. It was marked as deposition
8 exhibit 6A and was identified in the Gyaltsen Dep. at 100-103 and the Robinson Dep. at 102-
9 103.
10

11 16. Attached hereto as Exhibit 16 are copies of certain monthly financial reports,
12 including year-to-date information, regarding Click's commercial telecommunications
13 operations. These reports were included in a compilation of such reports that was marked as
14 deposition exhibit 13 and was identified in the Gyaltsen Dep. at 40-42, in deposition testimony
15 of City of Tacoma Finance Director Andrew Cherullo at 39-43, and in deposition testimony of
16 Tacoma Power's Rates, Planning & Analysis section manager William Berry at 37-40.
17

18 17. Attached hereto as Exhibit 17 is a copy of written responses, prepared by Click
19 General Manager Tenzin Gyaltsen and the Rates, Planning & Analysis section of Tacoma
20 Power, to certain questions asked by city council members at a March 31, 2015 joint study
21 session of the city council and public utility board, with handwritten notes by Tacoma Power
22 Superintendent Chris Robinson. It was marked as deposition exhibit 16 and was identified in
23 the Gyaltsen Dep. at 60-62 and the Robinson Dep. at 50-51.
24
25

1 18. Attached hereto as Exhibit 18 is a copy of Amended Resolution No. U-10879
2 adopted by the City's public utility board on September 28, 2016. It was marked as deposition
3 exhibit 33 and was identified in the Fosbre Dep. at 80-81.

4 19. Attached hereto as Exhibit 19 is a copy of plaintiffs' February 21, 2017 pre-
5 litigation administrative "Claim for Damages" filed with the City of Tacoma, omitting
6 numerous pages of supporting documents that were attached to the claim.

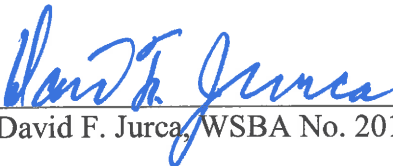
7 20. Attached hereto as Exhibit 20 is a copy of the April 21, 2017 tolling agreement
8 entered into by the parties to this case.

9 21. Attached hereto as Exhibit 21 are copies of pertinent excerpts from Tacoma
10 Power's 2016 Annual Financial Report. The Financial Report was marked as deposition exhibit
11 50 and was identified in the Robinson Dep. at 169-170.

12 22. Attached hereto as Exhibits 22 through 28 are excerpts from the transcripts of
13 deposition testimony (including witnesses' correction sheets received to date) given in this
14 action by William Berry (Exhibit 22), Andrew Cherullo (Exhibit 23), William Fosbre (Exhibit
15 24), William Gaines (Exhibit 25), Tenzin Gyaltzen (Exhibit 26), Steven Klein (Exhibit 27), and
16 Chris Robinson (Exhibit 28), respectively.

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

19 Signed at Seattle, Washington this 28TH day of December, 2017.

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David F. Jurca, WSBA No. 2015

EXHIBIT 1



TO: Mayor Strickland and City Council Members
Public Utility Board

FROM: Elizabeth A. Pauli, City Attorney *EAP*
William C. Fosbre, Chief Deputy City Attorney *William Fosbre*

SUBJECT: The City and TPU's Authority and Obligations Related to Providing Commercial Telecommunications Services to the Public

DATE: July 16, 2015

QUESTION

What are the City and TPU's authority and obligations related to providing commercial telecommunication services (cable television and broadband internet) to the public?

BACKGROUND AND ANALYSIS

Washington State law grants cities the authority to own and operate various utilities. See RCW 35.92.010, waterworks; RCW 35.92.020, sewerage and solid waste; RCW 35.92.030, asphalt plants; RCW 35.92.040, cold storage plants; RCW 35.92.050, gas and electricity plants; and RCW 35.92.060, transportation systems.

The citizens of Tacoma, through City Charter Section 4.1, have vested authority in the City to own and operate state-authorized utilities within or outside its corporate limits.

Section 4.1 – The City shall possess all the powers granted to cities by state law to construct, condemn and purchase, purchase, acquire, add to, maintain, and operate, either within or outside its corporate limits, including, but not by way of limitation, public utilities for supplying water, light, heat, power, transportation, and sewage and refuse collection, treatment, and disposal services or any of them, to the municipality and the inhabitants thereof; and also to sell and deliver any of the utility services above mentioned outside its corporate limits, to the extent permitted by state law.

Additionally, the citizens of Tacoma, through City Charter Section 4.5, have mandated that all revenue of City-owned and operated utilities be used only for the necessary operating expenses of the utilities. Utility revenue shall never be used to make loans to any other utility, department, or agency of the City.

Section 4.5 – The revenue of utilities owned and operated by the City shall never be used for any purposes other than the necessary operating expenses thereof, including the aforesaid gross earnings tax, interest on

EXHIBIT 7
30626/2/17
 DATE: 9-26-17
 Mindi L. Pettit, RPR, CCR #2519

and redemption of the outstanding debt thereof, the making of additions and betterments thereto and extensions thereof, and the reduction of rates and 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.

City Charter Section 4.5 is consistent with both the Washington state statute that governs local government accounting and case law interpreting the appropriate use of utility revenues. See RCW 43.09.210 and Okeson v. City of Seattle, 150 Wn.2d 540 (2003).

RCW 43.09.210 Local government accounting — Separate accounts for each fund or activity — Exemption for agency surplus personal property.

Separate accounts shall be kept for every appropriation or fund of a taxing or legislative body showing date and manner of each payment made therefrom, the name, address, and vocation of each person, organization, corporation, or association to whom paid, and for what purpose paid.

Separate accounts shall be kept for each department, public improvement, undertaking, institution, and public service industry under the jurisdiction of every taxing body.

All service rendered by, or property transferred from, one department, public improvement, undertaking, institution, or public service industry to another, shall be paid 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.

All unexpended balances of appropriations shall be transferred to the fund from which appropriated, whenever the account with an appropriation is closed.

This section does not apply to agency surplus personal property handled under RCW 43.19.1919(5).

The local government accounting statute prohibits one governmental entity from receiving services from another governmental entity for free or at reduced cost absent a specific statutory exemption. Okeson v. City of Seattle at 557. In applying this law the State Supreme Court held in Okeson that the City's electric utility could not maintain the

City's general government street lights without being paid for the value of the service. Okeson v. City of Seattle at 558. Street lighting costs must be accounted for separately and paid from non-utility revenues. Id.

Among all of the listed utilities authorized under state law (see Chapter 35.92 RCW, supra), the citizens, through City Charter Section 4.10, granted the Public Utility Board authority over only the electric, water, and belt line railway utility systems. Without an express delegation of authority from the City Council to the Public Utility Board, the Public Utility Board cannot exercise authority over any other municipal services or functions of the City.

Section 4.10 – The Public Utility Board, subject only to the limitations imposed by this charter and the laws of this state, shall have full power to construct, condemn and purchase, acquire, add to, maintain, and operate the electric, water, and belt line railway utility systems.

The City Charter does not prohibit the City Council from delegating additional authority to the Public Utility Board.

State law (specifically Chapter 35.92 RCW) does not grant cities authority to provide commercial telecommunication services (cable television and broadband internet) to the public.¹ Furthermore, no other state statute specifically authorizes cities to provide such services. Instead, the Washington appellate courts have ruled that a city's authority to provide commercial telecommunication services rests in a city's broad authority to self-govern in areas of local concern. When a city provides commercial telecommunication services to the public, it is not acting as a public utility. See City of Issaquah v. Teleprompter Corp, 93 Wn.2d 567, 570 (1980), and Rohrback v. City of Edmonds, 162 Wn. App. 513 (2011).²

¹ As noted above, the City is expressly authorized by state statute to own, operate, and compete against private water and power utilities. Because City-provided cable and Internet services are not expressly authorized by state law, there are no Washington court decisions exploring the limits of this authority.

² In 2000, the State Legislature expressly granted Public Utility Districts and Port Authorities the power to own and operate telecommunications systems, but limited this authority to only providing "wholesale" internet services. State law requires these governmental entities to "separately account of any revenues and expenditures for those services.... Any revenues received ...must be dedicated to costs incurred to build and maintain any telecommunication facilities constructed, installed or acquired to provide such services, including payments on debt issued to finance such services.... When a public utility district provides wholesale telecommunications services, all telecommunication services rendered to the district for the district's internal telecommunications needs shall be allocated or charged at its true and full value. A public utility district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale telecommunications services." RCW 54.16.330

A recent order of the United States Federal Communications Commission does not change the fact that telecommunication services are not considered a municipal/public utility under Washington State law. See FCC GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling and Order Adopted February 26, 2015. The Federal Communications Act does not use the term "utility." The term "utility" is a state-level classification. As an alternative to this term, the Communications Act classifies services principally into "information services" and "telecommunications services." The February 26, 2015, FCC order reclassified broadband internet services from an "information service" (lightly regulated) to a "telecommunications service," also known as a "Title II" service – in reference to Title II of the Communications Act. Title II has what the FCC likes to call "utility-style" provisions (rate setting, for example). The reclassification was driven by a desire on the part of the FCC to issue net neutrality rules that would survive legal challenge, but not from a desire to regulate all aspects of broadband service. Consequently, the FCC has also taken steps under its authority to forbear the application of Title II requirements to broadband. The result is many, many of the rules that would otherwise apply to a Title II service do not apply to broadband per the FCC order. As the FCC states in its order: "Unlike the application of Title II to incumbent wireline companies in the 20th Century, a swath of utility-style provisions (including tariffing) will not be applied." See page 12. The FCC also says: "[W]e are not regulating broadband Internet access service as a utility or telephone company." See FN 1274. The FCC order does not alter prior court decisions from the Washington State Supreme Court and Court of Appeals that ruled telecommunication services provide by a city are not public utilities.

The Public Utility Board's authority is limited to approving only those activities that bear a sufficiently close nexus to the purpose of providing electric, water, or rail services to its customers. See City of Tacoma v. Taxpayers of Tacoma, 108 Wn.2d 679 (1987).

In this legal vein, the Public Utility Board has authority to approve the construction of a telecommunication system for use by the City's electric, water, and rail utilities if it will enhance utility services provided to the City's utility customers. The Public Utility Board also has authority to sell (on a temporary or permanent basis) excess or surplus system capacity not currently needed for effective delivery of utility services. See RCW 35.94.010 and 35.94.040

RCW 35.94.010 Authority to sell or let.

A city may lease for any term of years or sell and convey any public utility works, plant, or system owned by it or any part thereof, together with all or any equipment and appurtenances thereof.

RCW 35.94.040 Lease or sale of land or property originally acquired for public utility purposes.

Whenever a city shall determine, by resolution of its legislative authority, that any lands, property, or equipment originally acquired for public utility

purposes is surplus to the city's needs and is not required for providing continued public utility service...may cause such lands, property, or equipment to be leased, sold, or conveyed....

The Public Utility Board is also bestowed with authority under state law to make all contracts and "to engage in any undertaking necessary to make [the City's] municipal electrical system efficient and beneficial to the public." Okeson II v. City of Seattle, 130 Wn. App. 814, 821 (2005). As mentioned above, this authority is limited. The Public Utility Board may not act beyond the purposes of the statutory grant of power under both City Charter Section 4.10 and Washington State law related to providing the utility services as listed in Chapter 35.92 RCW, and specifically RCW 35.92.050 (providing electricity). A utility activity is within the purposes of RCW 35.92.050 (and City Charter Section 4.10) only if it bears "a sufficiently close nexus to the purpose and object the Legislature intended to serve in granting the power to operate an electric utility," which is the supply of electricity to the municipality and its inhabitants. Id. at 822 (quoting Tacoma v. Taxpayers, 108 Wn.2d at 696).

Although the Public Utility Board can authorize Tacoma Power to construct and operate a telecommunications system for utility purposes, and arguably, sell surplus capacity, RCW 35.92.050 and City Charter Section 4.10 do not necessarily grant the Public Utility Board the authority to provide commercial telecommunication services to the public because such services are not sufficiently related to the production or delivery of electric services.

In 1997, the City Council officially delegated authority to the Public Utility Board to own and operate a telecommunication system for the purposes of providing commercial services (cable television and wholesale broadband internet) to the public. See Substitute Resolution No. 33668. Pursuant to that resolution, the City Council expressly authorized the Public Utility Board to approve "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 construction contracts, rate setting policies, debt financings, the public rights-of-way use for telecommunications and quarterly reviews."

The Public Utility Board provides commercial telecommunications services based on this delegated authority from the Tacoma City Council, not based on its authority to govern the operations of the City's electric utility under City Charter Section 4.10.

City electric utility revenues may be used to maintain the telecommunication system while it is being used to provide electric utility services to electric customers.

City electric utility revenues may not be used to pay for the costs directly associated (such cable programming, set top boxes, marketing, etc.) with providing commercial telecommunications services (cable television and wholesale broadband internet) to the

public. These costs are not sufficiently related to providing electricity to utility customers, thus must be paid for from non-utility revenues. Non-utility revenues can include rates or charges to the telecommunication services customers or general government tax dollars. General government tax dollars can be used to offset the costs of providing municipal services (think theater district, Tacoma Dome, etc.).

Costs incurred to maintain the portions of the telecommunication system used to serve both electric utility customers and commercial telecommunication services to the public must be distributed based on an allocation methodology.

The allocation of costs incurred for services provided between two city departments or enterprises is governed by RCW 43.07.210. The City Council and the Public Utility Board have discretion in determining what methodology it will use to allocate costs. See Cedar River Water and Sewer District v. King County, 178 Wn.2d 793 (2013). The methodology need only be reasonable and does not need to be the best or most accurate formula, especially if a formula is inefficient, costly, or burdensome, as compared to any increase in accuracy. Pro rata share, percentage of budget, FTE counts, number of computers, or similar types of formulas appear to be sufficient under the court's reasoning to allocate costs. As long as the methodology is followed throughout the budget year, there is no legal requirement to true-up to actual expenditures or provide refunds if a given fund budget runs a surplus. Id. A court will look at the size of any allocation error in relationship to the total costs allocated and the amount of the operating budgets to determine if a repayment is required. In the Cedar River case, the court did not find a potential \$200,000 error to be material, given the size of the allocated costs (\$19 million) and operating budgets at issue (in excess of \$1 billion), so no repayment was necessary.

Assuming that specific telecommunication equipment or facilities can be differentiated between electric utility uses and commercial telecommunication uses, then costs should be allocated accordingly. In the future, if a specific portion of the telecommunication system is no longer used to provide electric service but still needed for commercial telecommunication uses, then the future costs to maintain that specific portion should be borne solely by commercial telecommunication users or through tax dollars, but not utility revenues.

SUMMARY

The City's legal authority to own and operate a telecommunication system to serve electric utility customers is very different from its authority to use the system to provide cable television and broadband internet services to the public. The former authority stems from state laws and court decisions governing what functions bear a sufficiently close nexus to the primary purpose of providing electricity. The Public Utility Board has unquestioned authority to construct and operate a telecommunication system for the benefit of serving its electric customers. The latter authority - to provide commercial

Mayor Strickland
City Council Members
Public Utility Board

- 7 -

July 16, 2015

telecommunication services to the public – exists separate and apart from the City's electric utility functions. This latter function has been formally delegated to the Public Utility Board to operate and administer. Administration of this function requires separate accounting of costs and revenues associated with the commercial telecommunication services provided to the public, as state law and the City Charter prohibit the use of electric utility ratepayer revenues to pay for costs solely associated with providing these commercial telecommunication services. Telecommunication system costs associated with providing both electricity to utility customers and commercial telecommunications services to the public must be allocated and then paid separately by the two enterprises. Whenever the electric utility no longer needs a specific portion of the telecommunication system, which the commercial side is still using, then the maintenance costs associated with this specific portion of the system can no longer be paid with electric utility revenues.

I trust this analysis is of assistance, and please let us know if you have any questions.

cc: TC Broadnax, City Manager
William A. Gaines, Director of Utilities
Chris Robinson, Tacoma Power Superintendent

EXHIBIT 2

SAGE MANAGEMENT CONSULTANTS, LLC

**CITY OF TACOMA
TACOMA PUBLIC UTILITIES
2013 MANAGEMENT REVIEW**

FINAL REPORT



November 7, 2014

SAGE MANAGEMENT CONSULTANTS, LLC



TAC_PRA_HF_0009093

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!.

EXHIBIT 3

Response to questions from Council Member McCarthy

Prepared by: Tenzin Gyaltzen, Manager Click! Network

January 31, 2017

1) What will rate increase revenues be used to pay for? In what amounts?

The 2017-2018 Click! Budget includes two rate increases. The 2017 Cable TV rate increase anticipated to begin March 1, 2017 is expected to generate approximately \$4.7 million in revenue (\$2 million will be generated in 2017 and the balance of \$2.7 million in 2018), and the 2018 Cable TV rate increase anticipated to begin March 1, 2018 is expected to generate approximately \$3 million (all in 2018). In total, the 2017 and 2018 Cable TV rate increases are expected to generate approximately \$7.7 million.

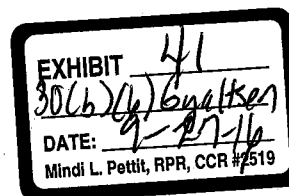
As shown in the table below, Biennium-to-Biennium, O&M and Capital expenditure are expected to increase by approximately \$25.5 million (\$10.4 million in O&M and \$15.1 million in Capital). The \$7.7 million in additional revenues from the two rate increases planned for 2017 and 2018 are expected to partially cover these increases in O&M and Capital expenditures. As shown in the last column of the table, titled "Application of Rate Increase", approximately \$3.7 million of the additional revenue will be used to fully cover increases in programming costs and taxes, and the remaining \$4 million will be used to cover increases in wages and benefits, City and TPU Assessments, Other O&M and Capital expenditures.

Click! Network Increases in Expenditures	2015-2016 Projected	2017-2018 Budget	B-T-B Increase	Application of Rate Increase
External Contracts (Programming)	\$24,685,935	\$28,060,579	\$3,374,644	\$3,374,644
Taxes	3,232,731	3,531,222	298,491	298,491
Wages and Benefits	17,657,739	18,944,468	1,286,729	900,710
City and TPU Assessments	2,401,586	2,922,626	521,040	364,728
Other O&M	9,595,318	14,503,145	4,907,827	677,508
Total O&M	\$57,573,309	\$67,962,040	\$10,388,731	\$5,616,081
Capital	\$5,224,000	\$20,319,778	\$15,095,778	\$2,083,919
Total O&M and Capital	\$62,797,309	\$88,281,818	\$25,484,509	\$7,700,000

2) How will rate increase affect customer prices? How will our customer prices compare with competitors? Do we have documentation to support our contentions regarding market prices?

The rate increase will raise the prices our customers pay for Cable TV services, including Broadcast Service, Standard Service and charges for set-top boxes. It will also commensurately raise all Cable TV bulk rates for motels and hotels, apartment complexes and condominiums.

For inside Tacoma, the monthly rates for Broadcast and Standard services will increase by \$1.70 and \$7.00, respectively. For outside Tacoma, the monthly rates for Broadcast and Standard services will increase by \$1.80 and \$7.37, respectively. The maximum monthly charge for set-top boxes will also increase from \$19 to \$19.99. These increases will raise Cable TV service rates on average by 12.9%.



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Click!'s current Broadcast and Standard Service rates are \$5.77 and \$15.00 (or 32% and 28%), respectively, under Comcast's rates. Click!'s proposed rates, effective March 1, 2017, for Broadcast and Standard Services are expected to be \$4.07 and \$8.00 (or 20% and 13%), respectively, under Comcast's rates. As noted, both rates are currently under market and are expected to remain under market.

The documents to support the market rate differential and Comcast's bundle and web offers were provided on January 26, 2017, as part of staff's response to the data request from the Government Performance and Finance Committee.

3) How will rate increase affect all TPU customers? Will non-click customers pay for rate increase? If so how much? Is there a differential between click/non-click customers?

An estimated \$14.7 million in Click!'s net operating loss for the 2017-2018 Biennium is covered by electric rate revenues. As such, the \$14.7 million is already factored into the proposed Tacoma Power electric rates.

If the proposed Click! Cable TV rate increase is passed, then no additional financial support by electric rate revenues will be required. However, if the proposed Click! Cable TV rate increase is not passed, then any resulting deficiency in Click! revenues arising from such action will increase Click!'s net operating loss and require additional financial support from Tacoma Power electric rate revenues.

In such an event, Tacoma Power's electric customers, whether a Click! customer or a non-Click! customer, would ultimately pay for the increase in Click!'s net operating loss through higher electric rates.

Also, there will not be a differential between Click and non-Click! customers, as all Tacoma Power electric customers within the various rate classes would be treated on a non-discriminatory manner.

EXHIBIT 4

**RESOLUTION NO. 39347**

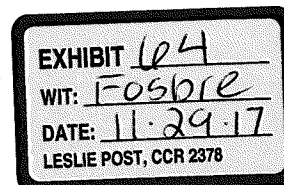
1 A RESOLUTION relating to Click! Network; authorizing Tacoma Power to prepare
2 a business plan to provide, in addition to retail cable television, retail internet
3 services including voice over data internet protocol ("VoIP"), commercial
broadband and Gigabit service ("Retail Services").

4 WHEREAS, in 1997, the City of Tacoma, through its electrical utility,
5 embarked on an effort to construct and operate a state-of-the-art
6 telecommunication system for the benefit of its electric utility and its electric utility
7 customers, and

8
9 WHEREAS the telecommunications system was constructed and has
10 been in continuous operation since 1999, and has proven to provide benefits for
11 the City electric utility and electric utility customers located both inside and
12 outside City limits, and

13
14 WHEREAS the telecommunication system is now a vital component of the
15 City's electric utility and continued operation and maintenance of the system is
16 an essential function of the electric utility, and

17 WHEREAS some of the benefits the City's electric utility and electric utility
18 customers have received from the system include (1) enhanced control, reliability
19 and efficiency of the City's electrical system; (2) increased capability to meet the
20 expanding telecommunication requirements in an evolving competitive electric
21 market, including the ability to make real-time, two-way interactive
22 communications with individual energy consumers; (3) improved traditional
23 electric products provided to consumers; (3) diversified revenue streams through
24
25
26





new business lines (i.e., internet transport, cable TV, etc.); and (5) maximized
1 return on the City's electric system assets, and

2 WHEREAS telecommunication technology is constantly evolving and
3
4 improving, including recent developments in the areas of voice over data internet
5 protocol, over-the-top video, and Gigabit-type service, and

6 WHEREAS the City's electric utility telecommunication system needs to
7
8 be updated and modernized to keep up with current technology, and

9 WHEREAS some benefits of updating and modernizing the City's electric
10 utility telecommunication system include allowing the utility to continue to
11 efficiently and effectively meet the demands of new federal regulations relating to
12 reliability of the electrical system, combating threats from possible cyberterrorism
13 acts, participating in energy transactions and trades to balance the energy
14 markets in less than 15-minute increments, enhancing communication between
15 electric utility assets and electric utility consumers, and providing electric utility
16 customers a means to instantly access electric utility accounts information for
17 payment of bills, report outages, and obtain energy usage and conservation
18 information, and
19

20 WHEREAS the expenditure of City electric utility revenues to update and
21
22 modernize the electric utility telecommunication system is a necessary operating
23 expense of the utility, and

24 WHEREAS the updating and modernization of the telecommunication
25 system will have ancillary benefits to the City's electric utility customers by
26 allowing them to access advanced telecommunication products such as voice



1 over data internet protocol, retail and commercial broadband, digital cable
2 television and video on-demand products, Gigabit service, Smart Cities
3 technology, and related and enhanced services offered as new technologies
4 become available ("ancillary benefits"), and

5 WHEREAS the efficient and orderly development and distribution of these
6 ancillary benefits to electric utility customers through the electric utility
7 telecommunication system must come through careful and deliberate planning,
8 and

9 WHEREAS the Public Utility Board passed Amended Resolution
10 No. U-10828, recommending the development of a business plan to the City
11 Council, and

12 WHEREAS City Council has determined that development and evaluation
13 of a draft business plan is in the best interests of the electric utility customers and
14 the City; Now, Therefore,

15
16
17 **BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:**

18 Section 1. That Tacoma Power shall develop a business, financial and
19 marketing plan (the "Business Plan") to provide customers with comprehensive,
20 accessible, competitive retail cable television and internet services including
21 voice over data internet protocol, retail and commercial broadband, Gigabit
22 service and related and enhanced services responsive to market demand and
23 competition as new technologies and services become available.
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Section 2. The Utility Board and the City Council shall, upon adoption of this Resolution, appoint a Click! Engagement Committee to provide oversight and assistance to Click! in the development of the Business Plan. The Click! Engagement Committee shall be comprised of two (2) Public Utility Board Members, two (2) City Council members, two (2) members of the public who have experience in the broadband industry, one selected by the Utility Board Chair and one selected by the Mayor, and one (1) Tacoma Power ratepayer at large selected by the Mayor. All appointments shall be approved by the Board and Council. The Click! Engagement Committee shall meet to consult with Click! on a regularly scheduled basis established by the Committee and Click!.

Section 3. That Tacoma Power shall present an initial Business Plan to the Public Utility Board and City Council on or before April 29, 2016.

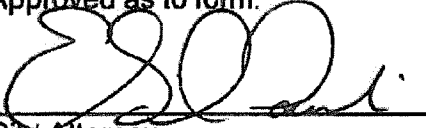
Adopted DEC 15 2015



Mayor

Attest:


City Clerk

Approved as to form:


City Attorney



TO: T.C. Broadnax, City Manager
FROM: Council Member Marty Campbell
COPY: City Council and City Clerk
SUBJECT: Resolution – December 15, 2015 - Click! Policy Directive – Business Plan
DATE: December 10, 2015

SUMMARY:

Authorizing Tacoma Power to prepare a business plan to provide, in addition to retail cable television, retail internet services including voice over data internet protocol (“VoIP”), commercial broadband and Gigabit service (“Retail Services”).

STRATEGIC POLICY PRIORITIES:

- Foster a vibrant and diverse economy with good jobs for all Tacoma residents.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

BACKGROUND:

On April 8, 1997, the City Council passed Substitute Resolution No. 33668, which approved Tacoma Power’s Business Plan to construct and operate a broadband telecommunication system (“System”). The City Council and Public Utility Board (“Board”) authorized Tacoma Power to develop a state of the art fiber optic system to: (1) support enhanced electric system control, reliability and efficiency, (2) develop capability to meet the expanding telecommunication requirements in an evolving competitive electric market, including real-time, two-way interactive communications with individual energy consumers, (3) create greater revenue diversification through new business lines (i.e. internet transport, cable TV, etc.), (4) enhance traditional products, and (5) maximize the return on Light Division assets.

Substitute Resolution No. 33668 further provided that the broadband “telecommunication 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 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.”

On December 3, 2015, the Board passed two resolutions that propose significant deviation from the Business Plan approved by the City Council. Amended Resolution No. U-10828 requires Tacoma Power to develop a new Business Plan related to Click!. The Business Plan would require Tacoma Power to fund significant capital upgrades to the existing System and provide retail internet services to customers. Substitute Resolution No. U-10829 requires Tacoma Power to solicit proposals for third-party operators to lease portions of the System to provide retail cable and internet services, and agree to maintain portions of the System it uses.

The City Council has retained the right to be involved in all major policy decisions involving the commercial aspects of the System. The Board’s action has triggered a major policy decision; therefore, consideration of a business plan option is before the City Council for consideration and policy direction.

ISSUE:

Whether the City Council should authorize Tacoma Power to prepare a business plan to provide, in addition to retail cable television, retail internet services including voice over data internet protocol, commercial broadband and Gigabit service.



ALTERNATIVES:

Preparation of a draft Request for Proposal for a third-party to operate, use, and maintain Tacoma Power's telecommunication network and purchase Click!'s physical assets to offer cable television and retail internet services, including voice over data internet protocol, and commercial broadband and Gigabit service to residential and commercial customers within Tacoma Power's service territory.

RECOMMENDATION:

The Board, through Amended Resolution U-10828, recommends this option.

Resolution No. 39347 Amended
 Adopted: DEC 15 2015
 Maker of Motion: Boe
 Seconded: Mello

Voice Vote:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Boe	X			
Mr. Campbell	X			
Mr. Ibsen	X			
Mr. Lonergan	X			
Mr. Mello	X			
Mr. Thoms	X			
Ms. Walker	X			
Ms. Woodards				X
Mayor Strickland	X			

Roll Call Vote:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Boe				
Mr. Campbell				
Mr. Ibsen				
Mr. Lonergan				
Mr. Mello				
Mr. Thoms				
Ms. Walker				
Ms. Woodards				
Mayor Strickland				

**EVERYTHING BEHIND THIS
PAGE IS BACKUP INFORMATION**



AMENDED RESOLUTION NO. U-10828

1 A RESOLUTION relating to Click! Network; authorizing Click! to prepare a
2 business plan to provide, in addition to retail cable television, retail
3 internet services including voice over data internet ("VoIP") protocol,
commercial broadband and Gigabit service ("Retail Services").

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

10
11 WHEREAS Tacoma Power provided retail cable TV services to
12 customers, wholesale internet to independent Internet Service Providers
13 ("ISPs") who served retail customers and wholesale broadband service to
14 business customers, and

15 WHEREAS the broadband telecommunication system is critical
16 infrastructure for Tacoma Power, including the connection of substations,
17 support of approximately 18,000 Gateway smart meters, as well as providing
18 support for the City's I-net system, and

19
20 WHEREAS the City Charter Section 4.6 requires a vote of the people
21 before the City may sell, lease, or dispose of any utility system, or parts thereof
22 essential to continued effective utility service, and

23 WHEREAS the presence of Click! Cable TV in the marketplace provided
24 savings for all cable TV customers, regardless of provider, in the Click! Market
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territory as compared to other Puget Sound market areas to an estimated average savings of \$10 million dollars a year, between 2004 and 2008, and

WHEREAS Click! services currently reaches 26.2% of the customers in the service territory with one or more of its services (Cable TV only, Internet only or Cable TV and Internet) according to Click! customer counts, and

WHEREAS 61% of those polled in May of 2015 said that it would be a good idea for Click! to provide internet service directly to customers, and

WHEREAS Click! infrastructure could provide Gigabit internet speeds to customers in the entire service territory with capital investment, and

WHEREAS customers' use of internet is increasing and use of Cable TV is decreasing, just as the cost for Cable TV is increasing significantly for the Click! network, and

WHEREAS Click!'s current business model creates future potential financial losses that may require the use of Tacoma Power ratepayer funds, and

WHEREAS the Public Utility Board has determined that the most reasonable path to meeting community objectives and financial sustainability is to pursue a business model where Click! offers additional retail products directly to its customers, including retail cable TV, Internet, voice over Internet (VoIP), and commercial broadband services ("All-In Retail model"); Now, therefore,

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

Sec. 1. Definitions.



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- a. "Click! or Click! Network" shall mean the telecommunication section of the Light Division of the Department of Public Utilities for the City of Tacoma, as established and described in Public Utility Board Amended Substitute Board Resolution U-9258 and City Council Substitute Resolution No. 33668.
- b. "Tacoma Power" shall mean the Light Division (doing business as Tacoma Power), of the Department of Public Utilities, for the City of Tacoma, as established by the City of Tacoma Charter Section 4.10.
- c. "Tacoma Public Utilities" shall mean the Department of Public Utilities (doing business as TPU), for the City of Tacoma, as established by the City of Tacoma Charter Article 4.
- d. "Retail Services" shall mean cable television and retail internet services including voice over data internet protocol, retail and commercial broadband, Gigabit service and related and enhanced services offered to customers from time to time as new technologies and services become available.
- e. "Expenditures" shall mean capital (including debt service) and operations and maintenance ("O&M") expenses determined on a "cash flow" basis incurred by Click! after January 1, 2016. "Expenditures" shall not include, and Click! shall not be charged Click! past physical plant and capital related costs made by Tacoma Power on behalf of Click! prior to January 1, 2016.

Sec. 2. Click! shall work with consultants as appropriate to develop a detailed business, financial and marketing plan (the "Business Plan") to provide customers the Retail Services and other aspects of the Business Plan contemplated herein. The goal will be for Click! to present to the Public Utility Board and the City Council an initial detailed Business Plan on or near April 7th, 2016. The goal will be for the Public Utility Board and City Council to approve the initial detailed Business Plan within 60 days thereafter.

- a. The Business Plan shall include annual, biennial and longer term goals, benchmarks and measures of financial progress and success, including
 - i. building customer counts and increasing market penetration
 - ii. financial projection and benchmarks
 - iii. designing and implementing rates that support customers count goals while providing revenue to pay Expenditures



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- iv. achievement of revenues that exceed Expenditures to the extent reasonably feasible
 - v. capital expenditure planning, including debt financing where appropriate
 - vi. charging just and proper proportions of the cost and expenses of other departments or offices of the City rendering service to Click!, as required under City Charter section 4.5.
- b. The Business Plan shall also include annual, biennial and longer term goals, benchmarks and measures of progress and success for non-financial achievement, including
- i. coordination with goals and strategic plans of TPU and the City of Tacoma
 - ii. promotion of market competition
 - iii. fostering and enhancing educational opportunity and economic activity in Tacoma and Pierce County
 - iv. ensuring just access to internet service regardless of economic condition, social barriers and physical challenges.
- c. The Business Plan will make adapting to changing market conditions and increased competition a priority, including necessary capital investments to improve technologies and stay competitive.
- d. The Business Plan will authorized, but not obligate, Click! to enter into negotiations for new contracts with internet services providers using its network on terms and conditions economically acceptable to Click! and consistent with the Business Plan, including authority to purchase the businesses of the existing private internet service providers using its network. Click! will be authorized to utilize the services of third-party business valuation consultants, acceptable to all parties, in connection with such negotiations.
- e. The Business Plan will include analysis and action plans for the structure of the Click! workforce, including the negotiation with the relevant labor organizations when necessary, to meet the requirements of the Business Plan.
- f. The Business Plan shall require a separate enterprise fund (subaccount) within the Tacoma Power fund to account for Click! revenues and Expenditures.
- g. Subject to the outcome of the legal analysis authorized under Sec. 4, from January 1, 2016, going forward if Expenditures made on behalf of



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Click! by Tacoma Power exceed Click! revenues during any month, such "Excess Expenditures" shall constitute a loan or advance from Tacoma Power to Click!, which shall be reimbursed as follows:

- i. "Target Date" means December 31, 2021 or a date when the cumulative Excess Expenditures reach \$31.6 million, whichever occurs first.
- ii. Click! shall reimburse the loans or advances from revenue exceeding Expenditures as soon as possible.
- iii. If Click! revenue in excess of Expenditures is insufficient to reimburse loans or advances in full by the Target Date, Click! revenue shall be supplemented with City of Tacoma non-utility revenue that, together with Click! revenue, will be sufficient to provide full reimbursement of cumulative loans or advances accrued prior to the Target Date within ten (10) years of the Target Date.
- iv. The Utility Board and the City Council may, at any time, fulfill their obligation to reimburse the cumulative loans or advances by applying the proceeds from a transaction (license, lease, sale, etc.) transferring some or all of the City's telecommunications system business to a private third-party. The Business Plan shall require Public Utility Board and City Council approval of budgets, expenditures, rates, and charges necessary to implement the business plan contemplated herein as part of the regular Tacoma Power budgeting, contract, and rates approval processes.

h. The Business Plan shall require Public Utility Board and City Council approval of budgets, expenditures, rates, and charges necessary to implement the business plan contemplated herein as part of the regular Tacoma Power budgeting, contract, and rates approval processes.

i. The Business Plan shall provide quarterly and annual reports to the Public Utility Board and to the City Council to monitor Click!'s actual performance relative to the approved business plan. Such reports shall include financial gains and losses and the balance of the loan account described below.

Sec. 3. The Public Utility Board and the City Council shall, upon adoption of this Resolution, appoint a Click! Engagement Committee to provide oversight and assistance to Click! in the development and implementation of the Business Plan. The Click! Engagement Committee shall be comprised of two (2) Public Utility Board Members, two (2) City Council members, two (2) members of the public who have experience in the broadband industry, and one (1) Tacoma Power ratepayer at large appointed by the City Council. The Click! Engagement Committee shall meet to consult with Click! on a regularly



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scheduled basis established by the Committee and Click!. The Public Utility Board and the City Council may consider delegating specific authority in the governance of Click! to the Click! Engagement Committee in the future as the Business Plan is further developed and implemented.

Sec. 4. Prior to implementing the Business Plan contemplated in this resolution, TPU and the City's Legal Department, shall seek a legal opinion or declaratory judgment in Pierce County Superior Court, to confirm that Tacoma Power may operate the City of Tacoma's telecommunications system in accordance with the business plan. The City's Legal Department shall include in its request for a legal opinion or declaratory judgment, those specific components of the business plan necessary to provide the Utility Board and the City Council comfort that they may fully implement the business plan reasonably without threat of disruption by legal challenge. TPU and the City's Legal Department are authorized to utilize the services of third-party legal advisors in connection with this activity.

Sec. 5. Click! shall review and resubmit rate adjustments budgeted and proposed by Click! and approved by the Public Utility Board (previously approved by Board Resolution U-10773 on April 22, 2015), that support the Business Plan and the City Council is requested to approve an ordinance amending Tacoma Municipal Code Chapter 12.13, to authorize said rate adjustments.

Sec. 6. A fiscal note is attached to and incorporated in this Resolution U-10828. The fiscal note estimates the Capital and O&M budget requirements and impacts in addition to the financial gains and losses anticipated over the next five (5) years, in connection with the Click! business plan contemplated herein.

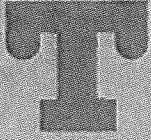
Approved as to form and legality:

William C. Foster
Chief Deputy City Attorney

Charlene Jacobs
Clerk

[Signature]
Chair
[Signature]
Secretary

Adopted 12-3-15



TACOMA PUBLIC UTILITIES
 3628 South 35th Street
 Tacoma, Washington 98409-3192

To: Chair and Members of the Public Utility Board
From: William A. Gaines, Director of Utilities/CEO
Date: November 25, 2015
Subject: Financial Impact of Authorizing Click! to Provide Retail Internet Service Including Gigabit Internet Service, Voice over Internet Protocol Service and Commercial Broadband Service, and Approving a Five Year Business Plan

Background:

A variety of business models have been developed and presented to policymakers, including a base case or status quo model and prospective models for Click! offering retail internet and cable television services, Click! offering wholesale-only internet (no video) and Click! entering into a private use contract involving Tacoma Power/Click! facilities. The financial models considered both low and high growth assumptions. This report addresses the fiscal impact of authorizing Click! to provide retail Internet service including Gigabit Internet service, Voice over Internet Protocol Service and Commercial Broadband Service ("All-In Retail with Gigabit model") along with cable television services. The All-In Retail with Gigabit model anticipates a loss of 1,916 Cable customers under the low growth option and a gain of 1,152 Cable customers under the high growth option in five years. It also anticipates a gain of between 6,412 and 12,124 Internet customers, and a gain of between 5,168 and 7,563 Voice over Internet Protocol customers, low and high respectively. Table 1 below shows the financial metrics of the All-In Retail with Gigabit option.

Table 1

	All-In Retail w/Gigabit	All-In Retail w/Gigabit
	Low Option	High Option
Revenue	\$181.4	\$207.1
O&M Expenditures	\$185.3	\$206.3
Capital Investment	\$27.7	\$28.8
Cumulative Cash Flow	(\$31.6)	(\$28.0)

Fiscal Impact:

The impact of pursuing the All-In Retail with Gigabit option is that the City will incur deficit spending in the range of \$28 million to \$31.6 million over the five-year business plan period, as shown in Table 1. However, as noted in Table 2 below, the Retail All-In with Gigabit model begins to produce positive cash flow in Year 8 under the high growth option.

Table 2

	LOW OPTION		HIGH OPTION	
	Cash Flow	Cumulative Cash Flow	Cash Flow	Cumulative Cash Flow
2016	(\$13,375,861)	(\$13,375,861)	(\$14,141,034)	(\$14,141,034)
2017	(4,894,538)	(18,270,399)	(4,726,564)	(18,869,598)
2018	(5,064,295)	(23,334,693)	(4,541,131)	(23,410,731)
2019	(4,230,859)	(27,565,552)	(2,866,053)	(26,276,783)
2020	(3,819,670)	(31,385,222)	(1,750,548)	(28,027,331)
2021	(3,482,159)	(35,077,381)	(645,919)	(28,973,250)
2022	(3,832,725)	(38,910,106)	(608,528)	(29,581,779)
2023	(3,114,794)	(42,024,900)	480,572	(29,101,207)
2024	(2,877,105)	(44,902,005)	1,146,032	(27,955,175)



EXHIBIT 5

**NEW ISSUE
FULL BOOK-ENTRY**

**RATINGS: Fitch: AA-
S&P: AA**

See **“DESCRIPTION OF RATINGS”** herein.

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the City, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2017 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended. In the further opinion of Bond Counsel, interest on the 2017 Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, taxes, although Bond Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2017 Bonds. See **“TAX MATTERS.”***



CITY OF TACOMA, WASHINGTON
\$70,575,000
Electric System Revenue Bonds, Series 2017

DATED: Date of Delivery

DUE: January 1, as shown on the inside cover

The City of Tacoma, Washington (the “City”), Electric System Revenue Bonds, Series 2017 (the “2017 Bonds”), will be issued as fully registered bonds under a bookentry system, initially registered in the name of Cede & Co., as nominee for The Depository Trust Company (“DTC”), New York, New York, which will act as securities depository for the 2017 Bonds. Individual purchases of the 2017 Bonds will be made in the principal amount of \$5,000 each or any integral multiple thereof within a maturity. Purchasers of the 2017 Bonds will not receive certificates representing their interest in the 2017 Bonds purchased.

The 2017 Bonds will bear interest payable semiannually on each January 1 and July 1, commencing January 1, 2018, to the maturity or prior redemption date of the 2017 Bonds. The principal of and interest on the 2017 Bonds are payable in lawful money of the United States of America by the fiscal agent of the State of Washington (the “Bond Registrar”), currently U.S. Bank National Association to DTC, which is obligated to remit such principal and interest to its broker-dealer Participants for subsequent disbursement to Beneficial Owners of the 2017 Bonds. See Appendix B—“BOOK-ENTRY SYSTEM.”

The 2017 Bonds are subject to redemption by the City prior to their stated maturities as described under “DESCRIPTION OF THE 2017 BONDS—Optional Redemption” and “—Mandatory Redemption.”

The 2017 Bonds are being issued to finance and refinance capital improvements to the Electric System and to pay costs of issuance. See “PURPOSE AND APPLICATION OF 2017 BOND PROCEEDS.”

The 2017 Bonds are payable solely from special funds of the City known as the Electric System Revenue Fund and the Electric System Revenue Bond Fund, and from Net Revenues of the Electric System (each as defined herein), and other funds pledged therefor, 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 2017 BONDS.”

The 2017 Bonds are not general obligations of the City, or the State of Washington, or a charge upon any general fund or other property of the City or the State of Washington not specifically pledged thereto by the Bond Ordinance, 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.

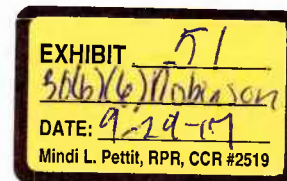
This cover page includes certain information for reference only and is not a summary of matters set forth herein. Investors should read the entire Official Statement to obtain information essential to the making of an informed investment decision.

The 2017 Bonds are offered for delivery when, as, and if issued, subject to the approval of legality by Orrick, Herrington & Sutcliffe LLP, Seattle, Washington, Bond Counsel and Disclosure Counsel. Certain legal matters will be passed upon for the Underwriters by Pacifica Law Group LLP, Seattle, Washington. It is expected that the 2017 Bonds will be available for delivery at the facilities of DTC in New York, New York, by Fast Automated Securities Transfer (FAST) on or about September 1, 2017.

Goldman Sachs & Co. LLC

Citigroup

Dated August 15, 2017



A portion of the interest on the 2010B Bonds and 2010C Bonds is reimbursed to the City by the federal government. Federal government sequestration, however, which became effective on March 1, 2013, is expected to continue to reduce such federal subsidy. The City does not expect any such reduction to have a material adverse impact on the City's ability to pay debt service on such 2010B Bonds or 2010C Bonds.

Subordinate Lien Obligations

The City retains the right to issue revenue obligations with a subordinate lien on Net Revenues. The City adopted the Master Subordinate Ordinance authorizing and setting forth the terms and provisions of Subordinate Revenue Bonds of the Electric System. See "SECURITY FOR THE 2017 BONDS—Subordinate Obligations" above.

Future Financing

Other than the 2017 Bonds, the City has no authorized but unissued Parity Bonds secured by Net Revenues. The City does not expect to issue bonds secured by Net Revenues in the next 12 months. The City may issue Future Parity Bonds or Subordinate Obligations in the next 12 to 24 months to finance capital improvements to the Electric Utility. Issuance of such Future Parity Bonds and Subordinate Obligations is subject to approval by the Council. See "CAPITAL IMPROVEMENT PROGRAM."

THE CITY

The City of Tacoma was incorporated in 1884 and utilizes the council-manager form of government. The administration of the City's affairs is governed by the City's Charter, pursuant to which the City has relatively broad powers. The City Council is the legislative body of the City. The City Council is composed of a Mayor and eight Council Members, five of whom are elected from districts which have been apportioned according to population. The three remaining positions are "at large" positions, nominated and elected City-wide. The Council Member positions are four year terms with overlapping terms to allow for the election of four Council Members every two years. The Mayor is elected City-wide for a four year term and is the presiding officer of the City Council. Council Members, including the Mayor, can serve no more than 10 consecutive years as a member of the City Council, Mayor or combination thereof.

The City Council appoints a City Manager who is the chief executive officer of the City. The City Manager is responsible to the City Council for the administration of all departments of the City with the exception of the Department.

The City Manager appoints a Finance Director who supervises the financial and purchasing functions of the City, including the City's accounting system. The Finance Director is responsible for preparing the City's Comprehensive Annual Financial Report ("CAFR") in accordance with generally accepted accounting principles applicable to governmental entities such as the City and in compliance with requirements of the State Auditor's Office. The Finance Director is responsible for the payment of principal and interest on all bonds issued by the City, including the Parity Bonds.

The City Manager appoints a City Treasurer who is responsible for the receipt, custody and disbursement of all City funds, including funds of Tacoma Power. The City Treasurer receives all money due and belonging to the City, and keeps a detailed account of the same in the manner prescribed by law and by the Finance Director. The Government Performance and Finance Committee, composed of the Mayor and three council members, is responsible for the financial management and policies of the City.

THE DEPARTMENT OF PUBLIC UTILITIES-TACOMA POWER

Overview

The City Charter provides for the Department to be governed by a five member Public Utility Board (the "Board"). The Board is responsible for general utility policy, and its members are appointed by the Mayor and confirmed by

the City Council. The Department's budget is presented to the Board for review and approval and then forwarded to the City Council for approval and inclusion in the City's budget. The Board meets twice monthly.

The Department consists of the Light Division ("Tacoma Power"), Water Division ("Tacoma Water"), and Belt Line Railroad Division ("Tacoma Rail"). The Board has supervision and control over most Department business. In the case of budgets, rates, bond issues, and additions and betterments to a utility system and system expansions, actions approved by the Board must also be approved by the City Council.

The Board appoints the Director of Utilities who is the chief executive officer of the Department. The Board must evaluate the performance of the Director annually and reappoint the Director every two years subject to reconfirmation by the City Council with the next reconfirmation scheduled for 2017. The reappointment of the Director has been approved by the Board and is currently pending before the City Council. William A. Gaines will retire from the position, effective December 2, 2017. The Director, with the concurrence of the Board, has the power to appoint division superintendents.

Utility rates and charges are initiated by the Board and adopted by the City Council, and are not subject to review or approval by any other governmental agency. See "ELECTRIC SYSTEM CUSTOMERS, ENERGY SALES, REVENUES AND RATES—Electric Rates."

The City Charter provides that the revenues of utilities owned and operated by the City shall never be used for any purposes other than the necessary operating expenses thereof, including a reasonable gross earnings tax imposed by the City Council for the benefit of the general fund of the City, interest on and redemption of the outstanding debt thereof, the making of additions and betterments thereto and extensions thereof, and the reduction of rates and charges for supplying utility service to consumers. The funds of any utility may not be used to make loans to or purchase the bonds of any other utility, department, or agency of the City. See "FINANCIAL INFORMATION—Taxes Imposed on Tacoma Power."

Tacoma Power - General

Tacoma Power is organized into six business units:

- **Generation** operates and maintains Tacoma Power's four hydroelectric generating projects (Cowlitz, Cushman, Nisqually and Wynoochee) and the associated recreational facilities, fish hatcheries and other project lands.
- **Power Management** manages, schedules and directs the power supply portfolio which includes Tacoma Power-owned generation and power supply contracts. Power Management markets bulk and ancillary power supply services, performs power trading activities, plans for and acquires conservation resources, and is responsible for compliance with various state, regional and federal regulatory mandates.
- **Transmission and Distribution** plans, constructs, operates and maintains the transmission and distribution systems including substations, the underground network system, revenue metering facilities and all overhead transmission and distribution systems.
- **Rates, Planning and Analysis** plans for and manages the retail rate process, financial planning activities, operations and capital budget development and monitoring, strategic asset management, construction project management, strategy management, and energy risk management analysis and modeling.
- **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 and data transport services to resellers.
- **Utility Technology Services** ("UTS") addresses existing and emerging technology requirements essential to managing Tacoma Power's computing systems. This includes supporting and enhancing utility system operations, communications, metering, cyber security, relevant smart grid applications, and the information technology strategic planning. UTS unifies the planning, design, deployment and maintenance of operational

computer systems, system interfaces and communication infrastructure used by Tacoma Power to sustain and improve system reliability and security. UTS is responsible for all matters related to Tacoma Power's compliance with the North American Electric Reliability Corporation ("NERC") Reliability Standards and manages Tacoma Power's Internal Reliability and Compliance Program.

Tacoma Power, which served an average of approximately 176,784 customer accounts in 2016, is one of the largest municipally-owned utilities in the Pacific Northwest. In 2016, it had 838 employees and operating revenues of approximately \$418.6 million. Tacoma Power was formed in 1893 when the City purchased the water and electric utility properties of the former Tacoma Water and Light Company. Tacoma Power is the fourth largest municipally-owned power utility in the State. In 1912, the City constructed its first hydroelectric generation facility on the Nisqually River. Since then it has acquired generating capacity to meet the growing needs of its customers through a variety of arrangements. In 2016 the four hydroelectric generating projects owned by Tacoma Power produced approximately 42% of Tacoma Power's resource portfolio. Tacoma Power's remaining power supply is purchased pursuant to power purchase contracts and market purchases. See "POWER SUPPLY RESOURCES AND COST OF POWER." Tacoma Power owns and operates 351 miles of transmission facilities and 2,014 miles of distribution lines to serve its retail loads and provides wholesale transmission to 10 small utilities. See "TRANSMISSION, DISTRIBUTION, AND TELECOMMUNICATIONS INFRASTRUCTURE."

The following table summarizes selected operating and financial data regarding Tacoma Power as of December 31, 2016.

**Tacoma Power
Selected Operating and Financial Data
Calendar Year 2016**

Average Number of Customer Accounts	176,784
Energy Sales in Megawatt-Hours (Retail).....	4,627,528
Operating Revenues	\$418,614,388
Gross Investment in Utility Plant.....	\$2,004,204,782
Net Investment in Utility Plant	\$1,033,409,064
Total Municipal Equity.....	\$821,995,693
Net Current Assets	\$289,162,319
Ratio of Current Assets to Current Liabilities	4.0:1.2
Long-Term Debt to Total Capitalization ⁽¹⁾	35.76%
Parity Bond Debt Service Coverage.....	2.94x

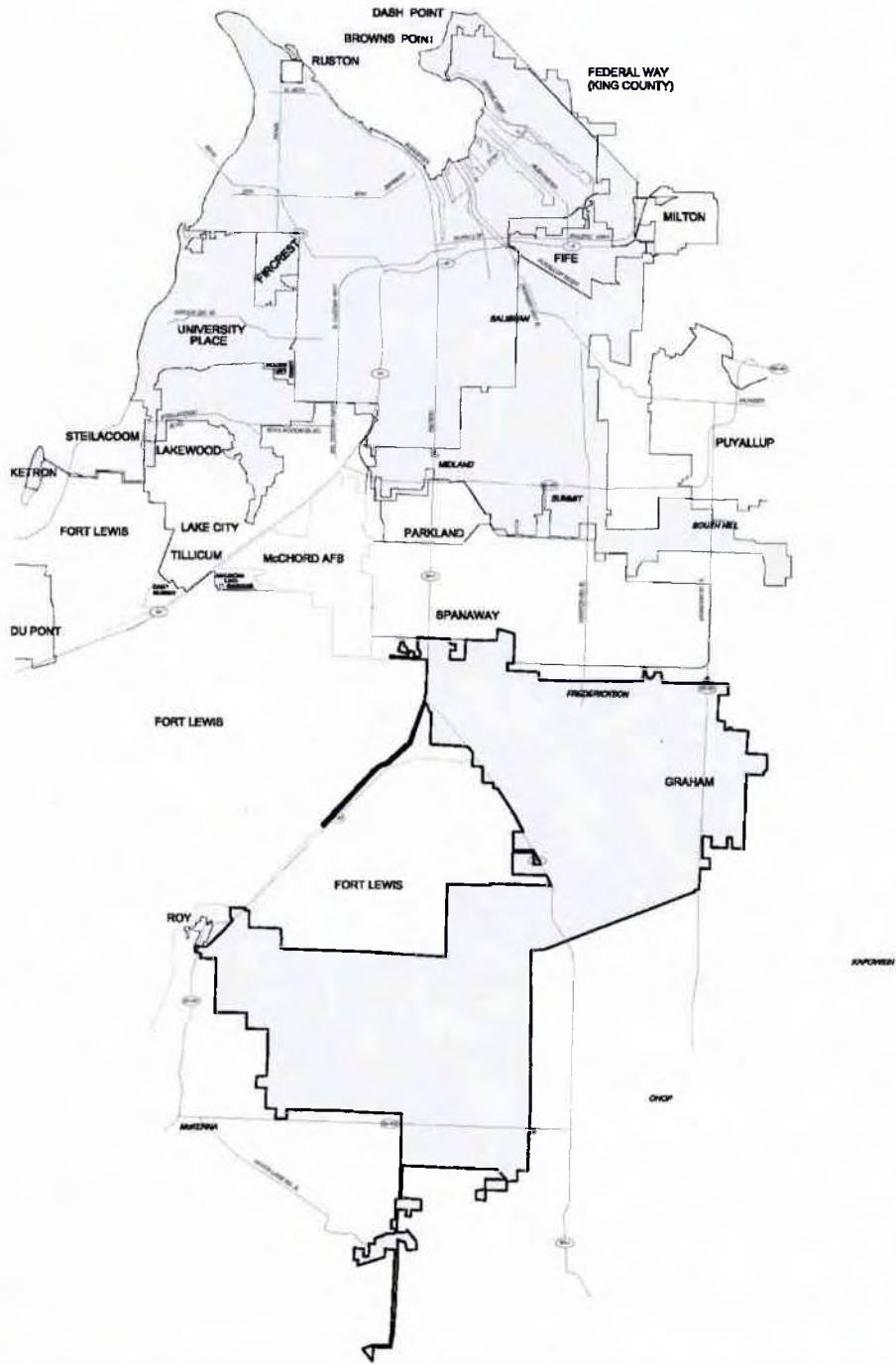
(1) Ratio of long-term debt to long-term debt plus equity. See footnotes (7) and (10) to the table entitled "Tacoma Power Operating Results and Debt Service Coverage 2012-2016."

Source: *City of Tacoma*

Service Territory and Map

Tacoma Power's service area consists of approximately 180 square miles, including the entire 43 square miles comprising the City of Tacoma. Tacoma Power provides electric service within its service area and indirectly serves other portions of the Tacoma metropolitan area through sales to Joint Base Lewis-McChord, the Town of Ruston and several other customers. The area that bounds Tacoma Power's service area is served by several cooperative utility companies, two municipal utilities, and Puget Sound Energy Company. The City Charter prohibits the City Council from granting any franchise to sell or supply electricity within the City as long as the City is engaged in supplying electricity. Click! Network currently provides a variety of commercial telecommunications services to the electric customers of Tacoma Power within the cities of Tacoma, University Place, Fircrest, Lakewood and Fife and portions of unincorporated Pierce County under agreements between those jurisdictions and Tacoma Power. A map showing Tacoma Power's service area follows.

TACOMA POWER SERVICE AREA



Map Date: 3-18-10

Strategic Plan

Tacoma Power's principal planning objective is to ensure that the utility has sufficient power supplies to meet customer demand. Given its reliance on hydro-based generating resources, Tacoma Power plans based on adverse water conditions to preserve available power supply, even in unusual periods of low precipitation. This conservative planning approach at times provides Tacoma Power with a power supply in excess of demand. This benefits the utility because this additional energy is sold into the wholesale power market at a price typically in excess of the cost to acquire or generate it. Power that is sold into the wholesale market offsets the revenue the utility needs to recover from its retail customers.

Tacoma Power is committed to providing low cost, environmentally responsible and reliable electricity service. This commitment is grounded by the utility's long-standing strategy of managing and maintaining a power supply portfolio with significant hydroelectric generation, both owned by the utility and committed to the utility under long-term contracts.

Security Issues

In addition to security as mandated by NERC Critical Infrastructure Protection standards (see "TRANSMISSION, DISTRIBUTION AND TELECOMMUNICATIONS INFRASTRUCTURE—Transmission Reliability"), Tacoma Power seeks to utilize best practices for securing utility operational networks and systems. These practices include isolating command and control systems from the Internet; network surveillance; and overseeing physical access. Tacoma Power has defined processes, measures and controls that guard the reliability of its systems and protect it from cyber threats.

Management

Brief descriptions of the backgrounds of key officials of the Department and Tacoma Power follow.

William A. Gaines, Director of Utilities, assumed his position in October 2007, after serving as Superintendent/Chief Operating Officer of Tacoma Power for a year. Mr. Gaines, an experienced executive with approximately 36 years in the utility industry, came to Tacoma Power from Seattle City Light, where he served as Power Supply and Environmental Affairs Officer and as Power Management Executive. He spent much of his career as an executive officer at Puget Sound Energy, where he served as Vice President for Engineering and Contracting and as Vice President for Energy Supply. Mr. Gaines is active in regional industry groups including the Public Power Council, Pacific Northwest Utilities Conference Committee and Western Systems Power Pool ("WSPP"), and sits on the Board of the Tacoma/Pierce County Chamber of Commerce and the Pierce County Economic Development Board. Mr. Gaines received a B.S. degree in Electrical Engineering from Washington State University and an M.B.A. from the University of Puget Sound. He also attended the executive development program at Stanford University. William A. Gaines will retire from the position, effective December 2, 2017.

Chris Robinson, Superintendent/Chief Operating Officer, assumed his position in May 2015. He joined Tacoma Power in 2001 and became Power Manager in April 2010, after having previously served as Assistant Power Section Manager of Energy Resource Planning. Prior to his tenure with Tacoma Power, Mr. Robinson worked with various electrical utility clients as a private-sector consultant. He received his M.S. in Resource Economics from the University of Maine, and his B.A. in Economics and B.A. in Political Science from Rutgers University.

Dolores Stegeman, Transmission and Distribution Manager, joined the City in 1991 as a civil engineer working in the Power Management group. Prior to her appointment in Transmission & Distribution, she held a variety of positions in Resource Operations and Trading, including assistant manager, analyst and scheduler. Ms. Stegeman has modeled river flows and reservoir levels, generated operations and financial reports and represented Tacoma Power in legal cases as high as the federal level. Ms. Stegeman was appointed interim Transmission & Distribution manager in 2013, and permanently appointed in 2014. She received her B.S. in Civil Engineering from St. Martin's University and her M.B.A. from the University of Washington. Ms. Stegeman has announced that she plans to retire at the end of 2017 and recruitment for her replacement has already started.

Chris Mattson, Generation Manager, assumed this position in 2017. Mr. Mattson joined Tacoma Power in 1995 and served in various engineering positions before becoming Production Engineering Manager in 2012. He received his B.S. and M.S. in Electrical Engineering from the University of Washington and is a registered Professional Engineer.

Clay Norris, Power Manager, joined Tacoma Power as Power Manager in June of 2015. Previously, Mr. Norris served as Director of Stakeholder Relations at the Northwest Energy Efficiency Alliance, Division Director of Power Resources at Eugene Water and Electric Board, Senior Vice President of Planning and Marketing at ElectriCities of North Carolina, and in various roles at Illinois Power. He received a M.B.A. from the University of Illinois - Springfield, a B.S. in Electrical Engineering from Missouri University of Science and Technology, and a B.A. in Math and Physics from Illinois College.

Tenzin Gyaltzen, Click! Network General Manager, assumed his current position in October 2011. He was previously employed at the City of San Bruno, California, for eight years, serving as its Cable Television Director. Prior to that Mr. Gyaltzen held operations management positions at Charter Communications, Inc. and at Fanch Communications, Inc. He has over 20 years of experience in the cable telecommunications industry. Mr. Gyaltzen received a B.S. degree in Accounting from Metropolitan State College of Denver and an M.B.A. from the University of Colorado at Denver.

John Lawrence, Utility Technology Services Manager, was appointed to his current position in 2012. He joined Tacoma Power in 1987, and in 2009 accepted the role of leading Tacoma Power's Reliability and Compliance office. In 2012, Tacoma Power combined its Smart Grid and Reliability and Compliance business units into one section called Utility Technology Services which is now led by Mr. Lawrence. Since 1998, he has held positions as Assistant Transmission and Distribution Manager of Construction and Maintenance, Assistant Transmission and Distribution Manager of Planning and System Operations, and interim Transmission and Distribution Manager. Mr. Lawrence has 36 years of experience in the Transmission and Distribution Electrical industry and is a graduate of Willamette University's Graduate School of Management's Utility Management program.

Bill Berry, Rates, Planning and Analysis Manager, assumed his current position in 2012. He was previously employed at the San Francisco Public Utilities Commission as Assistant General Manager for Business Services with responsibility for Customer Service, Finance, Information Technology Services, Human Resources, and Commercial Land Management. Earlier in his career, Mr. Berry served as Vice President for Corporate Finance with the New York Power Authority and also as a Senior Vice President in the Public Power and Water group at Lehman Brothers. He received his B.A. in Political Science from Williams College.

Labor Relations

Tacoma Power has approximately 833 employees, of which 530 are represented by unions. The majority of employees are represented by the International Brotherhood of Electrical Workers ("IBEW") Local 483, one of twelve labor organizations that represent City employees. The current three-year agreement for the Tacoma Power collective bargaining unit expired on March 31, 2017. The terms of the prior agreement remain in effect for one year after the expiration date while negotiations for a successor contract are underway. Tacoma Power has experienced only one limited labor stoppage since 1974, a 15-day work stoppage by a clerical unit in 1992. Management of Tacoma Power promotes responsive and respectful labor relations that are beneficial both to its business operations and to its employees.

ELECTRIC SYSTEM CUSTOMERS, ENERGY SALES, REVENUES AND RATES

Tacoma Power Customers

Tacoma Power serves six classes of retail electricity customers: Residential; Small General; General, including other industrial and large commercial customers; High Voltage General; Contract Industrial, comprised of two large industrial customers; and Other (principally municipal). Tacoma Power's relatively low-cost resource base and its access to preference power from BPA permit the rates it charges to be lower than almost all Western Washington

investor-owned and municipally-owned utilities. See the table entitled “Comparative Monthly Electric Bills” under “Electric Rates” below.

Residential Customers. In 2016, Tacoma Power supplied electric energy to 157,540 residential customer accounts with a total usage of 206 annual average megawatts (“aMW”) (39% of total retail sales). Tacoma Power received approximately \$152.8 million in revenue (47.7% of total retail revenues) from this class in 2016. The following table provides billing history for the residential class.

**Tacoma Power
Summary of Residential Usage⁽¹⁾—2012-2016**

Year	Number of Customer Accounts	MWh Billed (1000 kWh)	Revenue	Annual kWh per Customer	Annual Revenue per Customer	Average Annual Cost (cents per kWh)
2012	150,306	1,891,357	\$140,108,770	12,583	\$932	7.41
2013	152,633	1,906,519	\$148,479,187	12,491	\$973	7.79
2014	153,541	1,846,972	\$149,751,516	12,029	\$975	8.11
2015	155,496	1,757,385	\$147,936,446	11,302	\$951	8.41
2016	157,540	1,810,757	\$152,830,273	11,494	\$970	8.44

(1) Includes only class A Residential customers, usage and revenues. This table may differ from information presented in Tacoma Power’s audited financial statements attached as Appendix D which combines other customers described below with residential customers.

Source: Tacoma Power

Small General Customers. This class includes small non-residential customers, including retail, restaurant and other small businesses, and consumed 36 aMW (6.8% of total retail sales) in 2016 and accounted for \$27.7 million in revenues (8.6% of total retail revenues). There were 15,688 Small General customers in 2016.

General Customers. This class includes medium and large commercial and industrial users. Tacoma Power had 2,634 General customers in 2016. Total retail sales for the group were approximately 175.8 aMW (33.4% of total retail sales) in 2016 and accounted for approximately \$98 million in revenues (30.6% of total retail revenues).

High Voltage General Customers. Tacoma Power serves two military bases and four industrial companies as the High Voltage General customer class. This class includes the Fort Lewis Army Post and the McChord Air Force Base, now known as Joint Base Lewis-McChord. All customers in this class are served at transmission level voltage. In 2016, Fort Lewis Army Post used 29.7 aMW and McChord Air Force Base used 8.8 aMW of electrical energy, ranking them among Tacoma Power’s 10 largest retail customers. Total sales in 2016 for the High Voltage General class were approximately 46.9 aMW (8.9% of total retail sales) and \$17.9 million (5.6% of total retail revenues), of which the two military bases accounted for 38.5 aMW (7.3% of total retail sales) and \$14.3 million (4.5% of total retail revenues).

Contract Industrial Customers. Tacoma Power currently serves two Contract Industrial customers that together accounted for 11% of retail energy sales and 6.7% of retail revenue in 2016. One of these customers manufactures paper products and the other industrial gases. These customers are served under contracts that specify contract demand quantities and include notice provisions for changes in these quantities.

Other Customers. Tacoma Power’s other electricity customers primarily consist of street lighting, traffic signals, and private off-street lighting. In 2016, there were 914 customers in this class with consumption of 4.4 aMW and \$2.7 million in revenues.

Largest Customers. The following table lists Tacoma Power’s 10 largest electric system customers based on revenue in descending order of percentage of revenues. In 2016, these 10 customers accounted for approximately 17% of revenues and 24.9% of retail energy sales. No single customer represents more than 9% of Tacoma Power’s load. See “High Voltage General Customers” and “Contract Industrial Customers.”

Tacoma Power's 10 Largest Electric System Customers—2016

<u>Customer</u>	<u>Business Description</u>	<u>Percent of Retail Revenue</u>
Westrock CP LLC*	Pulp and Paper	5.0%
Fort Lewis Army Post	Military Base	3.5
Praxair*	Industrial Gases	1.7
City of Tacoma	Government	1.4
McChord Air Force Base	Military Base	1.0
Tacoma School District	Education	1.0
Multicare Health System	Healthcare	1.0
Pierce County	Government	0.9
U.S. Oil & Refining	Oil Refining	0.7
Puyallup Tribe of Indians	Government	0.7
Total		16.9%

*Contract Industrial customers.

Source: Tacoma Power

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Energy Sales and Revenues

The following table shows Electric System customers, energy sales and revenues for the period 2012 through 2016. Historical annual total energy sales, excluding contractual sales for resale, in the period 2012-2016 averaged 4.7 million megawatt hours (“MWh”). The table does not include revenues from Click! Network.

Tacoma Power Customers, Energy Sales and Revenues from Electric Sales⁽¹⁾⁽²⁾

	2012	2013	2014	2015	2016
Average Number of Customer Accounts					
Residential ⁽³⁾	150,306	152,633	153,541	155,496	157,540
Small General ⁽⁴⁾	15,079	15,248	15,361	15,488	15,688
General ⁽⁵⁾	2,751	2,728	2,731	2,670	2,634
High Voltage General ⁽⁶⁾	6	6	6	6	6
Contract Industrial ⁽⁷⁾	2	2	2	2	2
Other ⁽⁸⁾	864	889	890	897	914
Total Customers	169,016	171,506	172,531	174,558	176,784
Energy Sales (MWh)					
Residential ⁽³⁾	1,891,357	1,906,519	1,846,972	1,757,385	1,810,757
Small General ⁽⁴⁾	306,835	311,846	315,888	309,650	316,086
General ⁽⁵⁾	1,539,352	1,543,321	1,561,200	1,553,902	1,541,704
High Voltage General ⁽⁶⁾	467,930	463,730	451,539	421,453	411,578
Contract Industrial ⁽⁷⁾	504,874	543,450	516,644	507,201	508,674
Other ⁽⁸⁾	37,940	37,895	37,695	37,757	38,729
Subtotal	4,748,287	4,806,761	4,729,936	4,587,347	4,627,528
Sales for Resale	3,136,927	2,244,963	2,842,694	1,917,685	2,731,076
Total Energy Sales	7,885,214	7,051,724	7,572,632	6,505,032	7,358,604
Revenue From Energy Sales					
Retail Sales:					
Residential ⁽³⁾	\$140,108,770	\$148,479,187	\$149,751,516	\$147,936,446	\$152,830,273
Small General ⁽⁴⁾	23,499,735	25,110,481	26,594,512	26,956,060	27,703,400
General ⁽⁵⁾	85,531,256	90,073,119	95,711,871	97,745,514	98,041,673
High Voltage General ⁽⁶⁾	18,410,083	19,283,029	19,333,330	18,628,248	17,892,033
Contract Industrial ⁽⁷⁾	18,870,807	19,804,613	21,150,771	21,356,911	21,462,712
Other ⁽⁸⁾	2,330,455	2,436,472	2,502,840	2,582,638	2,653,140
Subtotal Retail Sales	\$288,751,106	\$305,186,903	\$315,044,840	\$315,205,817	\$320,583,231
Change in Unbilled ⁽⁹⁾	\$4,615,802	\$1,651,808	\$(666,186)	\$677,091	\$(840,476)
Sales for Resale: ⁽¹⁰⁾⁽¹¹⁾⁽¹²⁾	\$53,532,081	\$64,210,259	\$82,796,740	\$50,380,147	\$54,506,535
Total Revenue From Energy Sales	\$346,898,989	\$371,048,970	\$397,175,394	\$366,263,055	\$374,249,290

(1) Years ending December 31. Totals may not add due to rounding.

(2) Customers, sales and revenues in this table may differ from Tacoma Power's audited financial statements attached as Appendix D which combines customers separated out in this table.

(3) Residential customers, (class A).

(4) Small commercial, (class B).

(5) Medium and large commercial and industrial, (class G).

(6) Industrial customers and military bases served at transmission level voltage, (class CP).

(7) Contract industrial customers served at transmission level voltage, (class HVG).

(8) Street Lighting and Traffic Signals and Private Off-Street Lighting, (class H-1 and H-2).

(9) Change from year-to-year in the amount of electric service consumed but not yet billed as of year-end. The unbilled revenue is an estimate based on the number of bills sent out in November and December. The number of bills sent out fluctuates due to inclement weather conditions, meter reading assignments, and information technology related items.

(10) Sales for Resale: 2012 through 2014 water conditions were well above normal, and 2015 through 2016 water conditions were near normal; but all years reflect lower secondary market prices.

(11) See “POWER SUPPLY RESOURCES AND COST OF POWER—Wholesale Energy Market Purchases and Sales.”

(12) This amount is not reduced by the transfer in the financial statements to the Rate Stabilization Fund in the amounts of \$12,000,000 in 2012.

Source: Tacoma Power

Electric Rates

Tacoma Power is a municipal utility that establishes rates only to recover costs. Tacoma Power establishes rates with the goal of minimizing rate impacts to customers while maintaining the safety and reliability of the power system. Tacoma Power has been able to maintain low rates in comparison to State and national averages, while at the same time providing electric service revenues covering all operating and maintenance expenses, debt service and a portion of capital additions and improvements made to the Electric System. Rates are established by the Board and are subject to approval by the City Council.

Tacoma Power's rates and charges are free from the jurisdiction and control of the Washington Utilities and Transportation Commission and Federal Energy Regulatory Commission ("FERC"). Rates generally are set to provide revenues sufficient to pay a 3.8734% tax levied on Tacoma Power's gross revenues by the State and a 7.5% (8% for Click! Network) tax levied on Tacoma Power's gross revenues by the City, the latter of which is payable on a basis subordinate to debt service on Parity Bonds. See "SECURITY FOR THE 2017 BONDS—Flow of Funds."

Tacoma Power's services, including rates for those services, are designed to meet customer needs and provide the flexibility needed to respond to changing conditions in the electric utility industry. 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 power. In 2002, the State began requiring all but very small utilities in the State to offer green pricing programs for retail customers. Tacoma Power's Evergreen Options program complies with this law. The program is currently supplied by renewable energy credit purchases from Bonneville Environmental Foundation and 3Degrees. Starting late in 2017, revenue from the Evergreen Options voluntary program will also fund financial grants to nonprofit entities for the construction of local renewable energy projects.

Costs that Tacoma Power incurs to provide services are recovered primarily through the rates it charges to its customers. 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. Since 2012, Tacoma Power has had the rate and surcharge increases listed in the following table.

Rate Adjustments and Surcharges

<u>Effective Date</u>	<u>Average Rate Adjustment</u>
April 1, 2012	5.8%
April 1, 2013	4.2%
April 1, 2014	4.2%
April 1, 2015	3.0%
April 1, 2016	0.0%
April 1, 2017	5.9%
April 1, 2018 ⁽¹⁾	5.9%

(1) This average rate adjustment has been approved by the City Council and will become effective April 1, 2018.

Source: Tacoma Power

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**

<u>Residential</u> ⁽¹⁾	<u>Average Revenue (cents per kWh)</u>	<u>Monthly Bill</u>
500 kWh per month	10.4¢	\$ 56
1,000 kWh per month	9.0	96
2,000 kWh per month	8.4	176
 <u>Small General</u> ⁽²⁾		
7,500 kWh per month (30 kW)	8.1¢	\$ 617
12,300 kWh per month (49 kW)	8.0	997
 <u>General</u> ⁽³⁾		
200,000 kWh per month (500 kW)	6.3¢	\$ 13,249
400,000 kWh per month (1,000 kW)	6.3	26,436
1,800,000 kWh per month (5,000 kW)	6.5	122,972
 <u>High Voltage General</u> ⁽⁴⁾		
912,500 kWh per month (5,000 kW at 25% load factor)	6.4¢	\$ 63,283
11,497,500 kWh per month (21,000 kW at 75% load factor)	4.7	580,584
 <u>Contract Industrial</u> ⁽⁵⁾		
26,280,000 kWh per month (40,000 kW at 90% load factor)	3.7¢	\$1,045,751

- (1) Rates in the City based on 4.24 cents per kWh for energy, 3.44 cents per kWh for delivery, and a basic monthly charge of \$13.50 per customer (not including collectively metered apartments).
- (2) Rates in the City based on 4.35 cents per kWh for energy, 3.46 cents per kWh for delivery, and a basic monthly charge of \$20.75 per customer (not including unmetered services).
- (3) Rates based on 4.30 cents per kWh for energy, \$7.96 per kW for delivery and a basic monthly charge of \$56 per customer.
- (4) Transmission level voltage rates based on 3.83 cents per kWh for energy, \$4.51 per kW for delivery and a basic monthly charge of \$850 per customer.
- (5) Tacoma Power currently serves two large Contract Industrial customers under specific contracts established to meet those customers' needs. Contract Industrial rates are based on 3.07 cents per kWh for power supply energy, \$4.33 per kW for power supply demand, \$4.00 per kW for delivery and a basic monthly charge of \$1,870 per customer.

Source: Tacoma Power

valuable system information directly to the power system dispatchers through Tacoma Power's Supervisory Control and Data Acquisition and Energy Management System.

Construction and Maintenance

Tacoma Power has a number of established preventive and predictive maintenance programs and continues to develop more. For example, the substation predictive maintenance program can identify substation equipment requiring corrective action before a failure occurs through utilization of infrared, Doble testing, oil sample testing, and dissolved gas analysis. Tacoma Power owns and maintains approximately 49,000 power poles. The Pole Replacement program strategy is to test and treat 9% of the poles annually maintaining an 11-year cycle. Tacoma Power also performs tree trimming around its distribution and transmission lines, maintaining two and four year trimming cycles along with programs to replace dangerous trees with utility friendly trees.

Telecommunications Infrastructure

Approximately 1,500 miles of fiber and coaxial cable have been constructed by Tacoma Power in the cities of Tacoma, University Place, Fircrest, Lakewood and Fife, and portions of unincorporated Pierce County, providing Tacoma Power with a state-of-the-art telecommunication system with which supports transmission and distribution operations, advanced metering, and retail and wholesale commercial services. The network currently covers approximately 66% of the households in Tacoma Power's service territory.

The network consists of a hybrid fiber-optic coaxial ("HFC") system, which delivers two-way signals for cable TV, cable modem Internet services, and advanced metering. In addition, SONET ("Synchronous Optical Network") and Gigabit Ethernet technologies are used to support communications across Tacoma Power's transmission and distribution system and to carry out data transport services for commercial customers. The network was designed and constructed to meet high telecommunications standards, containing a redundant backbone and redundant service loops, which seek to ensure uninterrupted signal transport in the event of a network break. A network surveillance system allows Tacoma Power to monitor the system at all times.

Commercial Telecommunication Services. Launched in 1998 under the brand name Click! Network, Tacoma Power provides three commercial telecommunication services to customers of Tacoma Power: retail cable television, wholesale broadband transport and wholesale high-speed Internet over cable modem. Click! Network is one of several providers of telecommunications services in the Tacoma area.

Click! Network is accounted for as part of the Electric System. In 2016 Click! Network's annual revenues were approximately \$26.6 million, and annual operating expenses plus gross earnings taxes were approximately \$29.7 million.

Cable television is Click! Network's primary retail business. Click! currently has approximately a 15% share of a very competitive local cable television market. Cable TV products available to both residential and business customers include broadcast television, digital and high-definition channels, digital video recording capability, TiVo with access to over-the-top ("OTT") content such as Netflix, Hulu, YouTube and Pandora, TVEverywhere, and a wide variety of video-on-demand services. Video-on-demand services include local programming tied to schools, colleges, local governments and community organizations strengthening Click! Network's brand identity in the communities served.

Under wholesale Master Service Agreements, seven telecommunications carriers provide high capacity last mile data transport circuits to their customers utilizing Click! Network's telecommunications infrastructure. The seven telecommunications carriers provide SONET data services ranging from DS-1 lines to OC-48 lines and customized Metro Ethernet circuits to meet data transport and web access needs of large and small businesses in the Tacoma area.

Also under wholesale Master Service Agreements, two qualified locally based Internet Service Providers ("ISPs") provide high-speed Internet services via cable modems to their customers utilizing Click! Network's telecommunications infrastructure. The ISPs provide a variety of speed packages to meet the needs of the residential

and business consumers in the Tacoma area. As part of the contract, the two ISPs also provide customer service, cable modem installation, customer premise equipment and technical support services to their Internet customers.

Click! ended 2016 with 17,468 cable TV customers, 23,344 wholesale high-speed Internet service customers, and 173 wholesale broadband transport circuits.

Click! also continues to provide the City of Tacoma I-Net services to approximately 190 sites to keep the cost of telecommunications low for many governmental entities.

Click! Network implemented a 12.9% cable TV service rate increase effective March 1, 2017. An additional cable TV rate increase is planned for March 1, 2018. These cable TV rate increases are expected to generate approximately \$7.7 million in additional revenue. A major portion of additional revenue will be used to cover increases in programming costs.

CAPITAL IMPROVEMENT PROGRAM

Tacoma Power has funded its past capital improvement programs from contributions in aid of construction, proceeds of Parity Bonds and subordinate lien revenue bonds, and Revenues of the Electric System. The actual amounts spent during the past five years, together with the sources of funds used, are displayed in the table below.

**Historical Sources of Capital Improvement Funds
(\$000)**

Source of Funds	2012	2013	2014	2015	2016
Parity and Subordinate Lien Bond Proceeds	\$ 51,730	\$ 35,723	\$ 58,834	\$ 58,003	\$ 50,995
Contributions in Aid of Construction ⁽¹⁾	4,716	3,735	3,029	4,777	3,293
Cash Reserves	16,643	23,656	21,160	19,301	30,536
Total	\$73,089	\$63,114	\$83,023	\$82,081	\$84,824

(1) Customer contributions to fund capital projects.

Source: Tacoma Power

Tacoma Power has a long-term goal to finance an average of 50% of its normal capital requirements from net operating revenues with the balance from contributions in aid of construction received from customers and borrowed funds. However, due to varying water conditions, the amount of the capital improvement program, and periodic cash defeasance of outstanding Parity Bonds, the amount actually financed from net operating revenues varies from year to year. From 2012 to 2016, Tacoma Power financed an average of 66% of its capital improvements from borrowed funds. Tacoma Power's policy is to fund major projects with borrowed funds.

LITIGATION

No Litigation Concerning the 2017 Bonds

There is no litigation pending or threatened in any court (local, state, or federal) to restrain or enjoin the issuance or delivery of the 2017 Bonds, or questioning the creation, organization, existence, or title to office of the officers of the Department, Tacoma Power or the City, the validity or enforceability of the Bond Ordinance, or the proceedings for the authorization, execution, sale, and delivery of the 2017 Bonds.

Other Litigation

Because of the nature of its activities, the City is subject to various pending and threatened legal actions which arise in the ordinary course of business. The City believes, based on the information presently known, the ultimate liability for any legal actions, individually or in the aggregate, taking into account established accruals for estimated liabilities, will not be material to the financial position of the City or the Electric System, but could be material to results of operations or cash flows for a particular annual period. No assurance can be given, however, as to the ultimate outcome with respect to any particular claim. Below is a summary of certain legal matters involving Tacoma Power.

Ted Coates, et al. v. Tacoma. On June 22, 2017, a lawsuit was filed with the City alleging Tacoma Power has been unlawfully subsidizing the capital, operation and maintenance expenses of its commercial telecommunications business line (Click! Network). The customers of Click! Network are a subset of Tacoma Power's electric utility customers. The claimants have requested an immediate cessation of all illegal subsidies and to return funds allegedly used to unlawfully subsidize Click! Network operations for the past three years for the benefit of the electric utility customers. Litigation is ongoing and trial is set for June 2018.

U.S. Oil & Refining Company ("U.S. Oil"). In May 2016, a claim was filed by U.S. Oil alleging the April 28, 2016, electrical outage that occurred at the Lincoln substation caused the claimant \$9.1 million in lost revenue and damages. The claim is currently under investigation.

Miscellaneous. Tacoma Power has received several other miscellaneous claims that either do not allege significant damage amounts or that the City Attorney's Office has determined should not materially impact the finances of Tacoma Power or the City.

Environmental Issues

A substantial number of federal, state and local laws and regulations regarding various types of waste management have been enacted. These laws and regulations are set forth in acts such as the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, and the Washington State Model Toxics Control Act, which impose strict liability, regardless of time or location, on generators, transporters, storers and disposers of hazardous waste for cleanup costs or damages resulting from releases or contamination. Many normal activities in connection with the generation and transmission of electricity generate both non-hazardous and hazardous wastes. Tacoma Power has established a waste management plan to ensure compliance with environmental laws and regulations and is assessing its properties for potential liability from latent contamination resulting from disposal activities prior to implementation of the various regulations.

Tacoma Power has been a voluntary Potentially Responsible Party ("PRP") on several Environmental Protection Agency ("EPA") clean-up sites. Tacoma Power was a participant on eight sites that have been cleaned up or otherwise resolved with the EPA. Potential liability at all currently known existing sites has been negotiated and resolved.

Tacoma Power expects that State and Federal legislation may be enacted, and lawsuits could be filed, to address global warming issues, which could impact electric utilities.

EXHIBIT 6



TACOMA CITY CHARTER

Effective June 1, 1953
Last Amended November 4, 2014

City limits. The Council shall review the City Manager's performance annually and every two years shall vote on whether to reconfirm the appointment of the City Manager, with the affirmative vote of at least five members of the Council in a public meeting necessary to effect such reconfirmation. Neither the Mayor nor any Council Member shall be eligible for the position of City Manager within two years after the expiration of their latest term. The Council may directly retain the services of an individual or organization to assist the Council in conducting a search for a City Manager and conducting performance reviews of the City Manager.

(Amendments approved by vote of the people September 18, 1973, November 2, 2004, and November 4, 2014)

Council-Manager Relationships

Section 3.2 – The Manager shall be responsible to the Council for the administration of all units of the City government under the Manager's jurisdiction. Except for the purpose of inquiry, the Council and its members shall deal with administrative officers and employees under jurisdiction of the Manager solely through the Manager. Neither the Council nor any member thereof shall give orders to the Manager's subordinates or otherwise interfere with managerial functions through such means as directing or requesting the appointment or removal of any of the Manager's subordinates, or the making of particular purchases from or contracts with any specific individual or organization. The Manager shall have the right to attend all meetings of the Council and to take part in the discussion of matters coming before the Council, but not the right to vote.

(Amendment approved by vote of the people November 4, 2014)

Section 3.3 – The Manager shall supervise and be responsible for the effective management of the administrative affairs of the City. The Manager shall give general direction to the programs and activities of all City departments and offices, except those removed from the Manager's jurisdiction by this charter, and shall be responsible for the proper execution of the policies set by the Council and the enforcement of all laws and ordinances. The Manager shall keep the Council informed of the conditions and needs of the City and shall make such reports and recommendations as the Manager may deem desirable or as may be requested by the Council.

(Amendments approved by vote of the people September 18, 1973 and November 4, 2014)

Section 3.4 – The Manager shall have the power to appoint and remove, subject to the civil service provisions of this charter and except as otherwise provided in this charter or by state law, all officers and employees of the City under the Manager's jurisdiction, provided, appointments of department heads shall require confirmation by the City Council. The Manager may authorize the head of a department or office responsible to the Manager to appoint and remove subordinates in such department or office.

(Amendment approved by vote of the people November 4, 2014)

City Attorney

Section 3.5 – The City Manager shall appoint a City Attorney, who shall be an attorney admitted and qualified to practice in the Supreme Court of the State of Washington and who shall have practiced the profession within the State of Washington for not less than five years next preceding the appointment. The City Attorney shall have power to appoint and remove, subject to the approval of the Manager, professional assistants who shall also be attorneys admitted and qualified to practice in the Supreme Court of the State of Washington.

(Amendment approved by vote of the people November 4, 2014)

Section 3.6 – The City Attorney shall be legal advisor to the City Council, Manager, and all officers, departments, and boards of the City in matters relating to City affairs. The City Attorney shall represent the City in litigations in which the City is interested; shall provide written legal opinion on official matters when requested by the Council, Manager, commissions, boards, or other City officers; shall review for legal correctness contracts, bonds, franchises, and other instruments in which the City is concerned; and perform such other duties as may be prescribed by ordinance or otherwise by law. (Amendment approved by vote of the people November 4, 2014)

City Clerk

Section 3.7 – The City Manager shall appoint a City Clerk who shall:

- (a) attend all meetings of the Council and keep a permanent journal of its proceedings,
- (b) record and certify all ordinances and resolutions,
- (c) serve as custodian of the City seal and official City records,
- (d) prescribe and furnish sample forms for petitions provided for by this charter, and
- (e) perform such other duties as may be prescribed by the Manager, state law, this charter, or by ordinance.

The City Clerk with the approval of the City Manager may designate one clerk as deputy, who shall have all the powers and perform all the duties of the City Clerk in the Clerk's absence.

(Amendment approved by vote of the people November 4, 2014)

City Planning Commission¹⁰

Section 3.8 – There shall be a Planning Commission, composed of nine (9) members, with such powers and duties as are provided by ordinance. The nine members shall be residents of the City of Tacoma and be appointed and confirmed by the City Council for terms of three (3) years each. One member shall be appointed by the City Council for each of the five council districts. The Council shall appoint to the four remaining positions an individual from each of the following:

- (a) the development community;
- (b) the environmental community;
- (c) public transportation, and
- (d) a designee with background of involvement in architecture, historic preservation, and/or urban design.

A majority of the voting members of such Commission shall constitute a quorum for the transaction of business. The Commission shall be authorized to adopt rules for the transaction of business not inconsistent with this charter or ordinances of the City of Tacoma. Said Planning Commission members shall serve without pay.

(Amendments approved by vote of the people September 18, 1973 and November 3, 1992)

Tacoma Public Library¹¹

Section 3.9 – The Tacoma Public Library shall be administered by a board of trustees in the manner provided by state law or City ordinance not inconsistent therewith.

Tacoma Humane Society

Section 3.10 – The City Council is hereby authorized to enter into a contract with the Tacoma Humane Society, or any other agency or agencies performing similar duties and functions, granting to said society, agency, or agencies the control and operation of all city pounds and delegating certain duties and

¹⁰ See TMC Chapter 13.02 - Planning Commission

¹¹ See TMC Chapter 1.16 - Library

responsibilities with reference to the control of animals. Such contract(s) shall provide, among other things, that said society or agency (agencies) shall faithfully operate said pounds, shall pay all expenses in connection therewith, shall receive all licenses, fines, penalties and proceeds of every nature connected therewith, and such other sums as may be legally appropriate therefor, subject only to accounting as provided by law. The Council is further authorized, notwithstanding the provisions hereof, to determine that the City shall operate its own city pounds or detention facility and otherwise regulate and control animals within its corporate limits. Any contract entered into pursuant to the authority hereof shall be subject to cancellation by the City for good cause.

(Amendment approved by vote of the people September 18, 1973)

Administrative Organization¹²

Section 3.11 – Within the framework established by this charter, the administrative service of the City government shall be divided into such offices, departments, and divisions as provided by ordinance upon recommendation of the City Manager. Such ordinance shall be known as the “Administrative Code.”

Section 3.12 – The City Council may remove any appointed member of any City board, commission, or board of trustees, for cause, after notice and public hearing, if that member is found to have knowingly violated the oath of office under this charter (Section 6.4) or has committed any acts specified in state law as grounds for the recall and discharge of an elective public officer. The City Council, in its discretion, may allow a hearings examiner to hear such a matter. Recommendation of a hearings examiner shall be subject to review by the City Council. The City Council’s final decision shall be based on the evidence in the record. A record of the proceedings shall be made.

(Amendments approved by vote of the people November 2, 2004, and November 4, 2014)

Section 3.13 – There shall be a Landmarks Preservation Commission, composed of members with such powers and duties as are provided by ordinance. The members shall be residents of the City of Tacoma and be appointed and confirmed by the City Council.

(Amendment approved by vote of the people November 4, 2014)

Article IV

PUBLIC UTILITIES¹³

General Powers Respecting Utilities

Section 4.1 – The City shall possess all the powers granted to cities by state law to construct, condemn and purchase, purchase, acquire, add to, maintain, and operate, either within or outside its corporate limits, including, but not by way of limitation, public utilities for supplying water, light, heat, power, transportation, and sewage and refuse collection, treatment, and disposal services or any of them, to the municipality and the inhabitants thereof; and also to sell and deliver any of the utility services above mentioned outside its corporate limits, to the extent permitted by state law.

Power to Acquire and Finance

Section 4.2 – The City may purchase, acquire, or construct any public utility system, or part thereof, or make any 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.

¹² See TMC Chapter 1.06

¹³ See TMC Title 12 - Utilities

Rates

Section 4.3 – The City shall have the power, subject to limitations imposed by state law and this charter, to fix and from time to time, revise such rates and charges as it may deem advisable for supplying such utility services the City may provide. The rates and charges for services to City departments and other public agencies shall not be less than the regular rates and charges fixed for similar services to consumers generally. The rates and charges for services to consumers outside the corporate limits of the city may be greater but shall not be less than the rates and charges for similar service to consumers within the corporate limits of the city.

Diversion of Utility Funds

Section 4.4 – The Council may by ordinance impose upon any of the City-operated utilities for the benefit of the general fund of the City, a reasonable gross earnings tax which shall not be disproportionate to the amount of taxes the utility or utilities would pay if privately owned and operated, and which shall not exceed eight percent; and shall charge to, and cause to be paid by, each such utility, a just and proper proportion of the cost and expenses of all other departments or offices of the City rendering services thereto or in behalf thereof.

Section 4.5 – The revenue of utilities owned and operated by the City shall never be used for any purposes other than the necessary operating expenses thereof, including the aforesaid gross earnings tax, interest on and redemption of the outstanding debt thereof, the making of additions and betterments thereto and extensions thereof, and the reduction of rates and 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.

Disposal of Utility Properties

Section 4.6 – The City shall never sell, lease, or dispose of any utility system, or parts thereof essential to continued effective utility service, unless and until such disposal is approved by a majority vote of the electors voting thereon at a municipal election in the manner provided in this charter and in the laws of this state.

Franchises for Water or Electric Utilities

Section 4.7 – The legislative power of the City is forever prohibited from granting any franchise, right or privilege to sell or supply water or electricity within the City of Tacoma to the City or to any of its inhabitants as long as the City owns a plant or plants for such purposes and is engaged in the public duty of supplying water or electricity; provided, however, this section shall not prohibit issuance of temporary permits authorized by the Council upon the recommendation of the Utility Board of the City of Tacoma for the furnishing of utility service to inhabitants of the City where it is shown that, because of peculiar physical circumstances or conditions, the City cannot reasonably serve said inhabitants.

(Amendment approved by vote of the people September 18, 1973)

The Public Utility Board

Section 4.8 – There is hereby created a Public Utility Board to be composed of five members, appointed by the Mayor and confirmed by the City Council, for five-year terms; provided, that in the appointment of the first Board, on the first day of the month next following the taking of office by the first Council under this charter, one member shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, and at the expiration of each of the terms so provided for, a successor shall be appointed for a term of five years. Vacancies shall be filled for the unexpired term in the same manner as provided for regular appointments.

(Amendment approved by vote of the people November 2, 2004)

Section 4.9 – Members of the Board shall have the same qualifications as provided in this charter for Council Members. Members shall be entitled to reimbursement for expenses incurred in carrying out their official duties, other than those incident to attending board meetings held within the City of Tacoma.

(Amendment approved by vote of the people November 4, 2014)

Powers and Duties of the Public Utility Board

Section 4.10 – The Public Utility Board, subject only to the limitations imposed by this charter and the laws of this state, shall have full power to construct, condemn and purchase, acquire, add to, maintain, and operate the electric, water, and belt line railway utility systems.

Section 4.11 – All matters relating to system expansion and the making of additions and betterments thereto or extensions thereof, the incurring of indebtedness, the issuance of bonds, and the fixing of rates and charges for utility services under the jurisdiction of the Board shall be initiated by the Board, subject to approval by the Council, and executed by the Board; provided, that all rates and charges for utility services shall be reviewed and revised or reenacted by the Board and Council at intervals not exceeding five years and beginning with the year 1954.

Section 4.12 – The Board shall submit an annual budget to the Council for approval, in the manner prescribed by state law.

Section 4.13 – The Board shall select from its own membership a chair, vice-chair, and secretary and shall determine its own rules and order of business. The time and place of all meetings shall be publicly announced, and all meetings shall be open to the public and a permanent record of proceedings maintained.¹⁴

(Amendment approved by vote of the people November 4, 2014)

Section 4.14 – The Board shall maintain such billing, cost and general accounting records as maybe necessary for effective utility management or required by state law. Expenditure documents shall be subject to pre-audit by the central fiscal agency of City government. The City Treasurer shall be responsible for receipt, custody, and disbursement of all utility funds. The Board shall submit such financial and other reports as may be required by the Council.

Section 4.15 – The Board shall have authority to secure the services of consulting engineers, accountants, special counsel, and other experts. At intervals not exceeding ten years the Council shall, at the expense of the utilities involved, cause a general management survey to be made of all utilities under the jurisdiction of the board by a competent management consulting or industrial engineering firm, the report and recommendations of which shall be made public; provided, that the first such survey shall be made within three years of the effective date of this charter.

Section 4.16 – Insofar as is permitted by state law, the Board shall have the same authority, and be governed by the same limitations, in respect to the purchase of materials, supplies, and equipment and awarding of contracts for all improvements for Department of Public Utilities' purposes as does the Council and City Manager for general government purposes.

Section 4.17 – The Department of Public Utilities shall use the services of the City's General Government finance department, purchasing agent, law department, human resources/personnel department, and other City departments, offices, and agencies, except as otherwise directed by the City Council.

(Amendment approved by vote of the people November 3, 1992)

¹⁴ Chapter 42.30 RCW establishes the rules of procedure for Board meetings pursuant to the Open Public Meetings Act.

Administrative Organization

Section 4.18 – The Board shall appoint, subject to confirmation by the City Council, a Director of Utilities who shall:

- (a) Be selected on the basis of executive and administrative qualifications;
- (b) Be appointed for an indefinite period and subject to removal by the Board;
- (c) Serve as the chief executive officer of the Department of Public Utilities, responsible directly to the Board, subject to review and reconfirmation as follows:

The Board shall review the Director's performance annually, and every two years shall, by an affirmative vote of at least three members of the Board in a public meeting, vote on whether to reconfirm the appointment, subject to reconfirmation by the City Council. The first review and vote on whether to reconfirm the Director shall be in 2015.

(Amendment approved by vote of the people November 4, 2014)

Section 4.19 – Except for purposes of inquiry, the Board and its members shall deal with officers and employees of the Department of Public Utilities only through the Director.

Section 4.20 – Insofar as is possible and administratively feasible, each utility shall be operated as a separate entity. Where common services are provided, a fair proportion of the cost of such services shall be assessed against each utility served.

Section 4.21 – Subject to confirmation by the Board, the Director of Utilities shall appoint a properly qualified superintendent for each utility system under the Director's administrative control.

(Amendment approved by vote of the people November 4, 2014)

Section 4.22 – There shall be such other officers and employees in the Department of Public Utilities as the Board may determine, who shall be appointed and removed by the Director of Utilities subject to the provisions of this charter relating to municipal personnel. These employees shall be entitled to participation in the general employee retirement system and to enjoy such other employee welfare benefits as may be provided for municipal employees. Within the limitations of the annual budget and salary ordinance, the salaries and wages of employees in the Department shall be determined by the Board.

Location and Relocation of Utility Works

Section 4.23 – The Board shall have authority to place poles, wires, vaults, mains, pipes, tracks and other works necessary to any utility operated by the Board in the public streets, alleys, and places of the city. Before any such works are commenced, plans and specifications showing the exact location thereof shall be submitted to the City Manager for approval. Whenever it shall be necessary by reason of the grading, re-grading, widening, or other improvement of any public street or alley to move or readjust the works of any utility, the Board shall cause such works to be so moved or readjusted and the expense thereof shall be charged against such fund as may be agreed upon by the Director of Utilities and the City Manager or as determined by the City Council. Upon placing the works of a utility in any public street, alley, or place, the Board, at the expense of the utility involved, shall cause the surface of such street or alley to be replaced as near as may be to its previous condition. Whenever the Board and the City Manager are unable to reach an accord concerning the moving, readjusting or installation of any utility, works or improvements, or the distribution of the expenses thereof, the matter shall be referred to the City Council, whose finding and determination shall be conclusive.

EXHIBIT 7



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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.

EXHIBIT	2
	<i>30(b)(1)(c) Klein</i>
DATE:	<i>9-26-15</i>
Mindi L. Pettit, RPR, CCR #2519	

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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:

Authorizing Ordinance	Bonds Dated	Principal Amount Issued
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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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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Section 3.3. Date, Maturities and Interest. The Bonds shall be issued in the aggregate principal amount of not to exceed \$1,000,000 and shall be dated as of the date provided in the Bond Sale Resolution and shall bear interest from their dated date to their stated dates of maturity or prior redemption. The exact principal amount of the Bonds shall be established by the Bond Sale Resolution. The Bonds shall mature on the dates of the years and in the principal amounts and shall bear interest payable semiannually on the dates and at the rates per annum set forth in the Bond Sale Resolution.

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

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

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

Section 3.7. Tax Exemption. The City shall comply with the provisions of this section unless, in the written opinion of nationally-recognized Bond Counsel to the City, such

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compliance is not required in order to maintain the exemption of the interest on the Bonds from federal income taxation.

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

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

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

ARTICLE IV

REGISTRATION, FORM AND GENERAL TERMS

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

Section 4.2. Transfer and Exchange. So long as the Bonds are not in book-entry form, any Bond may be transferred pursuant to its provisions at the Registrar's principal office for such purpose by surrender of such Bond for cancellation, accompanied by a written instrument 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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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.

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

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

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

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

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

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

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

Section 5.10. Reserve Subaccount. There is hereby established within the Reserve Account a special subaccount entitled the "199__ Reserve Subaccount." Funds in such Reserve Subaccount shall be treated in all respects as other funds in the Reserve Account. The City shall make transfers into the Reserve Subaccount from money and investments in the

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Reserve Account, from proceeds of the Bonds, or from other available money in amounts sufficient to satisfy the Reserve Account Requirement with respect to the Bonds.

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

ARTICLE VI

DISPOSITION OF BOND PROCEEDS

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

All proceeds of the Bonds so deposited in the Construction Account shall be continuously and fully invested to the extent practicable in Permitted Investments. Interest earned and income or profits derived by virtue of such investments shall remain in the account and be used for the purposes for which the Bonds are issued or other lawful purposes. Money 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]
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney, ch. 85 97.

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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 #:

5957
25930

1. Date: June 21, 1996

Requesting Department/Division/Program	Sponsored By	Phone/Extension
2. Tacoma Public Utilities/Light Division	Steve Klein	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

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
---	---	--



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

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TAC_PRA_HF_0020239



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

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

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

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

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. 25930

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 8



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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construction contracts, rate setting policies, debt financings, the public rights-of-way use for telecommunications agreements and quarterly reviews.

Adopted APR 08 1997

Alan Fierstein
Mayor

Rick Rosenblatt
Attest: City Clerk

Approved as to form & legality:

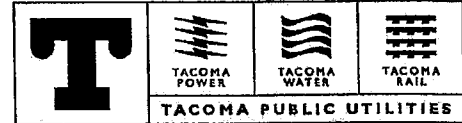
B. S. Karavites
Assistant City Attorney

Requested by Public Utility
Board Resolution No. U-9258

589c

EXHIBIT 9

MEMORANDUM



TO: Mayor and City Council Members

CC: Public Utility Board
T. C. Broadnax, City Manager

FROM: William A. Gaines, Director of Utilities/CEO *W.A. Gaines*

DATE: May 6, 2015

RE: Council inquiries from the March 31, 2015 Joint Study Session

Responses to Council inquiries made at the March 31, 2015 joint study session are below.

Mayor Strickland

- **When it comes to upgrading internet service, who will make the investments?**

Under the Wave proposal, all investments on the network, including the upgrades to Internet service, will be made by Wave.

- **Who will set the prices?**

Under the Wave proposal, Wave will assume the ISP and the Commercial Broadband Service Providers (a.k.a. MSAs) wholesale contracts. Upon the expiration of the assumed contracts, Wave will negotiate new wholesale contracts with the ISPs and the MSAs.

- **Requests to see an online component for public feedback in addition to town halls.**

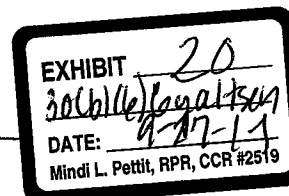
TPU's Community and Media Services Department is in the process of establishing an online component for public feedback.

- **Proposes abbreviated town halls outlining Click!'s current status followed by a separate town hall presentation for the Wave proposal. Then, garner opinions and questions.**

We have held two town hall meetings to date; one on April 9 and another on April 23. Staff is happy to set up a separate town hall presentation for the Wave and Rainier Connect proposals as desired by the City Council/Public Utility Board.

Council Member Woodards

- **What are the plans to absorb employees not hired?**



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Wave intends to hire approximately 81 employees to operate the network. Although Wave has agreed to interview all applicants, it is not certain at this time how many current Click! employees will apply at Wave and therefore staff is not in a position to estimate how many of the 81 employees Wave needs will be comprised of current Click! employees. However, TPU will work closely with Human Resources to absorb as many Click! employees as possible where opportunity exists within the Utility and the City. For those employees that are neither hired by Wave nor absorbed by either the Utility or the City, TPU intends to offer a severance package that includes monetary compensation and career counselling services.

- **What goals of "Plan B" have we achieved?**

After receiving direction from the Public Utility Board, staff collaborated with the Internet Service Providers (ISP) to arrive at a plan that would generate customer and revenue growth. The ISPs, through a consultant, reviewed Click!'s financials and proposed to generate 6,000 net new customers over a four-year period between August 1, 2012 and July 31, 2016. As part of their plan, the ISPs requested that the speeds of existing Internet packages be increased and the wholesale rates for all new and existing tier of service be frozen for the four-year period.

Staff knew that accepting the ISPs proposal to grow 6,000 net new customers would be beneficial in addressing Click!'s fiscal deficit, but that it would not be the entire solution. Click!'s operations is dynamic and evolving, therefore its operating costs fluctuate, mostly increasing, over time. Given the urgent need to take positive action, it was determined that the best course of action was to accept the ISPs proposal and establish a systematic process in place to ensure that the ISPs actually delivered on their commitment.

So, based on the actions taken by staff, to date, the ISPs have generated over 4,000 units towards their 6,000 net new customer growth commitment. The customer growth has generated incremental revenue to address the fiscal deficit, but not sufficient to eliminate it.

Council Member Walker

- **How many employees are affected by potential layoffs?**

All 93 employees employed by Click! are affected by this transaction.

- **How many of those employees are union?**

68 out of the 93 employees have union representation.

- **Does Wave have agreements with labor unions?**

Wave does not have any labor union represented employees.

- **Have you been in contact with the Unions?**

We had our first meeting with Union Leaders from Local 483 on January 12, 2015. Since then we have met with Union Leaders from Local 483 and Local 120 on three occasions. We meet with them on March 31, 2015 just hours prior to the Joint Utility Board and City Council meeting per staff's prior commitment to Union Leadership that staff would keep them apprised of any new development on the strategic front. Subsequently, staff has held two follow up meetings with Union Leaders and intends to continue meeting with the them to address their concerns.

Council Member Boe

- **What would stop someone from buying out Wave? What protection do we have if they were assumed by another company?**

We cannot prevent Wave from being bought out by another company, but through an assignment provision in the Indefeasible Right of Use (IRU) Agreement, TPU can prevent the assignment of the IRU Agreement to Comcast or a company that does not meet the lease objectives.

- **How much debt is left on Click! Are there any strings attached to that debt that would preclude this lease arrangement?**

Tacoma Power paid in excess of \$200 million to build the network. Except for an estimated \$87 million, which was debt financed, the remaining build cost was financed with cash or current funds. There are no outstanding debts associated with the network, so there are no strings that would preclude this lease or any other lease arrangement.

- **Under this agreement, would internet access remain unbilled to TPU and Inet?**

TPU and City currently pay Click! for certain telecommunications services, including the maintenance of the I-Net (per the I-Net Agreement), so such services would continue to be provided and billed by Wave.

- **Are there other providers besides Wave that may be interested in a lease?**

As you may know, on April 22, 2015, TPU received an offer to lease the network from Rainier Connect. So, it is entirely possible for other providers to be interested in leasing the network. Leasing and operating the network is not an easy endeavor so it would have to be a company with financial wherewithal, geographic fit and economies of scale to pull it off successfully. In the event the lease idea gains support from the Utility Board and the City Council and a desire to solicit other proposal emerges, staff intends to pursue a fair and open process to reach other potential bidders.

Council Member Ibsen

- **How much outstanding debt remains on Click! bonds? How much do are we paying toward Click! debt now?**

Since Click! has not produced free cash flows, it has not contributed towards debt service nor has it paid for capital investments since the initial outlay. So, outstanding debt associated with the telecommunications network would include the initial outlay,

interest owed on the initial outlay, and all additional funds advanced by Tacoma Power since the initial outlay.

The initial Capital Outlay was \$85,824,135, but only 27.4% of this amount is utilized to establish imputed debt service. The 27.4% of the initial outlay is \$23,515,813. Assuming a 20-year bond issue at 5.5%, an annual debt service amount of \$1,967,787 is derived. This amount multiplied by two is \$3,935,575, which is the amount of the imputed debt service assessed to Click! commercial. The calculation is provided in the table below.

Initial Capital Outlay	85,824,135
Commercial Portion	27.40%
Commercial Initial Outlay	23,515,813
Assumed Bond Life	20
Assumed Interest	5.50%
Annual D/S	1,967,787
Interest Portion	1,293,370

- **Outline measures taken towards improving Click!'s operating efficiency.**

A variety of cost cutting measures have been implemented to curtail costs and improve operating efficiencies. A summary is provided in the table below.

O&M Cutting Measures implemented and realized:

Reduction in support/maintenance agreements	\$300,000
Reduced Internet IP costs	600,000
Reduced billing system costs	400,000
Reduced headcount by four (10)	1,400,000
Total cost mitigations:	<u>\$2,700,000</u>
A&R and Capital reduction	\$5,000,000
Total cost reductions	<u>\$7,700,000</u>

- **What control would the City or TPU have over Wave rates?**

It has been determined by the Federal Communications Commission that effective competition exists in the Tacoma market, and therefore cable television rates are not

regulated. As such, the City currently does not review and approve cable TV service rates for Comcast. However, since Click! network is owned and operated by the City, the Public Utility Board and the City Council review and establish cable Click!'s cable TV service rates. If the proposal advances and Wave becomes the new operator of the network, Wave would be treated similar to Comcast and the Board/Council would not have a role in establishing cable TV service rates.

Council Member Loneragan

- **Provide information on when the debt service is going to be paid.**

Click! does not generate free cash flows so debt associated with the telecommunications network is never going to be paid off as a result of owning and operating Click!.

- **Where does the lease money go, especially once the debt is retired?**

The lease income should go back into Tacoma Power's fund because Tacoma Power funded the network build.

- **What would the Power rates be if Power customers didn't subsidize Click!?**

Power rates would be lower by 2 to 3% if the subsidy were to be removed.

- **Is there flexibility in the 60 day clock with Wave?**

The 60-day clock is fixed, but Wave would be agreeable to extending it if there is positive advancement of the Wave proposal.

- **What other companies may be interested?**

Comcast can be ruled out because it would remove competition. Google has not expressed an interest in Tacoma although Click! submitted an application when Google conducted its national solicitation campaign. There could be other nationally based cable operators who may want to do this, but none of them may be able to satisfactorily meet all the criteria to be successful. We also certainly do not want to put the City in a position where it has to change providers every few years. Lastly, it would be safe to assume that few companies, if any, would want to tie their destiny to a governmental entity.

- **What are the power rate impacts moving forward if we leased? What would the decrease be now and in the long run?**

The impact on Tacoma Power rates would be between 2 to 3%. This decrease would be cumulative in the long run.

Council Member Thoms

- **Slide 26, Does the last bullet mean there is a \$3.5M hole? Need clarification.**

It is anticipated that during the 2015-16 Biennium, Tacoma Power ratepayers would absorb approximately \$19 million or \$9.5 million annually in losses associated with

operating Click! Network. If the Wave proposal is pursued, only \$6 million of the \$9.5 million in operating losses would be avoided. The last bullet on slide 26 provides the breakdown of the remaining \$3.5 million in operating losses that would remain on the book, which are the imputed debt service of \$1.95 million and the General Government and Tacoma Public Utilities (TPU) assessments and allocations of approximately \$1.6 million. The imputed debt service would remain on the books because Wave would not be assuming any outstanding indebtedness associated with the telecommunications network, and the assessments and allocations currently charged to Click! would also remain and be absorbed by the remaining TPU operating units.

- **Couldn't we bring in ISPs to create a sophisticated solution that leverages TPU's position in the marketplace?**

[Need clarification.]

- **Where do the payments go beyond debt service?**

[Need clarification.]

- **Have we assessed security concerns under this lease?**

Yes, we have assessed the security concerns associated with a lease arrangement. Although all the fibers are part of a universal bundle as it traverses the footprint of the telecommunications network, the fibers are uniquely purposed and physically segregated between the various users of the network. As such, the Click! Commercial network, Tacoma Power's Power Control Operational Network (PCON), and the City's Institutional Network (I-Net) are independent of each other. Even though Click! personnel install, repair and maintain the physical infrastructure, they do not access the edge devices (switches and routers) on the PCON or the I-Net nor do they access the data traffic on the PCON or the I-Net. Therefore the install, repair and maintenance function currently performed by Click! personnel can be performed seamlessly by a third party, such as Wave.

- **What are the impacts of the severance packages?**

It depends on the retention and severance package that will be offered by the City. If a retention and severance package is not offered, the City faces to lose valuable employees necessary to continue operating the business in the interim and ensuring a smooth transition in the event the proposal is advanced. A retention and severance package is also useful in retaining valuable employees amidst all the uncertainty surrounding the future of Click! so that the City has the necessary team to continue operating the business in the event the proposal does not advance.

- **Specify loss of jobs.**

Wave already has a regional executive and a local management team, so loss of jobs is expected to occur at the upper management level. All other positions are generally transferable. Since Wave is looking at filling at least 81 positions to maintain operations, it appears that most customer service and field operations employees would be able to find employment with Wave.

- **Request organizational chart of how Click! is managed now.**

Current organizational chart attached.

- **Request copy of two consultant assessments.**

TPU is in the process of providing these to Council Member Thoms.

Council Member Mello

- **Can we look at different accounting practices that will show Click! in the black?**

Tacoma Power rate payers have been absorbing all the telecommunication network related costs that are not recovered through telecommunications revenues, so until revenues start exceeding costs there will continue to be subsidization by Tacoma Power rate payers. Therefore, the adoption of different accounting practices (i.e. cost allocation methodology) will not solve the overarching subsidization issue.

- **What TPU infrastructure relies on Click!?**

Click! Network infrastructure is utilized by three entities, which are the City of Tacoma for the Institutional Network (I-Net), Tacoma Power for their Power Control Operational Network (PCON), and Click! Commercial for retailing cable TV and wholesaling broadband services. Each entity is assigned its own set of fiber optic cables, so each entity's network is independently designed and operated. The only commonality is that the supports and maintenance of the fiber backbones of these independent networks is provided by Click! Commercial.

- **What cybersecurity concerns do we have with leasing?**

There are no alarming or deal breaking cybersecurity concerns with respect to leasing the network. Tacoma Power's Power Control Operational Network (PCON) is an independent and closed network designed to meet North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection (CIP) standards. The edge devices (switches, routers and servers) of the PCON and the data traffic on the PCON are all managed by Tacoma Power's Utility Technology Services (UTS) Section. Similarly, the I-Net is managed by the City's Information Technology Department. Click! Commercial only provides maintenance and support for the fiber backbones of the PCON and the I-Net and have no access to the edge devices or the data traffic on these independent networks. The interaction with the PCON and the I-Net is limited to making repairs when the fiber cables are damaged due to vandalism, accident (car v. pole), and provisioning of additional fibers. As such, there are no extraordinary risks associated with leasing to a third party like Wave, as they are equally capable and generally are able to perform the work more cost effectively.

- **Where will the Wave call center be located?**

Wave's Call Center and Network Operations Center (NOC) is located in Kirkland, WA. Wave will also be opening one or more local stores in Tacoma.

Council Member Campbell's questions:

- **Slide 9, Provide number of 'cord cutters' in Tacoma.**

Over the last 5 years, Click! has lost 5,231 customers. The subscriber decline is occurring at a rate of at least 1,000 customers per year.

When you analyze the service disconnection activity, approximately 5,855 service disconnections occurred 2014. The statistical data by reason for disconnection or "cutting the cord" is provided in the table below:

Non-payment	1,863	31.8%
Move out of area	1,132	19.3%
Transfer to new address (transfer service)	563	9.6%
Go to Comcast	502	8.6%
Too Expensive	419	7.2%
Move in area no transfer service	304	5.2%
No Truck Roll (new move in)	230	3.9%
Go to satellite	221	3.8%
Deceased	147	2.5%
Misc. reasons	121	2.1%
Temporary	117	2.0%
Refused to state reason	103	1.8%
Rate Increase	62	1.1%
Dissatisfied with programming	41	0.7%
Go to internet	30	0.5%

- **Slide 10, Provide a brief outlining innovations that Click! has implemented that makes it attractive to Wave.**

Click!'s network is a traditional HFC (hybrid fiber coaxial) network. On the fiber side, Click! has a Synchronous Optical Network (SONET) network and a Metro Ethernet network. About three years ago, Click! launched DOCSIS (Data over Cable Service Interface Specifications) 3.0 service enabling Internet service speeds of 100 Mbps (Megabits per second). About a year ago, Click! added TV Everywhere service enabling customer access to video content over their Internet connection. More recently, Click! upgraded its Metro Ethernet network to a Ciena based 10 Gbps (Gigabits per second) backbone and secured MEF (Metro Ethernet Forum) 2.0 certification.

As relevant and important as these improvements have been to Click! as an independent entity, they have no special significance to Wave. What makes Click! attractive to Wave are the following factors:

- (a) Both Click! and Wave have an advanced HFC (hybrid fiber coaxial) network, which enables a seamless network interconnection and expansion of their geographic footprint.

- (b) Click! has a meaningful quantity of unused fiber which enables rapid deployment of Gigabit Internet service to apartment complexes and condominium and subsequently to single family residents, potentially, through fiber-to-the-home (FTTH) technology.
- (c) Adding an additional 20,000 households to their existing base of 200,000 households improves their economies of scale by 10%, thereby increasing their negotiating power and competitiveness in the market.
- (d) Not only expand their presence in their home State of Washington, but the capture of a key market in the State.

- **Slide 16, Provide clarification to 'better' service.**

Better Service is intended to capture not only "customer service" that customers receive from customer service personnel over the phone or from service technicians at their homes, but also (i) the availability of better products (e.g. TIVO and Gigabit Internet); (ii) the availability of better service (24/7 call center, 24/7 network operations center, and a 7-day service window), (iii) the convenience of one call for ordering products and services, (iv) the convenience of one call for ordering repairs, (v) the convenience of one service appointment, (vi) the convenience of one bill for all services, and (vii) the access to an expanded fiber network that will span across three Western states, namely Washington, Oregon and California, improving economic development opportunity for the City.

- **Request copy of Sage management review report.**

The Sage report was distributed to all Council Members via an email dated April 7, 2015.

- **Request breakdown of costs over the last 15 years of customers who have skipped out on their cable bills.**

The amount of bad debt written off and collection fees paid between 2003 and 2014 is approximately \$2.9 million, and the number of unreturned set-top boxes over the same period is approximately 10,500 units.

EXHIBIT 10



AMENDED RESOLUTION NO. U-10828

1 A RESOLUTION relating to Click! Network; authorizing Click! to prepare a
2 business plan to provide, in addition to retail cable television, retail
3 internet services including voice over data internet ("VoIP") protocol,
4 commercial broadband and Gigabit service ("Retail Services").

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

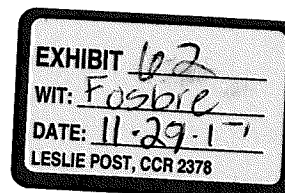
11 WHEREAS Tacoma Power provided retail cable TV services to
12 customers, wholesale internet to independent Internet Service Providers
13 ("ISPs") who served retail customers and wholesale broadband service to
14 business customers, and

15 WHEREAS the broadband telecommunication system is critical
16 infrastructure for Tacoma Power, including the connection of substations,
17 support of approximately 18,000 Gateway smart meters, as well as providing
18 support for the City's I-net system, and

20 WHEREAS the City Charter Section 4.6 requires a vote of the people
21 before the City may sell, lease, or dispose of any utility system, or parts thereof
22 essential to continued effective utility service, and

23 WHEREAS the presence of Click! Cable TV in the marketplace provided
24 savings for all cable TV customers, regardless of provider, in the Click! Market
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2015/Resolutions_Power/AMENDED U-10828 Click All In Retail Service.doc





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territory as compared to other Puget Sound market areas to an estimated average savings of \$10 million dollars a year, between 2004 and 2008, and

WHEREAS Click! services currently reaches 26.2% of the customers in the service territory with one or more of its services (Cable TV only, Internet only or Cable TV and Internet) according to Click! customer counts, and

WHEREAS 61% of those polled in May of 2015 said that it would be a good idea for Click! to provide internet service directly to customers, and

WHEREAS Click! infrastructure could provide Gigabit internet speeds to customers in the entire service territory with capital investment, and

WHEREAS customers' use of internet is increasing and use of Cable TV is decreasing, just as the cost for Cable TV is increasing significantly for the Click! network, and

WHEREAS Click!'s current business model creates future potential financial losses that may require the use of Tacoma Power ratepayer funds, and

WHEREAS the Public Utility Board has determined that the most reasonable path to meeting community objectives and financial sustainability is to pursue a business model where Click! offers additional retail products directly to its customers, including retail cable TV, Internet, voice over Internet (VoIP), and commercial broadband services ("All-In Retail model"); Now, therefore,

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

Sec. 1. Definitions.



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- a. "Click! or Click! Network" shall mean the telecommunication section of the Light Division of the Department of Public Utilities for the City of Tacoma, as established and described in Public Utility Board Amended Substitute Board Resolution U-9258 and City Council Substitute Resolution No. 33668.
- b. "Tacoma Power" shall mean the Light Division (doing business as Tacoma Power), of the Department of Public Utilities, for the City of Tacoma, as established by the City of Tacoma Charter Section 4.10.
- c. "Tacoma Public Utilities" shall mean the Department of Public Utilities (doing business as TPU), for the City of Tacoma, as established by the City of Tacoma Charter Article 4.
- d. "Retail Services" shall mean cable television and retail internet services including voice over data internet protocol, retail and commercial broadband, Gigabit service and related and enhanced services offered to customers from time to time as new technologies and services become available.
- e. "Expenditures" shall mean capital (including debt service) and operations and maintenance ("O&M") expenses determined on a "cash flow" basis incurred by Click! after January 1, 2016. "Expenditures" shall not include, and Click! shall not be charged Click! past physical plant and capital related costs made by Tacoma Power on behalf of Click! prior to January 1, 2016.

Sec. 2. Click! shall work with consultants as appropriate to develop a detailed business, financial and marketing plan (the "Business Plan") to provide customers the Retail Services and other aspects of the Business Plan contemplated herein. The goal will be for Click! to present to the Public Utility Board and the City Council an initial detailed Business Plan on or near April 7th, 2016. The goal will be for the Public Utility Board and City Council to approve the initial detailed Business Plan within 60 days thereafter.

- a. The Business Plan shall include annual, biennial and longer term goals, benchmarks and measures of financial progress and success, including
 - i. building customer counts and increasing market penetration
 - ii. financial projection and benchmarks
 - iii. designing and implementing rates that support customers count goals while providing revenue to pay Expenditures



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- iv. achievement of revenues that exceed Expenditures to the extent reasonably feasible
 - v. capital expenditure planning, including debt financing where appropriate
 - vi. charging just and proper proportions of the cost and expenses of other departments or offices of the City rendering service to Click!, as required under City Charter section 4.5.
- b. The Business Plan shall also include annual, biennial and longer term goals, benchmarks and measures of progress and success for non-financial achievement, including
- i. coordination with goals and strategic plans of TPU and the City of Tacoma
 - ii. promotion of market competition
 - iii. fostering and enhancing educational opportunity and economic activity in Tacoma and Pierce County
 - iv. ensuring just access to internet service regardless of economic condition, social barriers and physical challenges.
- c. The Business Plan will make adapting to changing market conditions and increased competition a priority, including necessary capital investments to improve technologies and stay competitive.
- d. The Business Plan will authorized, but not obligate, Click! to enter into negotiations for new contracts with internet services providers using its network on terms and conditions economically acceptable to Click! and consistent with the Business Plan, including authority to purchase the businesses of the existing private internet service providers using its network. Click! will be authorized to utilize the services of third-party business valuation consultants, acceptable to all parties, in connection with such negotiations.
- e. The Business Plan will include analysis and action plans for the structure of the Click! workforce, including the negotiation with the relevant labor organizations when necessary, to meet the requirements of the Business Plan.
- f. The Business Plan shall require a separate enterprise fund (subaccount) within the Tacoma Power fund to account for Click! revenues and Expenditures.
- g. Subject to the outcome of the legal analysis authorized under Sec. 4, from January 1, 2016, going forward if Expenditures made on behalf of



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Click! by Tacoma Power exceed Click! revenues during any month, such "Excess Expenditures" shall constitute a loan or advance from Tacoma Power to Click!, which shall be reimbursed as follows:

- i. "Target Date" means December 31, 2021 or a date when the cumulative Excess Expenditures reach \$31.6 million, whichever occurs first.
- ii. Click! shall reimburse the loans or advances from revenue exceeding Expenditures as soon as possible.
- iii. If Click! revenue in excess of Expenditures is insufficient to reimburse loans or advances in full by the Target Date, Click! revenue shall be supplemented with City of Tacoma non-utility revenue that, together with Click! revenue, will be sufficient to provide full reimbursement of cumulative loans or advances accrued prior to the Target Date within ten (10) years of the Target Date.
- iv. The Utility Board and the City Council may, at any time, fulfill their obligation to reimburse the cumulative loans or advances by applying the proceeds from a transaction (license, lease, sale, etc.) transferring some or all of the City's telecommunications system business to a private third-party. The Business Plan shall require Public Utility Board and City Council approval of budgets, expenditures, rates, and charges necessary to implement the business plan contemplated herein as part of the regular Tacoma Power budgeting, contract, and rates approval processes.

- h. The Business Plan shall require Public Utility Board and City Council approval of budgets, expenditures, rates, and charges necessary to implement the business plan contemplated herein as part of the regular Tacoma Power budgeting, contract, and rates approval processes.
- i. The Business Plan shall provide quarterly and annual reports to the Public Utility Board and to the City Council to monitor Click!'s actual performance relative to the approved business plan. Such reports shall include financial gains and losses and the balance of the loan account described below.

Sec. 3. The Public Utility Board and the City Council shall, upon adoption of this Resolution, appoint a Click! Engagement Committee to provide oversight and assistance to Click! in the development and implementation of the Business Plan. The Click! Engagement Committee shall be comprised of two (2) Public Utility Board Members, two (2) City Council members, two (2) members of the public who have experience in the broadband industry, and one (1) Tacoma Power ratepayer at large appointed by the City Council. The Click! Engagement Committee shall meet to consult with Click! on a regularly



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scheduled basis established by the Committee and Click!. The Public Utility Board and the City Council may consider delegating specific authority in the governance of Click! to the Click! Engagement Committee in the future as the Business Plan is further developed and implemented.

Sec. 4. Prior to implementing the Business Plan contemplated in this resolution, TPU and the City's Legal Department, shall seek a legal opinion or declaratory judgment in Pierce County Superior Court, to confirm that Tacoma Power may operate the City of Tacoma's telecommunications system in accordance with the business plan. The City's Legal Department shall include in its request for a legal opinion or declaratory judgment, those specific components of the business plan necessary to provide the Utility Board and the City Council comfort that they may fully implement the business plan reasonably without threat of disruption by legal challenge. TPU and the City's Legal Department are authorized to utilize the services of third-party legal advisors in connection with this activity.

Sec. 5. Click! shall review and resubmit rate adjustments budgeted and proposed by Click! and approved by the Public Utility Board (previously approved by Board Resolution U-10773 on April 22, 2015), that support the Business Plan and the City Council is requested to approve an ordinance amending Tacoma Municipal Code Chapter 12.13, to authorize said rate adjustments.

Sec. 6. A fiscal note is attached to and incorporated in this Resolution U-10828. The fiscal note estimates the Capital and O&M budget requirements and impacts in addition to the financial gains and losses anticipated over the next five (5) years, in connection with the Click! business plan contemplated herein.

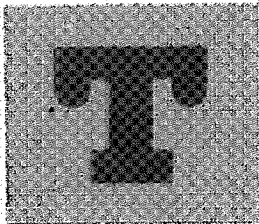
Approved as to form and legality:

William C. Foster
Chief Deputy City Attorney

Chloe J. Smith
Clerk

[Signature]
Chair
[Signature]
Secretary

Adopted 12-3-15



TACOMA PUBLIC UTILITIES
 3628 South 35th Street
 Tacoma, Washington 98409-3192

To: Chair and Members of the Public Utility Board
From: William A. Gaines, Director of Utilities/CEO
Date: November 25, 2015
Subject: Financial Impact of Authorizing Click! to Provide Retail Internet Service Including Gigabit Internet Service, Voice over Internet Protocol Service and Commercial Broadband Service, and Approving a Five Year Business Plan

Background:

A variety of business models have been developed and presented to policymakers, including a base case or status quo model and prospective models for Click! offering retail internet and cable television services, Click! offering wholesale-only internet (no video) and Click! entering into a private use contract involving Tacoma Power/Click! facilities. The financial models considered both low and high growth assumptions. This report addresses the fiscal impact of authorizing Click! to provide retail Internet service including Gigabit Internet service, Voice over Internet Protocol Service and Commercial Broadband Service ("All-In Retail with Gigabit model") along with cable television services. The All-In Retail with Gigabit model anticipates a loss of 1,916 Cable customers under the low growth option and a gain of 1,152 Cable customers under the high growth option in five years. It also anticipates a gain of between 6,412 and 12,124 Internet customers, and a gain of between 5,168 and 7,563 Voice over Internet Protocol customers, low and high respectively. Table 1 below shows the financial metrics of the All-In Retail with Gigabit option.

Table 1

	All-In Retail w/Gigabit Low Option	All-In Retail w/Gigabit High Option
Revenue	\$181.4	\$207.1
O&M Expenditures	\$185.3	\$206.3
Capital Investment	\$27.7	\$28.8
Cumulative Cash Flow	(\$31.6)	(\$28.0)

Fiscal Impact:

The impact of pursuing the All-In Retail with Gigabit option is that the City will incur deficit spending in the range of \$28 million to \$31.6 million over the five-year business plan period, as shown in Table 1. However, as noted in Table 2 below, the Retail All-In with Gigabit model begins to produce positive cash flow in Year 8 under the high growth option.

Table 2

	LOW OPTION		HIGH OPTION	
	Cash Flow	Cumulative Cash Flow	Cash Flow	Cumulative Cash Flow
2016	(\$13,375,861)	(\$13,375,861)	(\$14,141,034)	(\$14,141,034)
2017	(4,894,538)	(18,270,399)	(4,728,564)	(18,869,598)
2018	(5,064,295)	(23,334,693)	(4,541,133)	(23,410,731)
2019	(4,430,859)	(27,765,552)	(2,866,053)	(26,276,783)
2020	(3,829,670)	(31,595,222)	(1,750,348)	(28,027,331)
2021	(3,482,159)	(35,077,381)	(945,919)	(28,973,250)
2022	(3,832,725)	(38,910,106)	(608,528)	(29,581,779)
2023	(3,114,794)	(42,024,900)	480,572	(29,101,207)
2024	(2,877,105)	(44,902,005)	1,146,032	(27,955,175)



EXHIBIT 11

Revised 3-20-17 tjg



CLICK! NETWORK

B u s i n e s s
P l a n

Contact: Tenzin Gyaltsen

Phone: 253-502-8763

Email: TGyaltsen@ci.tacoma.wa.us

EXHIBIT 43
Tenzin Gyaltsen
DATE: 3/27/17
Mindi L. Pettit, RPR, CCR #25719

TAC_PRA_HF_0023767

Confidentiality Statement and Disclaimer

The information contained herein is: (i) provided by the principal founders of the business and, in some cases, (ii) publicly available from directories, publications and websites, as mentioned in the body and the footnotes where possible or appropriate. In some cases, non-publicly available information was used, including independent research, studies, or paid services from individuals and organizations.

While the information set forth herein is deemed by the Company to be accurate, the Company shall not be held liable for the accuracy of or any omissions from this Business Plan or for any other written or oral communication transmitted to any recipient and any other party in the course of its evaluation of transactions involving the Company. The information contained in the plan will require careful scrutiny, verification and due diligence efforts from any recipients of the plan. In furnishing the Business Plan, the Company undertakes no obligation to update this Business Plan or to correct any inaccuracies that may be contained herein.

Furthermore, the potential fulfillment of forward looking statements contained in the Business Plan are subject to change due to unexpected events, market shifts, or circumstances that cannot be known at this time. Forward looking statements are based on expectations, estimates and projections at the time the statements were made that involve a number of economic, business, and numerous risks and uncertainties which could cause actual results or events to differ materially from those presently anticipated. Forward looking statements in the Business Plan may be identified through the use of words such as, but not exclusively to: "expects," "will," "anticipates," "estimates," "believes," or statements indicating certain actions "may," "could," or "might" occur. Such estimates and projections are subject to significant uncertainties beyond the control of the Company. Although such projections are believed to be realistic, no representations are made as to their ultimate attainability.

Company Ownership

Click! Network, a municipal telecommunications enterprise, is a Section of Tacoma Power, which is a Division of Tacoma Public Utilities (TPU), which is a Department of the City of Tacoma ("City"), a municipal corporation in the State of Washington.

Company Location

The Company is located at:
3628 S. 35th Street
Tacoma, Washington

Executive Summary

Click! Network (also referred to as "Click!" and "the Company") is proud to provide value and choice for Tacoma, Washington. Click! currently holds telecommunications or video franchises from the City of

Tacoma, City of Fircrest, City of Fife, City of Lakewood, City of University Place, and Pierce County to offer Cable TV, high speed Internet, digital phone, as well as fiber-delivered data solutions to area residents and businesses.

Click!'s network is a hybrid fiber coaxial network consisting of approximately 400 miles of fiber optic cable and approximately 1,200 miles of coaxial cable. The network currently passes 113,000 homes and area businesses.

Click! underwent a multi-year strategic planning process that included the engagement of a business consultant; evaluation of a variety of business models; a lengthy public process; a review of operations and the key elements of the business plan, including the solicitation of input from expert third parties by a City Council appointed Click! Engagement Committee; and formal adoption of resolution directing the development of this Business Plan.

Click!'s competitive advantages include its customer loyalty and high customer satisfaction rating; its relationship with TPU and the City; its highly capable management and employees; its underleveraged fiber optic network; and its potential to market to the 100,000 plus unserved home passing.

This Business Plan anticipates that by the end of the 10-year business plan period, Click! will serve approximately 13,200 customers or 12% of the homes passed with Cable TV service, approximately 36,000 customers or 31% of the homes passed with high speed Internet service, and approximately 5,500 customers or 5% of the homes passed with digital phone service.

This Business Plan anticipates that Click! will begin making improvements to the hybrid fiber coaxial network in 2017 to deliver 1 Gigabit Internet service. This Business Plan also anticipates that Click! will utilize fiber-to-the-home (FTTH) technology to extend plant to new residential developments and commercial complexes.

This Business Plan anticipates that Click! will launch sustained marketing campaigns that focus on reviving the Click! brand, that promote Click!'s value proposition, and that fully leverages the brand equity of TPU and the City.

This Business Plan anticipates that Click! will strengthen its marketing plans and sales teams to effectively sell its products and services to both the residential and business customers.

This Business Plan anticipates that Click! will remain an open access network, and that it will continue to maintain wholesale agreements with the existing Internet Service Providers and telecommunications companies that currently ride the network.

This Business Plan anticipates that Click! will continue to be governed by the Tacoma Public Utility Board and the Tacoma City Council, and managed by the Director/CEO of TPU, the Superintendent/COO of Tacoma Power and the General Manager of Click!.

Click! currently has 102 budgeted full-time employees. A majority of these full-time employees are represented by two labor unions, namely the International Brotherhood of Electrical Workers (IBEW) Local 483 ("Local 483") and the Washington State Council of County and City Employees, AFSCME, AFL-CIO Local 120 ("Local 120"). Out of the 102 budgeted full-time employees, 72 are represented by the two labor unions and the remaining 30 are non-represented employees. Under this Business Plan, Click!

anticipates reducing its annual labor costs by \$1.5 million, as mandated by policy. Such labor savings are expected to result from implementation of organizational structure changes that would over a course of 2 to 3 years reduce the size of the workforce from the current 102 budgeted full-time employees to 77. This Business Plan anticipates that these changes to the organizational structure would need to be approved by Clickl's governing bodies and negotiated with its labor unions. For those employees who are impacted by the organizational structure changes, it is anticipated that TPU will explore options to place such affected employees in other suitable open positions within Clickl, TPU or the City, and for those employees who either could not be placed in a new position by TPU or by personal choice of the employee, severance package will be provided.

It is anticipated that Clickl will execute this Business Plan to the best of its abilities. However, should unforeseen events arise that impede Clickl's ability to execute this Business Plan, it will pursue alternative strategies including the exiting the business to protect the interest of TPU and the City.

Financial Highlights

The following table and graph illustrate the anticipated financial results of the Company during the next ten years.

FINANCIAL HIGHLIGHTS: 2015 to 2020

	2016		2017	2018	2019	2020
	Actual	Actual				
Projected Customers			43,764	51,244	55,816	56,791
Revenue	\$27,310,352	\$26,530,650	\$28,987,859	\$34,291,829	\$37,983,757	\$39,760,527
Operating Expenses	\$28,928,441	\$28,644,868	\$33,485,527	\$37,726,222	\$39,460,146	\$40,773,004
Operating Income	(\$1,618,089)	(\$2,114,177)	(\$4,497,668)	(\$3,434,393)	(\$1,476,389)	(\$1,012,477)
Capital Expenditures			\$15,580,500	\$4,781,996	\$4,484,915	\$4,076,194
Financing	\$941,923	\$4,282,077	(\$10,861,120)	\$2,151,880	\$2,151,880	\$2,151,880
Net Cash Flow	(\$2,560,012)	(\$6,396,254)	(\$9,217,048)	(\$10,368,269)	(\$8,113,184)	(\$7,240,550)

FINANCIAL HIGHLIGHTS: 2021 to 2026

	2021		2023	2024	2025	2026
	2021	2022				
Projected Customers	55,708	54,937	54,492	54,302	54,360	54,619
Revenue	\$40,038,407	\$40,085,136	\$40,380,307	\$40,771,253	\$41,253,345	\$41,869,967
Operating Expenses	\$41,825,014	\$42,629,332	\$43,427,999	\$44,290,654	\$46,745,980	\$47,710,140
Operating Income	(\$1,786,607)	(\$2,544,196)	(\$3,047,692)	(\$3,519,401)	(\$5,492,635)	(\$5,840,173)
Capital Expenditures	\$3,806,634	\$3,760,625	\$3,704,998	\$3,665,730	\$3,622,453	\$3,593,978
Financing	\$2,151,880	\$2,151,880	\$2,151,880	\$0	\$0	\$0
Net Cash Flow	(\$7,745,121)	(\$8,456,701)	(\$8,904,569)	(\$7,185,131)	(\$9,115,087)	(\$9,434,151)

Underlying the financial projections are the following key financial assumptions:

- A \$20.3 million investment in technology in the 2017-2018 biennium, including a DOCSIS 3.1 upgrade and improvements to the hybrid fiber coaxial network to deliver Gigabit Internet service.
- Over \$1.5 million in salary reductions by 2019 with the elimination of 22 positions.
- A growth in high speed Internet and digital voice customers with a forecasted loss in Cable TV and wholesale ISP customers.
- Growth in revenue of 9.26% in 2017 after a decline of 2.85% in 2016.

- Continued strong revenue growth of 18.30% in 2018 and 10.77% in 2019 with attractive net customer growth rates and price improvements.
- Continuing competition from telecommunications providers with national scale.

Click!: An Overview

Click! is at the cusp of expanding its product offerings to the Tacoma, Washington, metropolitan area. By engaging in retail services and implementing new technology, Click! will offer residents and businesses reliable municipal source for quality high-speed internet services, Cable TV, digital phone services, and fiber-delivered data solutions. Click! has developed this Business Plan to serve as a living document representing the organization's growth potential over the next 10 years.

This Business Plan describes the various actions that will be undertaken and the anticipated outcomes of such actions.

Historical Background

The Tacoma City Council voted to build the Click! Network on April 8, 1997. This effort grew out of a Stanford Research Institute study in 1996 that recommended that the city take advantage of the newly deregulated telecommunications market.

At that time Tacoma Public Utilities wanted to expand a fiber optic network to provide communications between substations and to manage the power generation and electric distribution system and to serve the communications backbone for a "wired" Advanced Metering Infrastructure (AMI) system. The original cost estimate for the TPU network was \$15 million and the recommendation made to the city was to spend more and also bring telecommunications services to customers.

The approved cost estimate for the network was \$65 million, but by the time the Click! was launched to customers in July 1998 the cost grew to \$89 million. The City Council approved a model where the city would compete for retail Cable TV service while also offering wholesale access to the network for ISPs that wanted to provide telephone or data services.

By the end of 1999, 600 miles of cable had been installed and 11,000 Tacoma residents subscribed to Click! cable television service. Downtown businesses and some residents also used the high-speed data services. However, the energy crisis of 2001 forced Tacoma Public Utilities to delay extension of service to Tacoma suburbs because Tacoma Power funds were needed to buy electricity, and because of poor telecom economics in more sparsely populated areas.

Cable companies nationwide had just begun introducing a cable modem product on their networks in 1996 and at the time that Click! was launched there was a low penetration of fast broadband everywhere in the country. During the early 2000s the cable companies and the telephone companies roughly split the broadband market. But over time cable modems became faster than DSL and the cable

companies won a greater market share each year, until today when they are rapidly winning most of the remaining DSL customers.

The original business plan had estimated that Click! could win about half of the cable customers from TCI, the cable company at the time. In 2001 TCI was purchased by Comcast, the biggest cable company in the country. Over time Comcast developed a bundling model that provided a discount for customers that bought multiple services. Since Click! only had the Cable TV product the business missed out on the bundling trend and Comcast began to steadily take cable customers from Click!. Click!'s homes passed penetration peaked at approximately 22% in 2009 with nearly 25,000 Cable TV customers.

The Strategic Planning Process

The strategic planning process began in 2010 with the engagement of CCG Consulting, LLC ("CCG").

The 2010 CCG Report

CCG performed an in-depth analysis of the day-to-day operations, financial and capital budgets and results, and interviewed the staff at Click!. CCG also interviewed the Utility Board members and management to understand their expectations for Click!.

CCG identified numerous findings and provided specific recommendations for improving the business, which included making Click! a full-service telecommunications company, raising cable television service rates for parity with market, offering triple play packages of video, data and voice as done by market competitors, reducing workforce headcount, reducing spans of control and combining job classifications to reflect industry practice.

Comment [PSB1]: Should this be expanding?

These findings and recommendations were presented to the TPU Board in January 2012. After receiving feedback from the public, the TPU Board issued a directive to pursue an alternative plan, which included maintaining the existing hybrid retail wholesale business model and to achieve Click!'s financial viability by growing the wholesale Internet business through a collaborative effort with the ISPs. This alternative plan became known as Plan B.

The 2013 CCG Report

CCG was reengaged in 2013 to review the operations and financials of Click! and to opine on the long-term sustainability of Plan B. CCG determined that Plan B would not sustain Click! in the long run and that other alternatives would need to be explored. CCG was then directed to explore alternative business models including cutting costs and operating Click! at industry expense metrics, revising the original 2012 all-in retail plan, exiting the retail cable television business and converting the business to wholesale only, leasing the network to an independent third party, completely shutting down the business, and selling the business and assets to a private party.

CCG concluded that other than shutting down, selling or leasing, all other alternatives produced a long-term financial deficit. The most promising of the viable alternative options was leasing the network to an independent third party.

The Wave Proposal

In 2013, Wave Division Holdings LLC ("Wave") a Washington based cable telecommunications company had made an unsolicited proposal to purchase Click! Network for \$15 million. TPU management then told Wave that the network was not for sale. Subsequently in 2014, Wave made another unsolicited proposal, but this time to lease the network. The proposal from Wave incidentally fit CCG's lease recommendation, which led TPU management to engage with Wave and the development of a Letter of Intent by Wave to lease the Click! network.

The Wave proposal entailed a 40-year indefeasible right of use (IRU) lease with annual lease payments of \$2 million, adjusted annually for inflation; capital investments in the amount of \$1.5 million per year, adjusted annually for inflation, into the physical network, and make up any shortfall in cash payments; support and maintenance of TPU's communications network; assumption of Click!'s obligation to support and maintain the City of Tacoma's Institutional Network (I-Net); new products and services for consumers including Gigabit Internet service; maintaining an open access network for the Internet Service Providers, and the provision of affordable video, data and voice to low income customers priced at \$9.95 per month.

The Wave proposal was formally presented to TPU Board and the Tacoma City Council at their Joint Study Session on March 31, 2015. The proposal, however, failed to receive support from its governing bodies. After nine months of public engagement and deliberation, finally in December 2015, Click!'s governing bodies directed staff to pursue further develop the original 2012 all-in retail option, and approved the formation of an advisory committee to guide the development, which became known as the Click! Engagement Committee.

The Click! Engagement Committee

- The Click! Engagement Committee was formed in January 2016.
- It was formed per the direction of the Tacoma Public Utilities Board and the City Council.
- The Committee was comprised of seven members as follows: Mayor Marilyn Strickland, City Council Member Marty Campbell, Public Utility Board Member Mark Patterson, Public Utility Board Member Karen Larkin, industry experts Janine Terrano and Terry Dillon, and ratepayer advocate Andrea Cobb.
- The Committee met 16 times between January 22, 2016 and August 1, 2016.
- The Committee focused on conducting a deep dive into the assumptions of an All-In business model for Click!.

- As part of that process, the Committee became informed on the fundamental elements of the Click! Network enterprise, including services, customers, governance, management, employees, network, business relationships, marketing, legal and regulatory environment, and finances.
- The Committee also sought advice from industry experts Doug Dawson from CCG Consulting (financial modeling), Colman Keane from EPB Chattanooga (business analysis), and John Wambaugh from Z2 Solutions (Advanced Metering Infrastructure).
- TPU management staff, including a representative of the City's legal department, were present at all the committee meetings and provided input.
- The Committee advised management to evaluate and consider the following new technologies and services:
 - a. Fiber-to-the-Home (FTTH) and Wi-Fi.
 - b. Gigabit internet, home security, home automation, and cloud services.
 - c. Local advertising sales
 - d. Development of local programming content
 - e. Advanced telecommunications services to small and medium sized businesses.
 - f. Provision of broadband/internet services to the following sectors:
 - i. Secondary and higher education institutions to advance education.
 - ii. Medical institutions to enable telemedicine.
 - iii. Properties managed by the Tacoma Housing Authority to address the City's digital equity initiative.
- On the matter of Click!'s relationship with the ISPs and MSAs, the Committee advised management to maintain an Open Access network whereby existing relationships with the ISPs are maintained. An increase to Click!'s share of ISP revenues was also explored.
- The Committee advised management to make broadband services more affordable for payment challenged customers by offering a Lifeline internet tier for \$14.95, where approximately \$10 of the charge would be covered by the recent expansion of the Federal Lifeline program.
- On the matter of organizational structure, the Committee generally supported the creation of a leaner organization through negotiating with labor representatives contracting out and consolidation of certain functions to achieve operational and cost efficiencies.
- After much discussion and deliberation the Committee came to the conclusion that 'saving Click!' may not accurately describe the best focus. Instead concentrating on providing Tacoma / Pierce County residents high quality affordable broadband services that meet customer and community objectives is a more meaningful focus.
- The Committee studied and confirmed that the financial analysis provided by staff, consultant Doug Dawson, and Moss Adams (the City's auditing firm) accurately portrayed Click!'s financial challenges, and that the public has not been misinformed.

- The Committee recognized that the rate, revenue and customer growth assumptions in the All-In financial models presented by Click! staff represent reasonable assumptions about the current and prospective business and market trends.
- The Committee acknowledged that the Wave Broadband lease proposal was a potentially viable proposal. It addressed many of the financial issues and some of the social objectives of the City. A deliberative process similar to the Committee's process might have improved the public understanding of the proposal.
- The Committee recognized that the rules governing Click! pertaining to rate making, offering of products and services, and purchasing need to be flexible enough such that it can quickly adapt to changing market conditions.
- The Committee concluded that 'no magical thinking' will resolve Click!'s fiscal problem, and that some form of external funding is required to keep it afloat.
- The Committee explored a variety of funding options, including the imposition of an access fee, a utility fee, characterizing Tacoma Power funding as a surcharge to Tacoma Power customers, abatement of Gross Earning Taxes paid to the City by Click!, debt financing of all the one-time capital expenditures, and tax measures.
- At its June 3, 2016 meeting, the Committee considered introducing a tax increase measure on the March 2017 Election ballot to raise the approximately \$6 million in annual deficit funding necessary to operate Click!. Subsequent to that meeting, the City members and TPU Board members concluded that a ballot measure would unduly extend the period of uncertainty for Click! employees and that the success of a tax-raising ballot measure was not assured.
- Then beginning on August 1, 2016 and subsequently, the Committee members introduced their own funding proposals, which are as follows:
 - a. Shared Contribution Model
 - b. Shared Contribution with TPU Phase-out Model
 - c. No City Funding Model

Policy Directive

On September 28, 2016, the TPU Board adopted Amended Resolution U-10879 approving the All-In-Retail option as the new path forward for Click!. The policy directives were as follows:

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

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

Sec. 2. The Clerk of the Board is directed to forward this Resolution and the Business Plan to the City Council for immediate consideration. The Board requests, due to budget timing constraints, that the City Council make its decision in a timely manner. Upon approval of the Business Plan, funding, and other provisions of this

resolution by Council, TPU staff is directed to complete the more detailed aspects of the Business Plan and then implement that plan.

Sec. 3. TPU's request that Click! management be delegated authority to make changes to products and service offerings, prices (within the limitations set forth in the Click! rates/charges ordinance approved by the Board and Council), and marketing strategies contained within the Business Plan without further approval by the Board and City Council is approved, and the Council is requested to concur in such approval. All significant material changes to the Business Plan that would remove TPU as the primary operator of Click! including, but not limited to, the sale or lease of telecommunications system equipment or capacity, outsourcing of work, permanent discontinuance of products or services, etc. shall be brought to the Board and City Council for approval. Such delegation includes approval of contracts allowing third parties to use surplus portions of the network to supply services to their customers so long as such use does not materially interfere with Click!'s operations of the 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.

Sec. 4. Tacoma Power's request to transfer an annual amount to the Click! fund from Tacoma Power electric revenues, to appropriately compensate Power's past, current and future beneficial uses of the telecommunications system infrastructure, which shall be used to pay Click! operating, maintenance, taxes, capital costs and debt, is approved. Tacoma Power's transfer from 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 purchase equipment as necessary to meet the objectives of the Ail-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.

The key elements of the high-level "All-In" business plan referred to in Sec. 1 of the recitals above are the following:

- ClickI 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.
- ClickI is expected to provide bundled service of cable television, internet and phone services.
- The ClickI network is expected to continue operating as an Open Access Network.
- ClickI 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.
- ClickI 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.
- ClickI 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.
- ClickI 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.
- ClickI is expected to offer Gigabit and multi-Gigabit service to residential customers.
- ClickI is expected to continue offering Gigabit and multi-Gigabit Metro Ethernet services to commercial customers.
- ClickI is expected to continue maintaining and supporting the City's Institutional Network (I-Net).
- ClickI 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.
- ClickI 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.
- ClickI 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.

Financial and Customer Summary (Low/High Growth):

Comment [PSB2]: Will all numbers remain the same (year 2 shown as 2017 here) regardless of when this plan is implemented?

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	18,544	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.

The All-In Business Plan

This Business Plan is intended to achieve the Policy Directives noted above. The key elements and the financial model of this Business Plan were developed in consultation with CCG Consulting, who has been advising Click! since 2010. This Business Plan describes Click!'s products and services, sales and marketing, network improvements, and labor strategies, and the anticipated financial results from the execution of these strategies.

Products and Services

The next table shows expected capital expenditures for the next ten years. They include an upgrade to 1 gigabit capacity for an expansion into the retail market along with recurring capital expenditures.

PROJECTED CAPITAL EXPENDITURES: 2017 to 2021

	2017	2018	2019	2020	2021
Broadband Services	\$309,500	\$309,500	\$309,500	\$309,500	\$309,500
Customer Related Equipment	\$859,000	\$859,000	\$887,919	\$869,382	\$827,588
Equipment A&R	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Headend	\$307,000	\$307,000	\$0	\$0	\$0
HFC Network	\$69,000	\$69,000	\$69,000	\$69,000	\$69,000
Infill MDU	\$210,500	\$210,500	\$210,500	\$210,500	\$210,500
Network Apps Upgrade	\$625,000	\$625,000	\$625,000	\$625,000	\$625,000
Network Security	\$40,000	\$40,000	\$40,000	\$40,000	\$40,000
New Service Drops	\$163,000	\$163,000	\$163,000	\$163,000	\$163,000
HFC Infill	\$797,000	\$797,000	\$797,000	\$797,000	\$797,000
HFC Road Projects	\$249,000	\$249,000	\$249,000	\$249,000	\$249,000
Voice Gateways	\$131,500	\$131,500	\$223,500	\$183,400	\$178,400
Adjustments to Capitalized Labor	\$0	\$41,496	\$41,496	\$48,412	\$41,496
Add Cable Modems	\$825,000	\$825,000	\$630,000	\$315,000	\$123,750
Node Upgrades - Hardware	\$3,450,000	\$50,000	\$50,000	\$50,000	\$50,000
Node Upgrade - Labor	\$3,500,000	\$0	\$0	\$0	\$0
Incremental Extra for Gigabit Modems	\$0	\$0	\$84,000	\$42,000	\$17,400
DOCSIS 3.1 Upgrade	\$4,020,000	\$80,000	\$80,000	\$80,000	\$80,000
Total	\$15,580,500	\$4,781,996	\$4,484,915	\$4,076,194	\$3,806,634

PROJECTED CAPITAL EXPENDITURES: 2022 to 2025

	2022	2023	2024	2025
Broadband Services	\$309,500	\$309,500	\$309,500	\$309,500
Customer Related Equipment	\$779,663	\$735,236	\$694,052	\$655,875
Equipment A&R	\$25,000	\$25,000	\$25,000	\$25,000
Headend	\$0	\$0	\$0	\$0
HFC Network	\$69,000	\$69,000	\$69,000	\$69,000
Infill MDU	\$210,500	\$210,500	\$210,500	\$210,500
Network Apps Upgrade	\$625,000	\$625,000	\$625,000	\$625,000
Network Security	\$40,000	\$40,000	\$40,000	\$40,000
New Service Drops	\$163,000	\$163,000	\$163,000	\$163,000
HFC Infill	\$797,000	\$797,000	\$797,000	\$797,000
HFC Road Projects	\$249,000	\$249,000	\$249,000	\$249,000
Voice Gateways	\$173,400	\$162,200	\$157,200	\$152,100
Adjustments to Capitalized Labor	\$48,412	\$48,412	\$55,328	\$55,328
Add Cable Modems	\$123,750	\$123,750	\$123,750	\$123,750
Node Upgrades - Hardware	\$50,000	\$50,000	\$50,000	\$50,000
Node Upgrade - Labor	\$0	\$0	\$0	\$0
Incremental Extra for Gigabit Modems	\$17,400	\$17,400	\$17,400	\$17,400
DOCSIS 3.1 Upgrade	\$80,000	\$80,000	\$80,000	\$80,000
Total	\$3,760,625	\$3,704,998	\$3,665,730	\$3,622,453

Labor Strategy

Following is a pro forma cash flow for The Company.

PRO FORMA CASH FLOW: 2017 to 2021

	2017	2018	2019	2020	2021
Total Revenue	\$28,987,859	\$34,291,829	\$37,983,757	\$39,760,527	\$40,038,407
Expenses					
Administration & Sales					
Administration	\$1,495,690	\$1,767,221	\$1,491,682	\$1,548,250	\$1,573,784
Market Business Ops Admin	\$6,544	\$6,948	\$7,122	\$7,300	\$7,482
Marketing Administration	\$429,074	\$455,614	\$387,705	\$397,398	\$407,333
Marketing	\$18,816,561	\$21,611,137	\$24,367,867	\$24,944,377	\$25,445,387
ISP Advertising	\$1,192,243	\$1,941,591	\$1,892,557	\$2,294,672	\$2,549,938
Customer Sales	\$39,013	\$41,427	\$55,431	\$60,000	\$61,499
Business Systems	\$408,031	\$433,271	\$444,103	\$455,205	\$466,585
Operations & Maintenance					
Tech Op Admin	\$39,624	\$42,075	\$43,127	\$44,205	\$45,310
Service Install	\$624,396	\$689,621	\$706,751	\$728,855	\$742,642
Dispatch	\$5,913	\$6,279	\$13,950	\$13,950	\$13,950
Converter Inventory	\$85,579	\$90,872	\$93,144	\$95,473	\$97,860
Network Operations	\$179,446	\$197,719	\$197,096	\$195,526	\$200,414
Broadband Services	\$275,287	\$292,315	\$644,242	\$644,538	\$635,994
Network Engineering	\$142,689	\$151,515	\$155,303	\$159,186	\$163,164
Network Service Assurance	\$7,973	\$8,467	\$0	\$0	\$0
HFC Construction	\$190,955	\$202,767	\$207,836	\$213,033	\$218,359
HFC Engineering	\$60,020	\$63,733	\$65,326	\$66,959	\$68,634
Salaries & Benefits	\$9,486,488	\$9,723,651	\$8,686,905	\$8,904,078	\$9,126,680
Total Op. Expenses	\$33,485,527	\$37,726,222	\$39,460,146	\$40,773,004	\$41,825,014
Operating Income	(\$4,497,668)	(\$3,434,393)	(\$1,476,389)	(\$1,012,477)	(\$1,786,607)
Capital Expenditures					
Capital Expenditures	\$15,580,500	\$4,781,996	\$4,484,915	\$4,076,194	\$3,806,634
Financing					
Financing	(\$10,861,120)	\$2,151,880	\$2,151,880	\$2,151,880	\$2,151,880
Net Cash Flow	(\$9,217,048)	(\$10,368,269)	(\$8,113,184)	(\$7,240,550)	(\$7,745,121)

PRO FORMA CASH FLOW: 2022 to 2026

	2022	2023	2024	2025	2026
Total Revenue	\$40,085,136	\$40,380,307	\$40,771,253	\$41,253,345	\$41,869,967
Expenses					
Administration & Sales					
Administration	\$1,640,132	\$1,681,136	\$1,751,536	\$1,809,864	\$1,870,015
Market Business Ops Admin	\$7,669	\$7,861	\$8,057	\$8,258	\$8,464
Marketing Administration	\$417,517	\$427,955	\$438,654	\$449,621	\$460,862
Marketing	\$25,709,053	\$25,996,601	\$26,310,486	\$26,652,629	\$27,025,630
ISP Advertising	\$2,738,798	\$2,920,536	\$3,095,607	\$3,265,422	\$3,436,995
Customer Sales	\$64,628	\$66,244	\$69,491	\$72,820	\$74,640
Business Systems	\$478,249	\$490,205	\$502,461	\$515,022	\$527,897
Operations & Maintenance					
Tech Op Admin	\$46,442	\$47,604	\$48,794	\$50,014	\$51,265
Service Install	\$765,641	\$784,782	\$808,834	\$829,055	\$854,214
Dispatch	\$13,950	\$13,950	\$13,950	\$13,950	\$13,950
Converter Inventory	\$100,306	\$102,813	\$105,383	\$108,018	\$110,718
Network Operations	\$205,424	\$210,560	\$215,824	\$221,220	\$226,751
Broadband Services	\$625,264	\$616,087	\$608,371	\$602,027	\$596,978
Network Engineering	\$187,244	\$171,425	\$175,710	\$180,102	\$184,604
Network Service Assurance	\$0	\$0	\$0	\$0	\$0
HFC Construction	\$223,818	\$229,413	\$235,148	\$241,027	\$247,053
HFC Engineering	\$70,350	\$72,108	\$73,911	\$75,759	\$77,653
Salaries & Benefits	\$9,354,847	\$9,588,718	\$9,828,436	\$11,651,172	\$11,942,451
Total Op. Expenses	\$42,629,332	\$43,427,999	\$44,290,654	\$46,745,980	\$47,710,140
Operating Income	(\$2,544,196)	(\$3,047,692)	(\$3,519,401)	(\$5,492,635)	(\$5,840,173)
Capital Expenditures					
Capital Expenditures	\$3,760,625	\$3,704,998	\$3,665,730	\$3,622,453	\$3,593,978
Financing					
Financing	\$2,151,880	\$2,151,880	\$0	\$0	\$0
Net Cash Flow	(\$8,456,701)	(\$8,904,569)	(\$7,185,131)	(\$9,115,087)	(\$9,434,151)

EXHIBIT 12

Tacoma Public Utilities

**Click! Network
Financial Performance Review**

April 24, 2000

PRICEWATERHOUSECOOPERS 

333 Market Street
San Francisco, California 94105

EXHIBIT 3
306(k)(b) Klein
DATE: 9-26-17
Mindi L. Pettit, RPR, CCR #2519

TAC_PRA_HF_0016987

PricewaterhouseCoopers LLP
333 Market Street
San Francisco CA 94105-2119
Telephone (415) 957 3000
Facsimile (415) 957 3394
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Mr. Mark Crisson
Director
Tacoma Public Utilities
3628 South 35th Street
Tacoma, WA 98411-0007

April 24, 2000

Subject: Click! Network Financial Performance Review

Dear Mr. Crisson:

PricewaterhouseCoopers has completed its review of the Click! Network as outlined in our agreement of March 7, 2000 and is pleased to present the results of our work in the attached report.

We would like to thank your staff for their complete cooperation and participation throughout the review. All of the staff we worked with demonstrated a professional, enthusiastic approach to their roles in helping Click! attain its goals and serve the greater Tacoma community. Their success is reflected in the supportive articles in trade and general media publications, and in the limited customer contacts we made.

Our review was initiated by collecting and reviewing numerous construction, marketing, accounting, and management reports. We interviewed all of the senior managers in the Click! organization, including working extensively with the new General Manager Dana Toulson. We observed the Network Operations Center (NOC), including the head end and customer care operations, the set-top box inventory, programming and control area, a hub and the broadband interconnection point, one of the two field construction offices which initiates, supervises and inspects the work done on the system, and the engineering department responsible for the design and Multiple Dwelling Unit (MDU) build-out. We also worked with the TPU Finance Department to understand the financial control structure and the

processes for capturing and reporting on revenues, payroll costs, accounts payable costs, journal entries and the preparation of financial statements.

Overall, the Click! Network has been deployed to date within the approved budget, with service levels and quality equalling, and in some cases exceeding, the original plans. The technical quality and redundancy is a model system. Customer service is a hallmark of the operation, particularly your commitment to managing provisioning expectations within an approximate two-week window - then keeping the schedules you set. The extra attention to customer education and support is likely to enhance customer retention. Actual expenditures have been appropriately authorized, inspected and approved. We have identified a number of areas where accounting, reporting and forecasting can be improved, and many of these recommendations have been or are being implemented. After these accounting adjustments, and if the business continues as planned for the remainder of 2000, revenues are forecast to exceed expenses before June of 2001. In total, you have provided the substance to the reality of Tacoma, America's #1 Wired City.

We appreciate this opportunity to have worked with you and the Click! Network staff on this most important project and wish you success in your continued development of Click! Should you have any questions regarding this report, or desire assistance in implementing our recommendations, please contact Rick Van Mell at 415-957-3138.

Very truly yours,

PriceWaterhouseCoopers LLP

(2)

Click! Network Review

April 2000

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(3)

Click! Network Review

April 2000

We were asked to review and provide recommendations on seven specific objectives which can be grouped into five general sections. The specific objectives are provided in italics at the beginning of each section. The five sections are:

- Construction Program
- Marketing Program
- Financial Control, Reporting and Projected Results
- Expansion into University Place
- Click!'s Position in the Telecommunications Evolution

Construction Program

"Review actual capital construction costs to date and how they conform to the budget."

Overall, we found the construction program to be well run and closely coordinated with your marketing and customer service plans. By the end of 1999 your system was operational, and by the end of 2000 all of the initial construction contemplated for the City of Tacoma in the current plan is on track to be complete within the authorized budget of \$91 million. Recommendations for improvement include continuing refinement of the capital budget, as defined in the Work Order system, into discrete tasks associated with specific Click! business lines and cost centers. Each task should identify specific measurable physical milestones and the associated spending by month. Where appropriate, each Work Order should also be linked to specific Marketing and revenue generation plans. In particular, capital spending to support CATV, broadband and ISP customer growth should be directly tied to the Marketing plan. This recommendation is already being implemented for the remainder of this year, the preparation of the 2001-2002 budget, and the longer term financial modelling of Click! Network.

(4)

Marketing Program

"Compare actual CATV subscriber penetration per activated node and as a system average for all activated nodes in relation to the business plan goal of 25%."

The marketing program for CATV was developed with a penetration target of 25% of the homes passed within 18 months of node release. As of April 1, 2000, the overall penetration in the City of Tacoma stood just over 23%, even though only 15% of the available nodes have been released for subscribers for a full 18 months. 29 individual nodes have already exceeded 25% penetration, and all of them have been released for one year or more. 16 of the 29 have penetrations between 30% and 47%. 22 nodes are between 20-25% penetration, and 16 of them have been open more than 300 days. 17 of the remaining 26 nodes with less than 20% penetration have been released for less than 6 months. There are 8 nodes completed but not yet fully released to subscribers. At April 1st, Click! had approximately 13,000 subscribers, with a projected year end target approximating 19,000. When the subscriber count passes 15,575 the overall penetration for all nodes in the City will exceed 25% and this appears likely before year-end 2000. A hallmark of the marketing program has been to manage the release of nodes such that customers can be given an installation date within about a two week window. This has been accomplished with a structured, coordinated program which calculates the daily estimated installation effort based on the services customers have requested and the number of Service Technicians available. Our primary recommendation for Marketing is the reciprocal of the construction recommendation: the marketing revenue generation plan should be clearly related to the required numbers of installations or circuits and their capital costs. Revenues are currently forecast by separate business line, and should be augmented with a separate summary page of assumptions and construction or installation milestones. Spending in the capital section of the business model should be identified by month, and where considerable capital must be spent before revenue can be generated, the time lag should be clearly defined on the assumptions page. This recommendation has been substantially incorporated into the Click! business model currently maintained by Marketing, and the data aligned with construction and Operations. Only the development of a summary assumptions and milestones page remains to be done. An additional recommendation is that the Click! business model projections be frozen for the remainder of the year 2000 and report actuals against the budget. A rolling forecast may also be desirable to track changes as they occur.

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Financial Control, Reporting and Projected Results

"Assess the management and control of the three Click! Business Lines' actual revenues and expenses.

Assess the assumptions for all three Click! Business lines and associated rates of growth and the business plan projections that revenue will exceed expenses by June 2001.

Based on the short history for the CATV, Business Advantage and ISP Advantage business lines, evaluate whether there are any obvious area of concern in financial performance, control or reporting."

As we conducted our review, we found these areas overlapped in many ways, and combined them into this *Financial Control, Reporting and Projected Results* section. For the reader to understand our findings and recommendations in the correct context, we believe it is instructive to describe the reporting and control environment as we found it.

Control Environment

First, past practice has been for Finance to provide monthly results to the Director and Superintendent before the division managers. Further, because the City (which provides TPU with its accounting systems) does not have an integrated financial system, the time lag for developing financial statements is considerable, and reports have not been distributed until late in the following month for March through November. This was explained as "waiting until the Board had approved the results" so there would be no distribution of unapproved information. While this may not be a problem for other TPU divisions, in the dynamic start-up environment of Click! Network, the Click! Manager is placed at a considerable disadvantage when asked to explain any given financial result without an effective mechanism to evaluate the supporting details. Another consequence of past practice and system limitations is the routine apparent distortion and delays in the December, January and February reports. For example, during our review which began in March 2000, the December results had just become available. The December Click! Network Operational Summary showed a

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profit of approximately \$145,000 when actual cash operating costs continued to exceed revenues. However this was the result of several journal entries, accruals and deferrals, one exceeding \$1 million. This page appeared in the Financial Statement package provided to the Board and did not contain any supporting explanation. The subsequent January summary showed a loss of approximately \$427,000 which again did not reflect the actual operating results. On April 7th, the Click! Manager had not seen any February results, yet the Director had already seen preliminary *March* results.

Actual Costs and Revenues

We believe it is important to also note that the actual control of spending for construction and operations appears to be functioning well, despite the limitations of the Work Order, Purchase Order and payroll systems. Reviews of Click! field construction management showed a well-controlled systematic management under unit price contracts and rigorous design and inspection procedures. However, because contractors were assigned to build more than one part of the network when customer demand dictated, their invoices sometimes included work that covered more than one Work Order. The coding by Click! construction staff should have segregated these costs to the appropriate Work Order, and they usually did. Under the Work Order/Purchasing system however, the contractor is working under a single Purchase Order number, and since the control is the maximum amount of the P.O., the Work Order system establishes an encumbrance up to the maximum of the P.O. However, when the invoice distributes work done across multiple Work Orders only the original Work Order encumbrance is reduced. The net effect is to appear to over-run one Work Order while showing a larger than required encumbrance in the original Work Order. Again, this is not a control problem with the actual spending, but is a computer system imposed limitation which limits the ability of Finance to provide a more meaningful oversight role. It also limits the value of Work Order reports in reflecting the true status of open commitments and estimates-to-complete phases of the work. It is the detailed logs and spreadsheets maintained by Click! that provide the best control.

Revenue generation and reporting has not been an issue, and the Click! database was able to provide sufficient data when requested. The billing system is currently being replaced to gain

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even more functionality, and, based on the prior results and the larger issues noted in this report, we did not specifically review this conversion.

We spent considerable time with the Finance Department and the Click! Manager to understand some of the major financial reporting issues, and to develop recommended solutions. Four of the largest issues involved capitalization of General and Administrative expenses, capitalization of connection costs for new subscribers, inter-company issues between Click! and Tacoma Power, and the formatting and presentation of Click! financial reports.

Capitalization of General and Administrative Expenses

The capitalization of General and Administrative expenses attributable to the construction program for 1999 accounted for over \$1,000,000. The entire sum was shown as a credit to expense in the month of December. The amount was calculated based on a long-standing formula used by Tacoma Power which compared the ratio of capital spending to operating spending, and was historically designed to capitalize a maximum amount of G&A under rate-based rule making. The formula creates a percentage which is then applied to the value of each Work Order for a division, subject to a maximum value which has been increased by 3% per year for about ten years. This same approach was applied by Finance for the first three months of 2000. The percentage factor used was 7.070%, with an individual line item value limited to \$94,000. Finance, as it went through the year end closing, assumed that all of the remaining amount in a Work Order not actually paid in 1999 would be spent in 2000, and added an extra \$2,000,000 for possible new work orders. The net result is another projected charge of approximately \$ 1 million for the year 2000, which was transferred by journal entry out of expense to capital for January, February and March of 2000 in the amount of \$85,000 per month. However, in late January when the amount to be capitalized was determined, the Click! Operations Manager issued Work Order revisions to close five old work order numbers and transfer the necessary remaining spending to five new Work Orders. The revised total spending for Work Orders is \$89 million, without any need for the additional \$2 million estimated by Finance. We re-ran the formula and arrived at a monthly G&A transfer closer to \$59,000, an annual difference of \$312,000. Finance has reviewed this analysis and suggests

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reducing the monthly transfer by \$32,000 which they believe will reflect the current expectations and account for the higher levels in the first quarter. We would like to repeat, this finding is at bottom a manifestation of a culture and pattern of closely held financial practices, reporting and disconnected manual systems, not a reflection of any individual's particular job performance.

Further, the initial Click! capital program established Work Order 17013 in the amount of \$1.9 million to account for capitalized G&A. This was intended to include managers' costs charged to operating expenses. The capitalized G&A however is going directly to construction-in-progress property accounts, and not to Work Orders. The result is that the total of the property accounts will be larger than the sum of the Work Orders. Since both the Capital and Operating Expense budgets are approved, cash control is maintained as long as total spending is less than the sum of the two budgets. However, the potential exists for the capitalization of G&A to cause the sum of the capital accounts to exceed the authorized Capital budget. (We do not expect that to happen based on the current information and projections.) We recommend that future Capital and Expense budgets plan for any expected G&A capitalization and include it only in the Capital budget, even if it flows temporarily through the Expense budget accounts. The Expense budget should be the net spending on operating activities after the capitalized G&A has been transferred to the capital accounts.

A related issue is the capitalization of Tacoma Power expenses. The same formula is used to develop a percentage which reduces Tacoma Power's expenses and charges Click!'s construction account - again by individual Work Order. For 2000 the proposed percentage is 6.16%, totalling just under \$1 million per year and charged at \$80,000 for Jan-Mar. Click! management recognizes there is some level of G&A support from Tacoma Power, but they question if \$80,000 per month is the appropriate level. The overall effect is that Click!'s construction has been charged a 13.23% G&A cost. This remains an open issue.

Capitalization of Connection Costs for New Subscribers

During our review of the construction program and its controls we learned that connection costs for new subscribers were higher than originally planned for two primary reasons. First,

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subscribers were requesting that more outlets be installed in their homes (approximately 3.5 vs. a planned 1.5). This meant that an individual Click! Service Technician might complete only one or two installations per day vs. a planned three to four. Second, given a high customer demand for service and the unplanned extra demand on Click! Technicians, third party contractors were assigned to make new subscriber connections, primarily in MDUs. These connections were invoiced to Click! at unit rates for the "drop" from the pole to the house and the first outlet, plus an additional charge for each additional outlet. A different rate is used if the connection is made at a pre-wired MDU (Multiple Dwelling Unit). When these contractor costs are invoiced to Click! they are normally coded to the capital Work Orders 17019 or 17027 depending if the connection was at an MDU or single residence.

The cost for all Click! Technicians flows through the payroll system as an operating expense to the 5534 and 5535 accounts. Monthly the Finance Department has been calculating a "new subscribers" count, multiplying it by an originally estimated cost based on a drop line and one outlet, then reducing operating expense and charging the capital Work Order for the resulting amount.

There are four problems with the way the system has worked. First, the "new subscribers" count calculation inadvertently included reconnects - about a 2% error. Second, the count included connections by both Click! Technicians and contractors - this resulted in the Work Orders being charged twice for the same connection. Once by the contractor's invoice and second by the capitalization journal entry. Third, starting in March 2000, this double charging was attempted to be corrected by transferring all of the contractor costs out of the Work Order to operating expense. (Approximate value \$244,000.) However, contractor costs are approximately 50% higher than the rate per connection being used to reduce operating expenses, resulting in overstating operating expense. Fourth, the contractor invoices accounted for all of the outlets installed, but the Click! operating expense reduction only accounted for the first outlet. Thus none of the cost for additional outlets installed by Click! Technicians has been capitalized. Though a specific count has not yet been determined, the estimated value for all additional outlets already installed or planned during the year 2000 approximates \$1.5 - 1.9 million.

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We recommend returning the \$244,000 to the original Work Orders, establishing a best effort count of outlets broken down by contractor or Click! installation, then developing a net adjustment that reduces Work Orders and increases operating expense for the connections that were double charged, and increasing Work Orders and reducing operating expenses for the outlets that were not capitalized.

The identification and recommendation development for these issues was accomplished through a series of cooperative meetings among at least six individuals on the Finance and Click! staffs.

Click! Network and Tacoma Power Intra-company Issues

One of the primary purposes for establishing a fiber-optic and coaxial network was to increase reliability, reduce costs and enable new services for the electricity customers of Tacoma Power. As the telecommunications concept evolved, additional features were added to the system. All of the capital budget, however, has been authorized under the Telecom fund - account 4717. To date all of the depreciation expense for the amounts capitalized are shown on the Click! Network Operational Summary page in the quarterly financial reports. Further, Click! staff provide technical support for the fiber operations and design elements which will support Power's SCADA system (Supervisory Control and Data Acquisition). An inter-division revenue from Power has been projected in the initial pro forma financial projections for Click!. The approximate value to Click! is \$1 million per year. However, a typical cable TV company would also pay a fee for use of a power company's easements, usually a "pole" connection fee. Other inter-company charges for services provided by the Distribution division and the Landscaping department are routinely charged to Work Orders as work is performed.

We recommend establishing a team to segregate the total capital cost and operating budget into Tacoma Power and Click! Network costs and develop an appropriate solution to be incorporated in the 2001-2002 budget cycle. The Click! Manager has already developed an initial estimate of the segregation that could be used as a starting point. An additional issue to be considered is the potential for a City franchise tax on SCADA or other intra-company

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"Revenue". Since these items do not produce any additional net cash and reflect Tacoma Power's use of assets to better deliver electricity, they might better be handled as credits to expense not subject to a Franchise Tax.

Click! Network Financial Reporting

We have already noted under Control Environment the historical communication and timing problems of financial reporting. The process of reviewing and developing the above recommendations has opened a new line of communication between Finance and Click! that should significantly improve the timing and quality of financial reporting. Some specific steps being implemented include providing access to the Click! Operational Summary spreadsheet on a regular schedule - approximately 2-3 days after the financial close on the 5th workday of the month. In addition, as new procedures for journal entries and transfers are developed when implementing these recommendations, there will be a mutual sign-off so all involved will know and understand the ramifications of the process.

The Board currently sees the Click! Network Operational Summary page in the quarterly financial report package. In addition, we understand they receive the Status Summary of Capital Programs. Working with Finance and the Click! General Manager, we recommend a few changes to the Operational Summary. First, the addition of a new line titled "Net Operating Income before Depreciation" to provide a measure for when revenues exceed expenses, and essentially Click! begins to contribute cash. Second, the current Depreciation and Amortization line represents all capital spent, and will be decreased when a Power/Click! segregation is established. Third, the "Summary of Cash" section should be removed because it provides a very incomplete picture of the construction program, and a complete view is provided in the Status Summary of Capital Programs document.

Click! Network Revenues Exceed Expenses Projection

We were asked to assess "the assumptions for all three Click! Business lines and associated rates of growth and the business plan projections that revenue will exceed expenses by June 2001."

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Click! maintains a robust and complex spreadsheet business model which ties together projected subscriber and customer counts, levels of service for each business line, and operating expenses by account, all by month for 15 years, and a corresponding capital spending page by year broken down by individual Work Order. This is a dynamic model that has been updated as parameters change.

The revenue projections are based on releasing all City of Tacoma nodes this year, and achieving penetration rates consistent with past experience. Thus the CATV revenue is projected to increase steadily throughout the year, and the growth rate will taper off in 2001 as the target penetration is achieved. Broadband revenue is predicted to grow also, with new customer acquisition planned during 2000, which will provide full year revenues in 2001. These assumptions and rates are consistent with current experience, and while not guaranteed, seem reasonable. A requirement for achieving the revenue is that new connections are completed to support the projected addition of new subscribers. Year to date through March, new connections are running approximately 30 days behind original projections. However, new Technicians have been hired, are completing training, and their productivity is expected to be reflected in increased connection rates from April onward. Revenues also include the previously mentioned inter-company SCADA income at the rate of approximately \$1 million per year.

Expense projections are based on payroll figures and program acquisition costs, and are broken down into 19 accounts in four departmental groups. These monthly figures are adjusted periodically for planned salary increases and staff additions. They include the previously discussed credits for the capitalization of work done by Technicians, but only at the level of a drop and one outlet per new connection. They do not include credits for the capitalization of General and Administrative expenses, or depreciation expense. Otherwise, we believe this is a reasonable projection of operating expenses.

As the model currently stands, operating losses steadily decline each month through December 2000, and turn positive and steadily increase starting in January 2001. Without the SCADA income, the breakeven point is not achieved until July 2001. The model currently has two "bottom lines" - one with and one without the SCADA income. We recommend a series of

changes to the Click! model to better align it and the Operational Summary from Finance. These changes include incorporating a G&A credit line and increasing the credit calculation for new connections to reflect the capitalization of all outlets. The Construction page should be reviewed to be sure the Work Orders reflect the revised G&A and outlet capitalization. As the inter-company charge issues are resolved, any cost for pole attachments and revenues or credits to expense should also be added. Since some of these changes are large, approximating \$1 million per year, the net result will not be known until they are completed. However, on an order-of-magnitude basis, the removal of \$1 million of SCADA income will be approximately offset or exceeded by an increased credit for G&A and outlets. If this is the actual result, the breakeven point will likely occur between January and June of 2001.

An additional word of caution is that the journal entries to make these adjustments for past periods will result in what look like very funny Operational Statement results for the months when they are entered. Further, December 2000 and January 2001 will be impacted by year-end accruals and reversals because of the limitations of the current accounting systems and procedures beyond the control of Click!. We suggest that Finance consider modifying the December and January Operational Summaries to provide footnotes that describe the year-end adjustments and the operating results before the adjustments were made.

Expansion into University Place

"Assess the financial assumptions and the resulting projections for capital construction costs, O&M expenses and benefits/revenues estimated to accrue as a result of expanding the market for the Click! Network's three primary business lines and meeting Tacoma Power's strategic business and operational needs in the service area of University Place."

Click! has developed a business model for the proposed expansion into University Place. This model is constructed the same way as their City of Tacoma model, with the same levels of detail. The inputs are based on an actual design down to the node level, and actual walkouts to identify aerial, underground and can-we-serve (CWS) units. The construction cost is based on the current contract costs for the various types of fiber, aerial and underground work done in the City. There is currently no allowance for capitalized G&A from either Click! or Tacoma

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Power, nor a specific contingency amount. The cost per home passed at the end of the second full year of operation in University Place is approximately 95% of the cost per home passed in the City. While it might be expected to be lower because the main fiber loops, head end, hubs and equipment do not have to be duplicated in University place, the underground construction required exceeds 50% of the homes passed compared to 10-15% in the City. A construction period of six months is planned before the release of the first node for customer service. Construction spending has been aligned by year with the rapid acquisition of subscribers in the first two years, and provided for in the model in future years to support a gradual subscriber acquisition program. The initial six month capital program is estimated at \$7.7 million with additional build-out spending of \$ 5 million during the first two years of customer service.

Revenues are based on market penetrations similar to the ramp-up experience in the City of Tacoma, and target penetration by the end of the second full year of operations is 24.8%. The service mix and price per service is also similar to the City. Broadband revenue is limited based on the lower mix of businesses passed. A modest amount of SCADA income is included.

Operating costs have been estimated on an incremental basis above the current City model. Thus additional costs will be incurred for the incremental programming, advertising, taxes, and additional staff in Customer Care and Service Technicians. No additional staff are considered necessary at the Click! Administrative level or for the NOC (Network Operations Center) to support the projected subscriber count. The credit to expense for the capitalization of new connections has been increased to include approximately 1.75 outlets per installation, but may need to be increased further in line with the recommendations above. Depreciation expense is not included in the model.

As currently modelled, revenues exceed expenses after the first six months of customer service - about 12 months from the start of construction in University Place. All full years of customer service have net positive cash flow, even if the SCADA income is not included. While annual cash flows are positive from the first year, the model shows cumulative cash flow becoming positive in year 14 of the project, based on current dollars. If construction were authorized for the second half of 2000, you may benefit from the availability of

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construction crews familiar with your standards, capitalize on the current public momentum Click! has established, and approximately match the declining connection needs for your Service Technicians in the City by the end of 2000 with the opening of new nodes in University Place in approximately January 2001.

Click!'s Position in the Telecommunications Evolution

"Assess Click!'s current and planned business and marketing model in the context of the evolving telecommunications technology as we understand it to suggest areas of risk/reward and the overall public benefit to the citizens and businesses served by Click!"

Click! continues to be at the forefront among public and private utility telecommunications efforts. This position has brought considerable national recognition to Tacoma, and also significant tangible benefits. From a review of local press clippings, at least 400 new jobs, five building renovation projects, enhanced University of Washington and UPS academic programs, and several development projects are all linked to the development and presence of Click!. Establishing Click! prompted AT&T (TCI and Excite @home) to upgrade services to Tacoma residents much earlier than otherwise would have happened. Your decision to operate primarily as a wholesaler beyond the CATV service level will stabilize operating and development costs. You remain aware of the developing technologies in digital set-top boxes and the integration of telephony into a variety of services, and are studying ways to cost effectively deploy them to people on the Click! network - without going into head-to-head competition with your own customers.

The success of Click! and its continuing value to the community depends on a team effort among business, civic and education leaders to create a unique region with considerable growth potential. The fiber/coax network is literally and figuratively the thread that ties them together and enables this potential. Working together, this team can leverage the Click! asset to attract major new businesses, create jobs, attract students to programs that provide the skills for those jobs and generally enhance the whole community.

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However, based on our experience serving large, national e-commerce firms, the exceptional benefits of a Wired City, modest real estate prices, available labor, and centers of higher education with technology programs, there is one dimension Tacoma may wish to evaluate in more detail, and that is taxes. When the likes of Webvan established their programs to build twenty-six \$40 million distribution and service centers with 5-600 jobs each, one of their critical site evaluation factors is the tax environment. When it comes to attracting large, sophisticated firms with the greatest benefits for Tacoma, competing sites will be any location within a mile or two of fiber because the cost to make the connection is minor compared to the project size. We understand Tacoma's tax structure has discouraged some businesses in the past, and may play a critical role in attracting new business. Reviewing tax policy options may be one of the more significant ways the City can contribute to the growth momentum you have established, and thus help to maximize returns on the Click! investment for the community.

Summary

Overall, the Click! Network has been deployed to date within the approved budget, with service levels and quality equalling, and in some cases exceeding, the original plans. The technical quality and redundancy is a model system. Customer service is a hallmark of the operation, particularly your commitment to managing provisioning expectations within an approximate two-week window - then keeping the schedules you set. The extra attention to customer education and support is likely to enhance customer retention. Actual expenses have been well managed, inspected and approved. We have identified a number of areas where accounting, reporting and forecasting can be improved, and many of these recommendations have been or are being implemented. After these accounting adjustments and if the business continues as planned for the remainder of 2000, revenues are forecast to exceed expenses before June of 2001. In total, you have provided the substance to the reality of Tacoma, America's #1 Wired City.

* * * * *

We appreciate this opportunity to have worked with you and the Click! Network staff on this most important project and wish you success in your continued development of Click! Should you have any questions regarding this report, or desire assistance in implementing our recommendations, please contact Rick Van Mell at 415-957-3138.

Very truly yours,

PricewaterhouseCoopers JLF

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EXHIBIT 13

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!



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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.**

- 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 1/31/2012 All \$ in 1000's	2012			Current Methodology		Recommended	
	Budget	Actual	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.

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	Historical Cost	Book Value	Book Value
	Costs	FW	Comm	FW
Coax				
1999	13,502,992	35,778,001	3,069,398	8,132,784
2001	250	662	84	223
2003	49,478	1,868,021	23,090	882,548
2004	1,228,665	16,748,029	574,849	8,691,174
2006	-	3,425,492	-	2,293,995
2007	-	20,159,527	-	14,850,820
2008	-	6,393,079	-	5,043,078
2009	-	2,018,391	-	1,749,272
2010	-	862,224	-	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	5,222,393	-	-	-
2004	235,912	152,189	-	-
2007	7,984,405	-	1,596,881	-
2009	489,217	-	281,530	-
2010	3,182,321	-	2,545,025	-
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	148,066	392,401
2000	144,134	381,903	41,040	108,742
2002	486	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	6,886
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	289,159
2006	697,344	-	444,896	-
2008	36,518	-	29,214	-
MDU				
1999	998,368	2,645,311	261,766	693,583
2000	163,631	433,562	48,194	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	999,476	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	5,294	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	1,396,938	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	132,275,367	22,832,938	57,191,012

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 AML. 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.

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.

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 Factors Summary				Projected 2013/2014 Expenses					
		Olds		New		Olds Allocation		New Allocation		Difference	
		Comm.	Pwr.	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 Ntwrk Cnst	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 Ntwk 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)

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.

EXHIBIT 14

Review of Cost Allocations

For

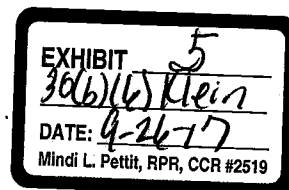
**Click! Network
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July 23, 2003



TAC_PRA_HF_0017087

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.

EXHIBIT 15

AN IN-DEPTH LOOK AT CLICK! FINANCIALS

May 20, 2015

EXHIBIT
9-20-15
DATE: 9-20-15
Mindl L. Pettit, RPR, CCR #2519



AGENDA

- **Background and 1997 Telecommunications Study (Bob Mack)**
- **What has changed? (Bob Mack)**
- **Smart meter technology (Joe Tellez)**
- **Click! financials: Cost allocation (Bill Berry)**
- **Moss Adams, LLC review (Julie Desimone)**
- **Click!'s revenues do not cover its costs (Bill Berry)**
- **Summary (Chris Robinson)**

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SUMMARY

Original Click! business plan vs. current situation

- Proved to be overly optimistic in terms of network build-out costs, programming costs, market share, revenues
- Assumed recovery of all related costs, including Click!'s share of the original capital investment
- Did not foresee the industry evolution to wireless power metering systems
- Did/could not foresee the significant increase in broadband internet utilization, and decline in cable television utilization
- “Hybrid” model involving private ISPs prevents product “bundling” to match competition
- “Hybrid” model involving ISPs prevents Click from enjoying the retail margin available from broadband Internet

Section 3

Joe Tellez

Chief Technology Officer

How smart meter technology (called advanced metering infrastructure, or AMI) has changed since Tacoma Power launched the Gateway project

- Tacoma Power was ahead of its time
- Industry-wide adoption of wireless technology for AMI
- Tacoma Power doesn't need a wired telecommunications network for metering



GATEWAY METERS NOW OBSOLETE

- **Ongoing meter reliability issues and higher-than-expected internal support costs**
- **No supplier available to sustain Gateway meters**
- **Alternative suppliers of coax wired smart meters nonexistent**
- **Wireless smart meter price points dropping for both power and water**

Gateway end-of-life factors contributed to the overall decline in the use of Click! Network to serve Tacoma Power's AMI needs

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Section 4

Bill Berry

Rates, Analysis and Planning Manager

A closer look at how Tacoma Power allocates costs to Click! Network

- Click! Cable and Internet services rely on the telecommunications network far more than the electrical system
- Click! should be responsible for 94% of all telecommunication costs based on review of actual usage



ALLOCATION SCENARIOS

- **2013/14 financials, budgets and rates reflect approximately 75/25 allocation between Click! and Electric**
- **The Click! financial trend presented on 3/31 with the Wave Broadband proposal showed 100% of the telecommunication expenses as an approximation of the new cost allocation**
- **Based on refined analysis and a third-party review, the cost allocation moving forward is 94/6**

WHY DO WE ALLOCATE?

- **Click! is part of Tacoma Power**
- **Telecommunications operations are supported by 17 workgroups (cost centers), 10 of which provide some support to electric systems**
- **Costs should be allocated in a reasonable manner to understand Click! financial performance and make sound business decisions**
- **Power rates should not be higher than value of services rendered**

COST ALLOCATION HISTORY

2000

- Price Waterhouse Coopers recommended that telecommunication costs be allocated between Click! services and electric services

2002-2003

- Staff determined that allocation should be approximately 75/25 between Click! and electric
- Projected usage based on build-out to support AMI
- A 2003 study by Virchow Krause & Co. confirmed the 75/25 allocation is reasonable
- Allocation is used for financials , budgets and rates (currently, as well)

2012-2013

- Staff conducted a new internal cost allocation analysis
- Results showed allocations should be 96/4 between Click! and electric
- New allocations have been used for planning, but not formally adopted for financials , budgets & rates

2015

- Moss Adams, LLC engaged to review new allocation methodology
- As part of their analysis Moss Adams interviewed staff and recommended updating the 2013 study with current financial information
- Staff updated the study which resulted in 94/6 allocation factor between Click! and electric

Section 6

Bill Berry

Click! revenues do not cover its costs

- Operating revenues do not fully cover operating expenses and taxes
- Operating revenues do not cover any of the annual capital requirements
- Operating revenues do not cover imputed debt service
- Even if imputed debt service were not included, Click! would still run at a deficit and the business model would still need to change

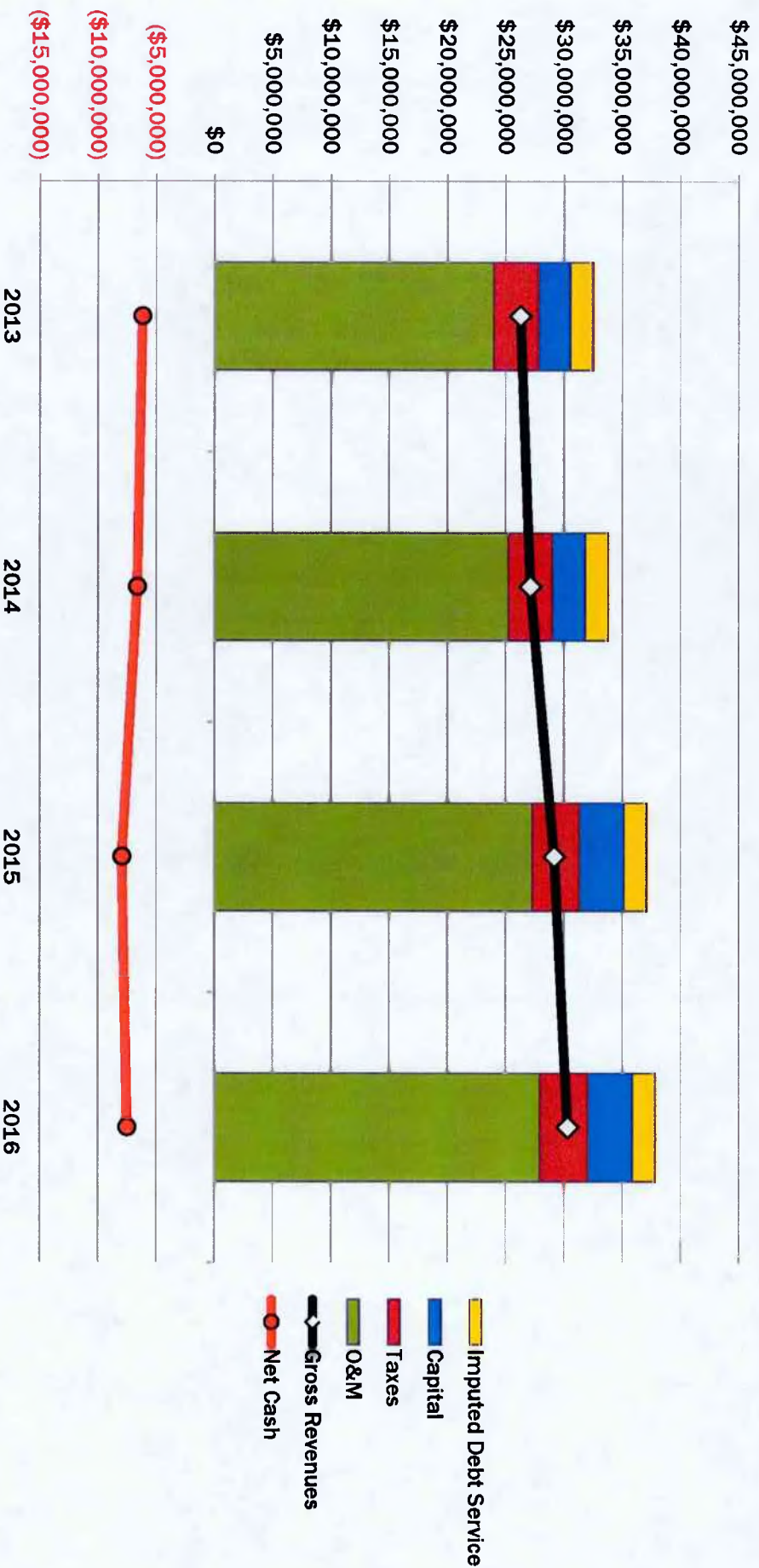


IMPUTED DEBT SERVICE

- The Virchow Krause in 2003 allocation studies determined that 27.4% of the original Tacoma Power capital investment in telecommunications plant is used by and allocable to Click!
- Tacoma Power financed with cash rather than bonds
- Intention from the beginning was for Click! to be self-sustaining, and repay its share of the capital investment
- That has not happened, so Tacoma Power has used imputed debt service assumptions in its financial analyses - original investment repaid by Click! over 20 years at a 5.5% interest rate
- Whether or not debt service is included, Click! revenues do not cover the costs for Click! services

CLICK! REVENUES & EXPENSES

94/6 COST ALLOCATION



- Includes imputed debt service
- Assumes 17.5% cable TV rate increase in 2015 and 10% cable TV rate increase in 2016, and 10% ISP rate increase in August 2016
- Numbers may not add up due to rounding

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Section 7

Chris Robinson

Tacoma Power Superintendent

Summary

SUMMARY

- Original vision for Click! was optimistic, placed emphasis on cable TV and committed to an unsustainable hybrid business model
- The hybrid business model has not been able to withstand business environment and consumer consumption changes
- Wired network no longer needed to support AMI – industry shifted to wireless, as will Tacoma Power
- A recent review of network use indicates that Tacoma Power should be responsible for 6% of total telecommunications costs
- Moss Adams confirms that the utility's allocation methodology is consistent with the current use of network
- Under the current business model, Click! revenues do not cover the cost of Click! services – whether factoring in debt service or not

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EXHIBIT 16

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
CLICK! NETWORK
COMMERCIAL OPERATIONS *

OPERATIONAL SUMMARY - AUGUST 31, 2015

	AUGUST 2015	AUGUST 2014
TELECOMMUNICATIONS REVENUE		
CATV	\$1,516,819	\$1,695,528
Broadband	67,075	90,753
ISP	554,044	506,939
Interdepartmental	17,170	16,494
Total Operating Revenue	2,155,108	2,309,714
TELECOMMUNICATIONS EXPENSE-COMMERCIAL		
Administration & Sales Expense		
Salaries & Wages Expense	260,431	295,838
General Expense	55,264	18,199
Contract Services	1,263,527	1,015,579
IS & Intergovernmental Services	101,768	51,808
Fleet Services	397	958
Capitalized A & G Expense	(11,656)	(4,766)
Total Admin. & Sales Expense	1,669,731	1,377,616
Operations & Maintenance Expense ...		
Salaries & Wages Expense	455,603	248,140
General Expense	38,167	20,536
Contract Services	14,170	19,950
IS & Intergovernmental Services	3,723	1,897
Fleet Services	40,134	11,084
New Connect Capital	(19,938)	(11,780)
Total Oper. & Maint. Expense	531,859	289,827
Total Telecommunications Expense .	2,201,590	1,667,443
Net Revenues (Expenses) Before Taxes and Depreciation and Amortization	(46,482)	642,271
Taxes	298,356	320,715
Depreciation and Amortization	271,174	427,409
	569,530	748,124
NET OPERATING REVENUES (EXPENSES)	(616,012)	(105,853)

* This August Operational Summary includes an update to cost allocations between Click! and Tacoma Power. Previously, allocated costs were approximately 75% Click! and 25% Tacoma Power. This cost allocation has been updated to reflect shared costs of approximately 94% to Click! and 6% to Tacoma Power. Year-to-date results incorporate the effects of this change with a January 1, 2015 effective date.

YEAR TO DATE			
AUGUST 31 2015	AUGUST 31 2014	2015/2014 VARIANCE	PERCENT CHANGE
\$12,946,450	\$13,122,180	(\$175,730)	-1.3%
754,712	735,625	19,087	2.6%
4,310,484	3,935,076	375,408	9.5%
151,538	151,147	391	0.3%
<u>18,163,184</u>	<u>17,944,028</u>	<u>219,156</u>	1.2%
2,184,407	1,946,949	237,458	12.2%
333,826	280,647	53,179	18.9%
9,198,273	8,472,146	726,127	8.6%
889,784	403,792	485,992	120.4%
3,505	8,398	(4,893)	-58.3%
(62,738)	(41,193)	(21,545)	-52.3%
<u>12,547,057</u>	<u>11,070,739</u>	<u>1,476,318</u>	13.3%
3,816,008	1,723,534	2,092,474	121.4%
273,368	153,448	119,920	78.2%
247,610	68,949	178,661	259.1%
29,187	15,810	13,377	84.6%
319,927	95,962	223,965	233.4%
(103,212)	(68,467)	(34,745)	50.7%
<u>4,582,888</u>	<u>1,989,236</u>	<u>2,593,652</u>	130.4%
17,129,945	13,059,975	4,069,970	31.2%
1,033,239	4,884,053	(3,850,814)	-78.8%
2,483,984	2,521,282	(37,298)	-1.5%
<u>2,551,714</u>	<u>3,419,367</u>	<u>(867,653)</u>	-25.4%
5,035,698	5,940,649	(904,951)	
<u>(4,002,459)</u>	<u>(1,056,596)</u>	<u>(2,945,863)</u>	-278.8%

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
CLICK! NETWORK
COMMERCIAL OPERATIONS

OPERATIONAL SUMMARY - DECEMBER 31, 2014

	DECEMBER 2014	DECEMBER 2013
TELECOMMUNICATIONS REVENUE		
CATV	\$1,842,141	\$1,836,298
Broadband	94,047	96,718
ISP	514,745	477,096
Interdepartmental	16,494	17,042
Total Operating Revenue	2,467,427	2,427,154
TELECOMMUNICATIONS EXPENSE-COMMERCIAL		
Administration & Sales Expense		
Salaries & Wages Expense	262,379	196,807
General Expense	49,500	43,328
Contract Services	1,059,700	874,315
IS & Intergovernmental Services	124,142	97,763
Fleet Services	947	(870)
Capitalized A & G Expense	(6,728)	(4,030)
Total Admin. & Sales Expense	1,489,940	1,207,313
Operations & Maintenance Expense ...		
Salaries & Wages Expense	229,736	195,626
General Expense	35,573	13,636
Contract Services	12,874	72,844
IS & Intergovernmental Services	2,784	1,806
Fleet Services	11,806	3,371
New Connect Capital	(7,523)	(27,923)
Total Oper. & Maint. Expense	285,250	259,360
Total Telecommunications Expense .	1,775,190	1,466,673
Net Revenues (Expenses) Before Taxes and Depreciation and Amortization	692,237	960,481
Taxes	342,619	358,712
Depreciation and Amortization	427,360	436,154
	769,979	794,866
NET OPERATING REVENUES (EXPENSES)	(77,742)	165,615

YEAR TO DATE			
DECEMBER 31 2014	DECEMBER 31 2013	2014/2013 VARIANCE	PERCENT CHANGE
\$19,836,525	\$19,496,123	\$340,402	1.7%
1,109,326	1,140,453	(31,127)	-2.7%
5,987,698	5,419,161	568,537	10.5%
217,017	229,632	(12,615)	-5.5%
<u>27,150,566</u>	<u>26,285,369</u>	<u>865,196</u>	3.3%
2,906,826	2,847,120	59,706	2.1%
421,514	699,244	(277,730)	-39.7%
12,643,254	11,900,808	742,446	6.2%
710,113	631,385	78,728	12.5%
12,647	11,049	1,598	14.5%
(62,533)	(120,491)	57,958	48.1%
<u>16,631,821</u>	<u>15,969,115</u>	<u>662,706</u>	4.1%
2,577,896	2,435,321	142,575	5.9%
231,978	176,640	55,338	31.3%
126,176	249,960	(123,784)	-49.5%
25,198	25,915	(717)	-2.8%
144,767	133,794	10,973	8.2%
(106,683)	(127,043)	20,360	16.0%
<u>2,999,332</u>	<u>2,894,587</u>	<u>104,745</u>	3.6%
19,631,153	18,863,702	767,451	4.1%
7,519,413	7,421,667	97,746	1.3%
3,796,690	3,874,803	(78,113)	-2.0%
5,128,915	5,209,048	(80,131)	-1.5%
<u>8,925,605</u>	<u>9,083,851</u>	<u>(158,244)</u>	-1.7%
<u>(1,406,192)</u>	<u>(1,662,184)</u>	<u>255,990</u>	15.4%

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
CLICK! NETWORK
COMMERCIAL OPERATIONS

OPERATIONAL SUMMARY - DECEMBER 31, 2015

	<u>DECEMBER</u> 2015	<u>DECEMBER</u> 2014
TELECOMMUNICATIONS REVENUE		
CATV	\$1,653,804	\$1,842,141
Broadband	99,460	94,047
ISP	578,441	514,745
Interdepartmental	25,573	16,494
Total Operating Revenue	<u>2,357,278</u>	<u>2,467,427</u>
TELECOMMUNICATIONS EXPENSE-COMMERCIAL		
Administration & Sales Expense		
Salaries & Wages Expense	160,043	262,379
General Expense	44,880	49,500
Contract Services	1,153,608	1,059,700
IS & Intergovernmental Services	116,368	124,142
Fleet Services	214	947
Capitalized A & G Expense	(7,021)	(6,728)
Total Admin. & Sales Expense	<u>1,468,092</u>	<u>1,489,940</u>
Operations & Maintenance Expense ...		
Salaries & Wages Expense	286,562	229,736
General Expense	56,638	35,573
Contract Services	109,259	12,874
IS & Intergovernmental Services	2,825	2,784
Fleet Services	36,848	11,806
New Connect Capital	(11,394)	(7,523)
Total Oper. & Maint. Expense	<u>480,738</u>	<u>285,250</u>
Total Telecommunications Expense .	1,948,830	1,775,190
Net Revenues (Expenses) Before Taxes and Depreciation and Amortization	408,448	692,237
Taxes	248,729	342,619
Depreciation and Amortization	254,639	427,360
	<u>503,368</u>	<u>769,979</u>
NET OPERATING REVENUES (EXPENSES)	<u>(94,920)</u>	<u>(77,742)</u>

* The Operational Summary includes an update to cost allocations between Click! and Tacoma Power. Previously, allocated costs were approximately 75% Click! and 25% Tacoma Power. This cost allocation has been updated to reflect shared costs of approximately 94% to Click! and 6% to Tacoma Power. Year-to-date results incorporate the effects of this change with a January 1, 2015 effective date.

YEAR TO DATE			
DECEMBER 31 2015	DECEMBER 31 2014	2015/2014 VARIANCE	PERCENT CHANGE
\$19,249,419	\$19,836,525	(\$587,106)	-3.0%
1,153,413	1,109,326	44,087	4.0%
6,590,798	5,987,698	603,100	10.1%
263,088	217,017	46,071	21.2%
<u>27,256,718</u>	<u>27,150,566</u>	<u>106,152</u>	0.4%
3,119,328	2,906,826	212,502	7.3%
516,159	421,514	94,645	22.5%
13,601,019	12,643,254	957,765	7.6%
1,338,117	710,113	628,004	88.4%
6,062	12,647	(6,585)	-52.1%
(82,488)	(62,533)	(19,955)	-31.9%
<u>18,498,197</u>	<u>16,631,821</u>	<u>1,866,376</u>	11.2%
5,481,440	2,577,896	2,903,544	112.6%
434,304	231,978	202,326	87.2%
544,941	126,176	418,765	331.9%
44,132	25,198	18,934	75.1%
464,502	144,767	319,735	220.9%
(163,515)	(106,683)	(56,832)	-53.3%
<u>6,805,804</u>	<u>2,999,332</u>	<u>3,806,472</u>	126.9%
25,304,001	19,631,153	5,672,848	28.9%
1,952,717	7,519,413	(5,566,696)	-74.0%
3,617,205	3,796,690	(179,485)	-4.7%
3,602,876	5,128,915	(1,526,039)	-29.8%
<u>7,220,081</u>	<u>8,925,605</u>	<u>(1,705,524)</u>	-19.1%
<u>(5,267,364)</u>	<u>(1,406,192)</u>	<u>(3,861,172)</u>	-274.6%

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
CLICK! NETWORK
COMMERCIAL OPERATIONS

OPERATIONAL SUMMARY - DECEMBER 31, 2016

	DECEMBER 2016	DECEMBER 2015
TELECOMMUNICATIONS REVENUE		
CATV	\$1,676,505	\$1,653,804
Broadband	92,036	99,460
ISP	605,241	578,441
Interdepartmental	21,748	25,573
Total Operating Revenue	2,395,530	2,357,278
TELECOMMUNICATIONS EXPENSE-COMMERCIAL		
Administration & Sales Expense		
Salaries & Wages Expense	440,487	160,043
General Expense	34,710	44,880
Contract Services	1,388,655	1,153,608
IS & Intergovernmental Services	258,245	116,368
Fleet Services	285	214
Capitalized A & G Expense	(6,070)	(7,021)
Total Admin. & Sales Expense	2,116,312	1,468,092
Operations & Maintenance Expense ...		
Salaries & Wages Expense	769,006	286,562
General Expense	62,128	56,638
Contract Services	81,414	109,259
IS & Intergovernmental Services	3,015	2,825
Fleet Services	34,685	36,848
New Connect Capital	(12,963)	(11,394)
Total Oper. & Maint. Expense	937,285	480,738
Total Telecommunications Expense .	3,053,597	1,948,830
Net Revenues (Expenses) Before Taxes and Depreciation and Amortization	(658,067)	408,448
Taxes	334,246	248,729
Depreciation and Amortization	219,219	254,639
	553,465	503,368
NET OPERATING REVENUES (EXPENSES)	(1,211,532)	(94,920)

YEAR TO DATE			
DECEMBER 31 2016	DECEMBER 31 2015	2016/2015 VARIANCE	PERCENT CHANGE
\$18,128,193	\$19,249,419	(\$1,121,226)	-5.8%
1,153,483	1,153,413	70	0.0%
7,090,299	6,590,798	499,501	7.6%
302,931	263,088	39,843	15.1%
<u>26,674,906</u>	<u>27,256,718</u>	<u>(581,812)</u>	<u>-2.1%</u>
3,389,124	3,119,328	269,796	8.6%
591,409	516,159	75,250	14.6%
13,352,385	13,601,019	(248,634)	-1.8%
1,555,037	1,338,117	216,920	16.2%
4,271	6,062	(1,791)	-29.5%
(52,257)	(82,488)	30,231	36.6%
<u>18,839,969</u>	<u>18,498,197</u>	<u>341,772</u>	<u>1.8%</u>
5,787,486	5,481,440	306,046	5.6%
494,785	434,304	60,481	13.9%
647,083	544,941	102,142	18.7%
39,301	44,132	(4,831)	-10.9%
424,791	464,502	(39,711)	-8.5%
(174,249)	(163,515)	(10,734)	-6.6%
<u>7,219,197</u>	<u>6,805,804</u>	<u>413,393</u>	<u>6.1%</u>
26,059,166	25,304,001	755,165	3.0%
615,740	1,952,717	(1,336,977)	-68.5%
3,684,409	3,617,205	67,204	1.9%
2,674,188	3,602,876	(928,688)	-25.8%
<u>6,358,597</u>	<u>7,220,081</u>	<u>(861,484)</u>	<u>-11.9%</u>
<u>(5,742,857)</u>	<u>(5,267,364)</u>	<u>(475,493)</u>	<u>-9.0%</u>

EXHIBIT 17

Inquiries from March 31 Joint Council/PUB Study Session

Council Member Ibsen

- **How much outstanding debt remains on Click! bonds? How much do we have paying toward Click! debt now?**

Since Click! has not produced free cash flows, it has not contributed towards debt service nor has it paid for capital investments since the initial outlay. So, outstanding debt associated with the telecommunications network would include the initial outlay, interest owed on the initial outlay, and all additional funds advanced by Tacoma Power since the initial outlay.

The initial Capital Outlay was \$85,824,135, but only 27.4% of this amount is utilized to establish imputed debt service. The 27.4% of the initial outlay is \$23,515,813. Assuming a 20-year bond issue at 5.5%, an annual debt service amount of \$1,967,787 is derived. This amount multiplied by two is \$3,935,575, which is the amount of the imputed debt service assessed to Click! commercial. The calculation is provided in the table below.

Initial Capital Outlay	85,824,135
Commercial Portion	27.40%
Commercial Initial Outlay	23,515,813
Assumed Bond Life	20
Assumed Interest	5.50%
Annual D/S	1,967,787
Interest Portion	1,293,370

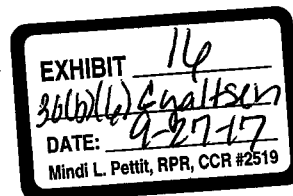
What did these funds "buy"?

- **Outline measures taken towards improving Click!'s operating efficiency.**

A variety of cost cutting measures have been implemented to curtail costs and improve operating efficiencies. A summary is provided in the table below.

O&M Cutting Measures implemented and realized:

Reduction in support/maintenance agreements	\$300,000
Reduced Internet IP costs	600,000
Reduced billing system costs	400,000
Reduced headcount by 10 (10) ?	1,400,000
Total cost mitigations:	\$2,700,000
 A&R and Capital reduction	 \$5,000,000



Inquiries from March 31 Joint Council/PUB Study Session

Lonergan

- **Provide information on when the debt service is going to be paid.**

Click! does not generate free cash flows so debt associated with the telecommunications network is never going to be paid off as a result of owning and operating Click!.

- **Where does the lease money go, especially once the debt is retired?**

The lease income should go back into Tacoma Power's fund because Tacoma Power funded the network build.

- **What would the Power rates be if Power customers didn't subsidize Click!?**

Power rates would be lower by 2 to 3% if the subsidy were to be removed.

- **Is there flexibility in the 60 day clock with Wave?**

The 60-day clock is fixed, but Wave would be agreeable to extending it if there is positive advancement of the Wave proposal.

- **What other companies may be interested?**

Comcast can be ruled out because it would remove competition. Google has not expressed an interest in Tacoma although Click! submitted an application when Google conducted its national solicitation campaign. There could be other nationally based cable operators who may want to do this, but none of them may be able to satisfactorily meet all the criteria to be successful. We also certainly do not want to put the City in a position where it has to change providers every few years. Lastly, it would be safe to assume that few companies, if any, would want to tie their destiny to a governmental entity.

- **What are the power rate impacts moving forward if we leased? What would the decrease be now and in the long run?**

The impact on Tacoma Power rates would be between 2 to 3%. This decrease would be cumulative in the long run.

? Not sure about this?

EXHIBIT 18



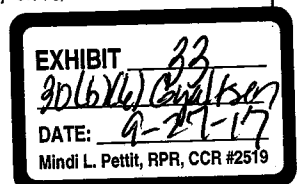
AMENDED RESOLUTION NO. U-10879

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

11 #15. WHEREAS all financial models studied by the Click! Engagement
12 Committee and Tacoma Power nonetheless show that the market price that can
13 be charged for these enhanced Click! services and the market penetration that
14 can be achieved will be insufficient to cover all of the costs associated with the
15 operations and maintenance of the telecommunications system and the capital
16 improvements necessary to update the HFC to allow for 1 gigabit service, and
17

18 #16. WHEREAS the internet-related uses of the current Click!
19 telecommunications system and an enhanced Click! telecommunications
20 system would provide Tacoma Power customers benefits by giving them
21 access to advanced customer services options such as: power use monitoring,
22 outage reporting, scheduling of services, bill paying, and electrical appliance
23 control, and
24

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



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
7

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

16 #23. WHEREAS the Board has determined that along with enhanced
17 product offerings, the new business plan should also grant Click! management
18 flexibility to change product offerings, prices, and marketing strategies,
19 excluding the leasing of the entire network, without prior Board or Council
20 approval so as to effectively compete with private companies offering similar
21 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
6 Sec. 1. Click!'s proposed high-level "All-In" business plan (the "Business
7 Plan"), attached as Exhibit A to this resolution, is approved.

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

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

EXHIBIT 19

CITY OF TACOMA CLAIM FOR DAMAGES FORM

General Liability Claim Form

Pursuant to Chapter 4.96 RCW, this form is for filing a claim against the City of Tacoma. Some of the information requested on this form is required by RCW 4.96.020 and may be subject to public disclosure. Pursuant to the new law, Claim for Damages forms cannot be submitted electronically (via e-mail or fax).

PLEASE TYPE OR PRINT IN INK

Mail or deliver original claim to:

City of Tacoma
Office of the City Clerk
747 Market Street, Room 243
Tacoma, WA 98402

Business Hours: Mon. - Fri. 8:00 a.m. - 5:00 p.m. Closed on weekends and holidays.

For Official Use Only

RECEIVED

FEB 21 2017

CITY CLERK'S OFFICE

No.

CLAIMANT INFORMATION

1. Claimant's name: See Exhibit A attached hereto.
Last name First Middle Date of birth (mm/dd/yyyy)
2. Current residential address: See Exhibit A attached hereto.
3. Mailing address (if different): See Exhibit A attached hereto.
4. Residential address at the time of the incident (if different from current address):

5. Claimant's daytime telephone number: c/o undersigned counsel at (206) 689-2140
Home Business Cell
6. Claimant's e-mail address: c/o undersigned counsel at djurca@helsell.com

INCIDENT INFORMATION See Exhibit B attached hereto.

7. Date of the incident: N/A Time: N/A a.m. p.m.
(mm/dd/yyyy) (check one)
8. If the incident occurred over a period of time, date of first and last occurrences:
from See Exhibit B attached hereto. Time: a.m. p.m. to _____ Time: a.m. p.m.
(mm/dd/yyyy) (check one) (mm/dd/yyyy) (check one)
9. Location of incident: See Exhibit B attached hereto.
City State Place or Address where occurred
10. If the incident occurred on a street or highway:
See Exhibit B attached hereto.
Name of street or highway At the intersection with/or Nearest intersecting street
11. City agency or department allegedly responsible for damage/injury: Mayor and City Council, Department of Public Utilities
TPU, Tacoma Power, and Click! Network
12. Names, addresses, and telephone numbers of all persons involved in or witness to this incident:
See Exhibit B attached hereto.

13. Names, addresses and telephone numbers of all City employees having knowledge about this incident:
See Exhibit B attached hereto.

14. Names, addresses, and telephone numbers of all individuals not already identified in #12 and #13 above that have knowledge regarding the liability issues involved in this incident, or knowledge of the Claimant's resulting damages. Please include a brief description as to the nature and extent of each person's knowledge. Attach additional sheets if necessary.
See Exhibit B attached hereto.

15. Describe the cause of the injury or damages. Explain the extent of property loss or medical, physical or mental injuries. Attach additional sheets if necessary.
See Exhibit B attached hereto.

16. Has this incident been reported to law enforcement, safety or security personnel? If so, when and to whom?
It has been reported to the Mayor and City Council, and to the Public Utilities Board. See Exhibit B attached hereto.

17. Names, addresses and telephone numbers of treating medical providers. Attach copies of all medical reports and billings.
N/A

18. Please attach documents which support the claim's allegations. See Exhibit B attached hereto.

19. I claim damages from the City of Tacoma in the sum of \$ See Exhibit B attached hereto.

This Claim form must be signed by the Claimant, a person holding a written power of attorney from the Claimant, by an attorney admitted to practice in Washington State on the Claimant's behalf, or by a court-approved guardian or guardian ad litem on behalf of the Claimant.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct, to the best of my knowledge, information and belief.

David L. Gurca
Signature of Claimant or Authorized Agent

Helsell Fetterman LLP, 1001 Fourth Avenue, Suite 4200,
Seattle, WA 98154-1154 (King County) 2/20/2017
Date and Place (residential address, city and county)

Attorney for Claimants identified in Exhibit A attached hereto.

Exhibit A

The names and addresses of the Claimants are as follows:

Edward E. (Ted) Coates
5105 Grand Loop, #201
Tacoma, WA 98407

Mr. Coates is a former Director of Tacoma Public Utilities, and an electric ratepayer of Tacoma Power.

Mike Crowley
1618 Bridgeview Drive
Tacoma, WA 98406

Mr. Crowley is a former Mayor and member of the City Council of the City of Tacoma, and an electric ratepayer of Tacoma Power.

Mark and Margaret Bubenik, dba Steele Manor Apartments
8415 104th Street NW
Gig Harbor, WA 98332

Mr. Bubenik is a former Chief Assistant City Attorney for Tacoma Public Utilities. He and his wife do business as Steele Manor Apartments, located at 621 South Steele Street, Tacoma, WA 98405, and are ratepayers of Tacoma Power.

Thomas H. Oldfield
1212 South Fernside Drive
Tacoma, WA 98465

Mr. Oldfield is an attorney and an electric ratepayer of Tacoma Power.

Industrial Customers of Northwest Utilities
818 SW 3rd Avenue #266
Portland, OR 97204

ICNU is an incorporated, non-profit association of large industrial users of electricity in the Pacific Northwest, including industrial electric ratepayers of Tacoma Power.

All communications with the Claimants about this claim should go through their attorney, whose name, address, telephone number and email address are as follows:

David F. Jurca
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
(206) 689-2140
djurca@helsell.com

Exhibit B

Pursuant to actions and resolutions of the Mayor and City Council of the City of Tacoma, the Tacoma Power electric utility has been unlawfully subsidizing both the capital expenses and the operational and maintenance (O&M) expenses of the commercial telecommunications business of the Click! Network (“Click”) for many years. Further, the Mayor and City Council have proposed that substantial improvements and expansion of the Click telecommunications business be funded in large part by further subsidies from the electric utility. The Claimants are or represent ratepayers of the Tacoma Power electric utility. They seek the following relief: (1) the immediate cessation of all such subsidies and (2) a refund to the Tacoma Power electric utility, from the City’s general fund or from separate funds of Click itself, in the amount of all such unlawful subsidies for the past three years and to the date of cessation of all such subsidies, for the ultimate benefit of all electric ratepayers.

The unlawful subsidies include unreimbursed capital expenditures for facilities and equipment benefiting or properly allocable to Click rather than to the electric utility, unreimbursed expenditures for O&M expenses benefiting or properly allocable to Click rather than the electric utility, and the provision of facilities or services for Click without receiving payment therefor at its true and full value (for example, allowing Click wires or equipment to be attached to electric utility power poles without adequate payment therefor, and paying for audits or studies for Click’s benefit without adequate reimbursement therefor).

The amount of unlawful subsidies for the past three years is estimated to total more than \$21 million.

This claim is supported by the documents attached hereto, and by other documents believed to be within the City’s possession, custody or control. City employees and other persons having knowledge about the relevant facts include the following: present and former mayors and members of the City Council and the Public Utilities Board; present and former City Attorneys and Assistant City Attorneys who have dealt with issues relating to electric utility and Click expenses; present and former executives, managers and analysts at Tacoma Public Utilities, Tacoma Power and Click; present and former managers and employees of the City’s Finance Department who have dealt with financial matters for the electric utility or Click; and authors of audits, reports and studies by outside consultants and auditors concerning past and projected capital and O&M expenses of the electric utility and Click, including but not limited to those prepared by Virchow Krause & Company, CCG Consulting LLC, Moss Adams LLP, NewGen Strategies and Solutions LLC, CTC Technology & Energy, and the Washington State Auditor’s Office.

EXHIBIT 20

TOLLING AGREEMENT

On February 21, 2017 claimants Edward E. (Ted) Coates, Mike Crowley, Mark and Margaret Bubenik dba Steele Manor Apartments, Thomas H. Oldfield, and Industrial Customers of Northwest Utilities filed a Claim for Damages with the City of Tacoma. The filing of the Claim for Damages suspended for sixty calendar days the running of any limitations period applicable to the claims set forth in the Claim for Damages. *See* RCW 4.96.020(4). Claimants and the City wish to enter into discussions about potential procedures for simplifying or streamlining any litigation or other resolution of the subject matter of, or issues raised by, the Claim for Damages, without the constraints of facing the imminent resumption of the running of any such limitations period.

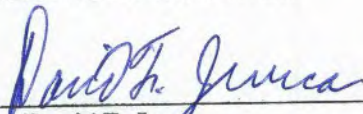
Accordingly, claimants and the City agree as follows:

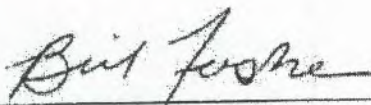
1. The running of any limitations period applicable to claims relating to the matters set forth in the Claim for Damages shall be tolled (suspended) while this Tolling Agreement is in effect.
2. This Tolling Agreement shall be deemed to be in effect from April 21, 2017 through July 31, 2017, unless terminated earlier in accordance with paragraph 3, below.
3. This Tolling Agreement may be terminated by any of the above-named claimants upon seven calendar days written notice mailed, emailed or delivered by hand to the undersigned counsel for the City, and it may be terminated by the City upon seven calendar days written notice mailed, emailed or delivered by hand to the undersigned counsel for the claimants.

4. The undersigned counsel represent and warrant that they are authorized by their respective client(s) to enter into this Tolling Agreement on their client(s)' behalf and that this Agreement shall be binding upon and effective as to their respective clients.

Dated as of this 21st day of April, 2017.

HELSELL FETTERMAN LLP

By 
David F. Jurca
djurca@helsell.com
Attorneys for Claimants


Bill Fosbre, Acting City Attorney
bill.fosbre@cityoftacoma.org
Attorney for City of Tacoma

K&L GATES LLP

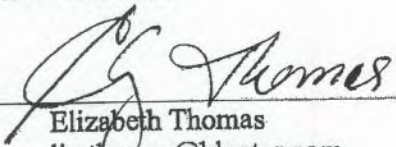
By 
Elizabeth Thomas
liz.thomas@klgates.com
Attorneys for City of Tacoma

EXHIBIT 21

ANNUAL

TACOMA POWER

2016

**FINANCIAL
REPORT**



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

**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)

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.

EXHIBIT 22

Berry

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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
WILLIAM T. BERRY, JR.

9:58 a.m.

October 19, 2017

1001 Fourth Avenue, Suite 4200

Seattle, Washington



REPORTED BY: Mindi L. Pettit, RPR, CCR #2519



206 622 6875 | 800 831 6973
production@yomreporting.com
www.yomreporting.com

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Seattle, Washington; October 19, 2017

9:58 a.m.

--oOo--

WILLIAM T. BERRY, JR.,

sworn as a witness by the Certified Court Reporter,
testified as follows:

EXAMINATION

BY MR. JURCA:

Q. All right. Would you state your name for the record, please.

A. William Thomas Berry, Jr. I go by Bill, however.

Q. Great. And what is your home address?

A. 10818 View Drive Northwest, Gig Harbor, Washington 98332.

Q. I gather you are employed by Tacoma Power.

A. I am.

Q. And what -- what's your job title?

A. So my title is section manager -- so I'm a manager of the rates, planning and analysis section of Tacoma Power.

Q. Can you briefly describe what the -- what that section does.

A. So we do budgeting -- O&M and capital budgeting. We do rates -- cost of service and electric



1 rates. We do energy risk management. We do financial
2 planning. We do financing -- all of our bonds and
3 stuff.

4 And we're now doing two other new things --
5 oh, we also do strategy, so strategic planning and
6 strategy execution. And then the two new things that
7 we're doing, we're building an asset management program
8 and a -- a capital project asset management program and
9 then also a project management office to manage our
10 capital projects better.

11 Q. Okay. Does -- does your section -- which I
12 guess I can abbreviate as RPA?

13 A. RPA.

14 Q. Does your section also work on developing
15 rates for Click?

16 A. No.

17 Q. Okay.

18 A. No.

19 Q. That's done by the Click section itself?

20 A. Yes.

21 Q. Okay. Would you briefly describe your
22 educational background.

23 A. Grammar school, high school. I have a
24 bachelor's degree in political science from Williams
25 College.



1 Q. In what year?

2 A. 1973.

3 Q. And just out of curiosity, where did you grow
4 up?

5 A. I grew up in Newark, New Jersey.

6 Q. Okay.

7 A. So I also -- I went to Rutgers Law School for
8 a year and a half. And we had a baby, and I decided
9 that that wasn't the life for me. And I've also -- I
10 also -- so I didn't graduate. I also attended the
11 master's program for public administration at Albany
12 State New York, but didn't graduate there either.

13 Q. Okay.

14 A. Didn't -- didn't finish.

15 Q. So when did you leave your formal schooling, I
16 guess I should say?

17 A. So formal --

18 Q. Well, whatever -- the program at Albany State,
19 I take it, was that before or after the program at
20 Rutgers Law --

21 A. So I graduated from Williams in '73. Started
22 law school in September of that year. I left that
23 program in January of '75. I moved to Albany, New
24 York. Took a job in the speaker's counsel's office in
25 the state legislature there. And while I was -- while



1 I worked for the state assembly, I also attended
2 classes at Albany State.

3 Q. Okay.

4 A. So that was the end of my formal -- but I was
5 working full-time at that point.

6 Q. Got it. Okay. So now would you briefly
7 describe your -- your work experience since, I guess,
8 working for the state legislature in New York.

9 A. Yeah, so I worked for speaker's counsel from
10 March '75 until the end of '78. I then took a job in
11 the governor's office. I was there until October of
12 '79. Then I moved to New York City and took a job as
13 the director of policy relations for the New York Power
14 Authority. I was in that role for probably about three
15 years. And then I managed to talk my way into being
16 vice president of corporate finance. So I did that for
17 three years. And then I --

18 Q. And just -- was that in New York City or in
19 Albany or --

20 A. It was in New York City.

21 Q. Okay.

22 A. Yeah. New York Power Authority at the time
23 was located in New York City -- the headquarters.

24 Q. Okay.

25 A. Now it's in White Plains.



1 Q. Okay.

2 A. So I left there in October of '85 and went to
3 work for Lehman Brothers. I worked -- I worked in New
4 York for Lehman for about ten months. So I took the
5 job with the intention of moving to California.

6 And so I moved to California in '86. I worked
7 for Lehman until '96, so about 11 -- 11 years. Then I
8 did -- for two years, I kind of did a -- an Internet
9 start-up thing. And then I -- when that was over, I
10 ended up going to work for San Francisco Public
11 Utilities Commission.

12 Q. And when did you start there?

13 A. January of '79. I was --

14 Q. You mean, '99?

15 A. '99, yeah. Yeah. So I took a role there as
16 assistant general manager for finance administration,
17 essentially the CFO responsible for finance and HR and
18 Internet technology services, customer -- customer
19 service, and real estate. So I did that for about five
20 years. I left in April of 2004. I did consulting for
21 seven years. And then I took this role in -- in
22 Tacoma, started in January of 2012.

23 Q. Okay. Couple of questions. When you were
24 working for Lehman, did you sort of deal primarily with
25 electric utility companies or --



1 you know, this has happened; what do you think we
2 should do with it?

3 Q. The operational losses that Click has, are
4 those operational losses covered by electric revenues?

5 MS. VANDER STOEP: Object to form and
6 foundation.

7 A. Can you repeat that. Sorry.

8 Q. (By Mr. Jurca) Are Click's operational losses
9 covered by electric revenues?

10 MS. VANDER STOEP: Same objections.

11 A. So, to the extent Click revenue doesn't cover
12 all of the costs that have been allocated to Click,
13 then yes.

14 Q. (By Mr. Jurca) Okay. A number of documents
15 I'm going to show you or ask you to look at, and I --
16 just to see whether you're familiar with them, and I
17 may not have detailed questions about them. Would you
18 turn to Exhibit 3. That document was prepared in April
19 2000, which, again, was before you arrived at -- at
20 Tacoma Power. Is -- are you familiar with that
21 document? Have you seen it before?

22 A. Yes.

23 Q. Okay. Is it something that you have had
24 occasion to consult or to consider in doing your job at
25 RPA?



1 made applicable back to the beginning of the year 2015,
2 correct?

3 A. Correct.

4 Q. Okay. Do you know whether anyone within your
5 section at RPA took a look at what the result would
6 have been for the year 2014 if that change had been
7 applied to 2014 as well?

8 A. I don't recall that.

9 Q. Okay.

10 A. I mean, it may have happened. I don't recall
11 that.

12 Q. Okay. Let's see, would you look at
13 Exhibit 12, please. Are you familiar with that
14 document?

15 A. So I'm not sure whether I've seen this before.

16 Q. Okay.

17 A. I've seen, you know, documents produced by CCG
18 Consulting and Doug Dawson, but I don't -- it doesn't
19 look familiar.

20 Q. Okay. Fair enough. All right. Would you
21 now -- and as I said before, some of these documents,
22 I'm just going to have you look at briefly. Others,
23 I'll spend more time with.

24 A. Sure.

25 Q. Would you look at Exhibit 13 now. That is a



1 compilation of monthly operational summaries for Click
2 that I've come to understand was prepared by the City's
3 finance department. Have you -- do you routinely see
4 these kinds of monthly operational summaries for Click?

5 MS. VANDER STOEP: Object to form and
6 scope.

7 A. So I receive the monthly financial reports.
8 And this is a part of them.

9 Q. (By Mr. Jurca) Okay. So you receive monthly
10 financials for Tacoma Power?

11 A. For Tacoma Power.

12 Q. And this is a -- a part of that?

13 A. Yes.

14 Q. Okay. And just -- if you -- on the lower
15 right corner of the pages is a -- is a number that has
16 a bunch of digits. The lawyers refer to those as Bates
17 numbers, because the Bates stamp company originally --
18 these things used to be put on by hand. Anyway, if you
19 look at the page that has the Bates number 3798? Kari
20 is too young to remember this, but we used to hand
21 stamp --

22 MS. VANDER STOEP: You know, actually I
23 worked at a firm where we still did that. I'm older
24 than you think.

25 A. Where -- are these in order?



1 Q. (By Mr. Jurca) Well, as I say, these are --
2 it's a compilation of just the -- they're in order, but
3 they're not -- but there are gaps in the numbers.

4 A. Okay. 3798?

5 Q. 3798?

6 A. So it's with the T-A-C-P-R-A-H-F and then
7 3798?

8 Q. Yes. Yes.

9 A. I have to find it.

10 Q. It may be easier if I -- it's the monthly
11 operational report for August 2015.

12 A. Oh, then I'll just jump ahead. Got it.

13 Q. Okay. And just -- the note there, the
14 footnote down at the bottom of the page refers to that
15 change from 75-25 to 94-6, just to . . . Those --
16 those are the 75-25 and 94-6 figures that you were
17 referring to previously, right?

18 A. Yes.

19 Q. Okay. Let's look at the monthly operational
20 summary for December of 2015. And if the Bates numbers
21 are helpful, it's -- it begins at No. 4286.

22 A. Okay.

23 Q. And if you turn to the next page, which is the
24 second page of that operational summary, that shows the
25 figures year to date for 2015 and 2014, right?



1 A. Yes.

2 Q. Okay. And you see that the figures shown for
3 year to date net operating losses for 2015 was
4 something over 5 million and the operational losses for
5 the year 2014 was a little more than \$1.4 million.

6 Let me ask you this. Since, as we've just
7 discussed, the previous allocation was used for the
8 year 2014 and then the new allocation was used for the
9 year 2015, would you expect that if the new allocation
10 had been applied to the year 2014, that the operational
11 losses for that year would have been significantly
12 greater than the 1.4 million figure shown here?

13 MS. VANDER STOEP: Object to form and
14 scope.

15 A. Yeah, I think so.

16 Q. (By Mr. Jurca) Okay. Would you look at
17 Exhibit 17, please. I wish -- I believe -- I can't
18 remember whether we identified the handwriting on that
19 or not. So I'll ask you, do you happen to recognize
20 the handwriting on the first page of that exhibit?

21 A. No.

22 Q. Okay. This exhibit is a copy of a -- some
23 sort of a slide presentation made at a joint public
24 utility board and city council study session, I
25 believe, on March 31, 2015. Do you -- I guess I'll --



1 the Sage Consulting report regarding slide -- regarding
2 Click?

3 MS. VANDER STOEP: Object to scope.

4 A. So I'm familiar with a Sage Consulting report
5 about TPU, covering probably Click and power and other
6 parts of TPU.

7 Q. (By Mr. Jurca) And is that consulting -- or
8 Sage Consulting report something that is mandated by
9 the City charter?

10 A. I believe so.

11 Q. Okay.

12 A. Not -- not Sage --

13 Q. But the preparation of such a consultant's
14 report?

15 A. Yes.

16 Q. Okay. And Sage was the consultant selected to
17 do that report?

18 A. Yes.

19 Q. Okay. We've got a -- we'll come to a document
20 later on, but let me ask -- since we're on this exhibit
21 now, would you turn to page 22 of this exhibit -- or
22 Slide 22. And you see there on the -- right above the
23 heading recommendation, the statement, "As a result of
24 the industry changes and the competitive disadvantages,
25 power has been subsidizing Click and the subsidies will



1 MS. VANDER STOEP: Object to form.

2 A. Yes.

3 Q. (By Mr. Jurca) Okay. Would you do so,
4 please.

5 MS. VANDER STOEP: Object to form.

6 A. So, at this time, we were -- so these are
7 Click all-in proposal, and that proposal would include
8 some up-front capital investment.

9 Q. (By Mr. Jurca) To -- to improve --

10 A. To improve --

11 Q. -- the network?

12 A. To improve the network. And where it says,
13 "We've historically always revenue funded Click
14 capital," that's how it's been done. So we have this
15 large, up-front investment, and in an earlier analysis
16 or reporting, the assumption was that that would all be
17 revenue funded as normal, which would make the rate
18 increases -- the rates -- the required rates higher.

19 Q. For those initial years when that capital
20 investment is being made?

21 A. Right. But they are the type of capital
22 investments that we might -- we should be able to
23 finance in some way, so it's just spreading the cost
24 out, because the life of the asset is going to be used
25 over a period of time. So I believe there was a change



1 in the assumption so that the assumption is that we're
2 going to finance or spread it out in some fashion.

3 Q. Do you know why the -- this says that only 13
4 million of the 20 million is being amortized?

5 MS. VANDER STOEP: Object to form.

6 Q. (By Mr. Jurca) I gather that that's what --
7 what that is indicating that 7 million of the \$20
8 million capital investment would be revenue funded as
9 had been done previously, but 13 million of the 20
10 would be amortized and spread out over a number of
11 years?

12 MS. VANDER STOEP: Object to form.

13 Q. (By Mr. Jurca) Is that the way you understand
14 that?

15 MS. VANDER STOEP: Object to form.

16 A. Yes.

17 Q. (By Mr. Jurca) Okay. Do you know -- do you
18 know why or where the -- where the 13 million versus
19 the 7 million that's not being amortized -- what the
20 basis for that is?

21 MS. VANDER STOEP: Object to form.

22 A. So next page.

23 Q. (By Mr. Jurca) Okay.

24 A. The first big paragraph, five lines from the
25 bottom, this also includes 20 million for capital



EXHIBIT 23

Cherullo

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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



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production@yomreporting.com
www.yomreporting.com

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Seattle, Washington; October 11, 2017

9:59 a.m.

--oOo--

ANDREW CHERULLO,

sworn as a witness by the Certified Court Reporter,

testified as follows:

EXAMINATION

BY MR. JURCA:

Q. Please state your name for the record.

A. My name is Andrew Cherullo.

Q. And would you spell it, although I think she
has it.

A. C-h-e-r-u-l-l-o.

Q. What is your present residence address?

A. 7908 Woods Estate Lane in Olympia, Washington.

Q. ZIP?

A. 98506.

Q. And what is your present employment?

A. I am the finance director for the City of
Tacoma.

Q. Would you briefly describe your educational
background.

A. I have a bachelor's degree in political
science and a bachelor's degree in economics, a
master's in economics.



1 Q. From what institutions and in what years?

2 A. BAs are from 1990, University of Montana, both
3 of them. Master's is from Tufts in 1996.

4 Q. So did you have any employment between getting
5 your bachelor's degree and your master's degree?

6 A. I did.

7 Q. Would you just tell us what that was.

8 A. Should have brought my resume, Dave.

9 Q. I don't need specific, you know, dates, but
10 just employment background would be helpful.

11 A. My general employment background, I know
12 that -- can I start currently and work backwards?

13 Q. Whichever is easiest.

14 A. It will work in my mind easier.

15 Q. Backwards or forwards, whichever is easier.

16 A. So I'm the finance director for the City of
17 Tacoma. I have been there since February of 2013.
18 Prior to that, I was the chief financial officer for
19 the Health Care Authority in Olympia. Prior to that, I
20 was the CFO and chief operating officer of the
21 Massachusetts School Building Authority.

22 Q. And could you put some years on that.

23 A. So let's see. I was the -- at the Health Care
24 Authority from 2011 to 2012. The school building
25 authority, I was there from -- six years . . . Oh,



1 '11 -- I was there six years.

2 Q. Okay. Close enough.

3 A. Close enough. And prior to that, I was the
4 budget director for the house ways and means committee
5 for the state legislature in Massachusetts. And I was
6 the budget director for four years. Prior to that, I
7 was a budget analyst and a revenue director for four
8 years. So I was in the legislature there for eight
9 years.

10 Q. Okay. Well, as far as your employment in the
11 State of Washington, for the Health Care Authority in
12 Olympia, that was a public agency, so it was subject to
13 whatever accounting principles are applicable to public
14 agencies in this state?

15 MS. VANDER STOEP: Object to form.

16 Q. (By Mr. Jurca) Is that correct or not
17 correct?

18 MS. VANDER STOEP: Object to the form.

19 A. Yeah, I guess you're asking me a legal
20 question, right? I don't understand.

21 Q. (By Mr. Jurca) Well, all that I'm asking --
22 is that a public agency?

23 A. It is a public agency.

24 Q. Okay.

25 A. It deals with Medicaid in the state, and it



1 deals with public employee benefits for state workers.

2 Q. Okay. And how -- just -- how did you become
3 the finance director for the City of Tacoma?

4 A. I was recruited through a firm. I'm trying to
5 remember the name of them. I was -- I was recruited
6 there. They were seeking a finance director, and I was
7 recruited.

8 Q. Okay. Have you had any particular training or
9 coursework that you would consider to be aimed at
10 accounting principles or financial principles for
11 municipal -- for municipalities in the state of
12 Washington?

13 MS. VANDER STOEP: Object to form.

14 A. Coursework, as you mean, in school?

15 Q. (By Mr. Jurca) Seminars or -- not necessarily
16 a college or university, but other kinds of training,
17 question mark?

18 A. I think -- okay -- can you state your first
19 question again then.

20 Q. Have you had any special -- let me restate it.
21 Have you had any special schooling or training
22 regarding what's involved in being a finance director
23 for a city in the state of Washington?

24 A. Yes.

25 Q. And can you describe what training that was.



1 regard to Click was unreasonable, are you?

2 A. Personally, no.

3 Q. Then would you -- wouldn't -- based on that,
4 wouldn't you agree with me that --

5 A. They might have approached the state auditor,
6 Moss on their own and been told something different,
7 but if you're asking me, again, we rely on the state
8 auditor or Moss Adams in this case --

9 Q. Okay.

10 A. -- because we rely on our auditors to say do
11 you believe that this methodology is reasonable.

12 Q. Okay. And, again, I want to get a feel for
13 the scope of what you do as finance director, so let me
14 ask you to look at Exhibit 12. And is that a document
15 that you've seen before? And, again, I mean prior to
16 preparation for this deposition.

17 A. No.

18 Q. Okay.

19 A. Not prior to.

20 Q. Okay. All right. Would you turn to
21 Exhibit 13. That's been identified previously as a
22 collection of -- it's an almost complete, but not
23 completely complete collection of monthly operational
24 summaries for the Click Network in the -- for the years
25 2014, '15, and '16. And I think there were a couple of



1 months missing, but let me see if I have that correct.

2 Yeah, I think the first two months of 2015 are missing.

3 But aside from that --

4 A. So these are not the complete --

5 Q. -- can you confirm --

6 A. These aren't the complete financial statements
7 then?

8 Q. They're not the complete financial statements
9 for Tacoma Power, no. These are a collection of the
10 monthly operational summaries for Click, are they not,
11 for the years 2014, '15, and '16, with the exception of
12 January and February 2015?

13 MS. VANDER STOEP: Object to form.

14 A. It's kind of hard to tell with an incomplete
15 document.

16 Q. (By Mr. Jurca) Well, let's look -- let's look
17 at the first two pages. That's labeled operational --
18 Click Network commercial operations operational summary
19 January 31, 2014. Isn't that what the monthly
20 operational summaries for Click look like?

21 A. These two pages, yes. They're usually part of
22 the power overall financial document though.

23 Q. Right. But the parts that relate to Click --
24 as I said, these are excerpts. These are the excerpts
25 of --



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 Power, I gather there are monthly financial reports
2 prepared by your department for Tacoma Power that
3 include monthly operational summaries for Click. Is
4 that right? Is that what you're telling me?

5 A. We do produce the monthly financial statements
6 for power.

7 Q. And does -- and do those include monthly
8 operational summaries for Click?

9 A. They do.

10 Q. Okay. And I gather, what you're telling me is
11 that you are unable to verify that Exhibit 13 consists
12 of the Click monthly operational summaries because
13 you're -- you would be uncomfortable verifying that
14 without having the full monthly document available. Is
15 that what you're saying?

16 A. Yes.

17 Q. Okay.

18 A. You've pulled two pages out of 28 months'
19 worth of financial statements, so it's a difficult task
20 for me. If it's a couple -- you said this was a
21 couple, two and a half years' worth of things or
22 something -- or three years.

23 Q. Previous witnesses have identified these as
24 the Click monthly operational summaries for the years
25 2014, '15, and '16 except for the two months that I



EXHIBIT 24

Fosbre

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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



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SEATTLE, WASHINGTON; NOVEMBER 29, 2017

10:05 A.M.

--oOo--

WILLIAM FOSBRE,
sworn as a witness by the Certified Court Reporter,
testified as follows:

EXAMINATION

BY MR. JURCA:

Q. I'm going to call you Mr. Fosbre, or I might fall into the usual and call you Bill. I mean no disrespect if I call you Bill instead of Mr. Fosbre.

A. Your choice.

Q. State your name for the record, please.

A. Bill Fosbre.

Q. What is your home address?

A. 6153 37th Lane Southeast, Lacey, Washington.

Q. Are you presently the City Attorney for the City of Tacoma?

A. Yes.

Q. How long have you been in that position?

A. Since May 24th.

Q. Of this year?

A. Of this year.



1 Q. Prior to that you were acting City Attorney
2 for awhile?

3 A. Yes.

4 Q. When did you become acting City Attorney?

5 A. February 6th, I think it was, of this year.

6 Q. Would you briefly describe your educational
7 background?

8 A. Okay. I have a bachelor's degree in
9 sociology from Western Washington University and a
10 master's degree in political science.

11 Q. What years did you get those degrees?

12 A. 1988 was my bachelor's degree. My master's
13 degree was in 1990. That was also from
14 Western Washington. I went to University of
15 Puget Sound, now it's Seattle University, for law
16 school and graduated in 1997.

17 Q. Would you briefly describe your employment
18 background?

19 A. I worked nine years for the State Supreme
20 Court.

21 Q. This was after law school?

22 A. During law school.

23 Q. Okay.

24 A. And then I worked for the City of Tacoma
25 starting in 1999 and worked there for about three and



1 a half years. And then I went to Snohomish County and
2 was the district court administrator for three years,
3 that was from 2002 to 2005. I came back to the City
4 in 2005 and have been there ever since.

5 Q. While you were with the Tacoma City
6 Attorney's Office, I gather that at least during some
7 portion of that time you were principally the attorney
8 for Tacoma Public Utilities?

9 A. Yes.

10 Q. And during what period of time was that?

11 A. So I was at the utilities starting in 2005,
12 but I became the Chief Deputy in 2008.

13 Q. Okay.

14 A. So from 2008 until February of this year.

15 Q. I'm going to be jumping around from topic to
16 topic a little bit.

17 A. Uh-huh.

18 Q. Let me begin by asking; is it your
19 understanding that --

20 MR. JURCA: Let me withdraw that and start
21 with a preliminary point.

22 Q. (By Mr. Jurca) Tacoma Power is the current
23 name of what used to be known as Tacoma City Light, is
24 that right?

25 A. That's correct.



1 Q. Would you agree that electric utility
2 customers of Tacoma Power are subsidizing the costs of
3 Click! Network customers?

4 MR. FILIPINI: Object to the form and to the
5 extent it calls for a legal conclusion.

6 A. I'd say no, because I haven't seen anything
7 that relates to these shared costs to know whether or
8 not they're indeed a subsidy, because I can't just as
9 a lawyer call it a subsidy. A court could call it a
10 subsidy. Maybe after a judge has reviewed the case
11 they might call it a subsidy, but I can't call it a
12 subsidy. Plus I don't have a math degree.

13 Q. (By Mr. Jurca) Would you agree that
14 according to the financial statements of the Click!
15 Network, it has had substantial losses every year in
16 recent years?

17 MR. FILIPINI: Object to the form.

18 A. Correct. It has not generated sufficient
19 revenues to cover what they're calling Click!
20 expenses.

21 Q. (By Mr. Jurca) Would you agree that those
22 losses are being covered by revenues of the electric
23 utility?

24 A. Yes.

25 Q. In your opinion, is it lawful for revenues



1 of the electric utility to be used to cover the losses
2 of the Click! commercial telecommunications services?

3 MR. FILIPINI: Object to the extent it calls
4 for a legal conclusion.

5 A. Well, under the current state of the law,
6 I'd say that there is substantial risk that might be
7 considered unlawful. But there's yet to be a
8 definitive answer.

9 Q. (By Mr. Jurca) Do you have an opinion on
10 that issue?

11 MR. FILIPINI: Same objection.

12 A. I would have to see what the losses are that
13 are being paid for with the electric revenues, meaning
14 if the revenues weren't sufficient to cover items such
15 as cable programming, set top boxes, I would probably
16 believe that there's, once again, substantial risk
17 that the court would find that's not a proper
18 expenditure of electric revenues. If it's for
19 equipment or components of the system that are
20 currently used by both, the Click! Network and other
21 parts of Power, I don't know, because I would have to
22 wait for the court to tell me.

23 Q. (By Mr. Jurca) Now, in the course of
24 performing your duties at the City, have you come to
25 learn that Click! was established by a City ordinance



1 trying to draw a distinction between those other
2 systems within the Power utility.

3 Q. (By Mr. Jurca) Okay. I may be asking you
4 some questions in which I refer to the electric
5 utility and Click!.

6 Would you agree that it's fair to refer to
7 the electric utility as being those five other
8 business units that we just saw listed besides Click!?

9 A. For the purposes of whatever distinctions
10 you want to draw, yes, we could -- that would be fair.

11 Q. Would you turn to Exhibit 44.

12 Do you recognize that as a copy of a
13 Sage Management Consultants, LLC report dated
14 November 7, 2014?

15 A. Yes.

16 Q. That report was prepared pursuant to a
17 requirement in the City Charter that every ten years
18 there be a consultant report reviewing Tacoma Power,
19 or is it reviewing TPU as a whole?

20 A. TPU as a whole and the management functions
21 there.

22 Q. Okay. But this was at least a part of that
23 report that was prepared pursuant to that provision of
24 the City Charter, correct?

25 A. Yes.



1 Q. Did you review this report at or about the
2 time it was issued?

3 A. I reviewed it after it was issued.

4 Q. Shortly after it was issued?

5 A. Yes.

6 Q. Turn to the second page of the exhibit.
7 Under the heading "Click! Strategic Plan," there are a
8 number of items listed. The last item listed says,
9 "As a result of the industry changes and the
10 competitive disadvantages, Power has been subsidizing
11 Click! and the subsidies will likely grow over time."

12 When you saw that statement, did you
13 construe the word "Power" there to refer to the
14 electric utility?

15 A. Yes.

16 Q. When you reviewed that statement did you
17 express to anyone any objection to the use of the word
18 "subsidy" or "subsidizing" in the context of that
19 statement?

20 MR. FILIPINI: I'll just remind you not to
21 provide the content of any privileged communications.
22 Otherwise, go ahead.

23 A. Yes.

24 Q. (By Mr. Jurca) You did object to that word?

25 A. I had conversations about that word.



1 is contained in a document, maybe we'll come to it.

2 But based on that assumption, that roughly a
3 third of electric customers don't live in places where
4 they can even get Click! service if they wanted, would
5 you agree that with respect to them, the Power subsidy
6 to Click! is unfair to those Power ratepayers?

7 MR. FILIPINI: Object to form and to the
8 extent it calls for a legal conclusion.

9 A. Yes.

10 Q. (By Mr. Jurca) Was there a point in time
11 when the senior staff of Tacoma Power and Tacoma Power
12 Utilities recommended to the Public Utility Board that
13 the assets of the Click! Network should be leased to
14 Wave?

15 A. Yes.

16 Q. Did you understand that one of their reasons
17 for making that recommendation to the Public Utility
18 Board was to reduce the amount of Click! losses being
19 covered by electric utility revenues?

20 A. Yes, not only reduce, but actually fund --

21 Q. Okay.

22 A. -- the existing M&O and capital
23 improvements.

24 Q. Did you ever express a position on that
25 recommendation; were you in favor of it, opposed to it



1 presentation, I would have seen these documents.

2 Q. Okay. Do you recall seeing anything in this
3 slide presentation, either while you were in
4 attendance at the meeting or reviewing the slides
5 afterwards, that you thought was incorrect?

6 A. No.

7 Q. Now let's turn to Exhibit 7. That's a copy
8 of a memorandum dated July 16, 2015 from Elizabeth
9 Pauli, City Attorney, and you as Chief Deputy City
10 Attorney, addressed to the Mayor and City Council
11 members and the Public Utility Board dealing with the
12 subject of the City and TPU's authority and
13 obligations related to providing commercial
14 telecommunications services to the public, right?

15 A. Yes.

16 Q. Were you the principal author of this
17 memorandum?

18 A. Yes.

19 Q. Okay.

20 A. And Elizabeth did portions of it, but I'm
21 the principal author.

22 Q. Maybe we can save some time here; can you
23 give me the -- by the way, this memorandum was
24 considered a public document and not confidential or
25 subject to the attorney-client privilege, correct?



1 resolution, i.e., the telecommunications system,
2 should it pay other City departments for services
3 rendered by those other City departments based on its
4 full and true value, either full and true or true and
5 full value of those services?

6 MR. FILIPINI: Object to form and calls for
7 a legal conclusion.

8 A. Well, to the extent -- the system was inside
9 Power, so Power is required to pay. So if they then
10 in turn allocate those costs to that system, that
11 might be one way they've done it.

12 But in answer to your real question, yes, I
13 think the Power fund needs to pay for the services
14 that are provided to, both through our City Charter as
15 well as that state law.

16 Q. (By Mr. Jurca) Okay. Let's keep marching
17 through some of the documents here.

18 MR. JURCA: This isn't an exhibit. I'll ask
19 that it be marked.

20 (Deposition Exhibit No. 62 was marked
21 for identification.)

22 Q. (By Mr. Jurca) Do you recognize that as
23 Amended Resolution No. U-10828 of the Public Utility
24 Board adopted on December 3, 2015?

25 A. Yes.



1 Q. That has your signature on it as
2 Chief Deputy City Attorney?

3 A. Yes.

4 I have to get my glasses.

5 Q. This Amended Resolution No. U-10828
6 authorized Click! to prepare a business plan to
7 provide, in addition to retail cable television,
8 retail Internet services including voice over data
9 Internet protocol, commercial broadband and gigabit
10 service, correct?

11 A. Yes.

12 Q. Do you know whether the phrase "All-In" had
13 been developed yet by this time, that is, early
14 December of 2015, to describe the concept or the
15 proposal of expanding Click!'s business to include
16 retail Internet, commercial broadband and VoIP
17 protocol in addition to retail cable TV?

18 A. Yes.

19 Q. So to say it in a more abbreviated fashion,
20 this was the Public Utility Board resolution
21 authorizing Click! to prepare a business plan for the
22 All-In proposal?

23 A. Yes.

24 Q. If you look at the "whereas" clause -- I'm
25 sorry. It's the first -- it's Section 1 that begins



1 setting up a firm line to start whatever this new
2 thing was.

3 Q. Well, the original build-out was paid out of
4 basically electric utility funds rather than being
5 funded by the issuance of debt, isn't that right?

6 A. Correct. The City paid for some of the
7 fiber as well.

8 Q. So you said there was no debt out there, but
9 there was still -- there had been a substantial
10 capital expenditure made out of electric utility
11 revenues that was still being accounted for in Click!
12 monthly financial statements as a -- I can't remember
13 now, we can look at it if we need to -- as either a
14 depreciation or some aspect of a capital expense.

15 Do you recall that?

16 MR. FILIPINI: Object to form.

17 A. No. I'm just telling you what I think was
18 the rationale for why they picked that date or why
19 they made that statement.

20 Q. (By Mr. Jurca) Okay. On page four,
21 Section 2(f), it says, "The Business Plan shall
22 require a separate enterprise fund (subaccount) within
23 the Tacoma Power fund to account for Click! revenues
24 and expenditures."

25 Do you see that?



1 losses and that the Council wanted to be aware, at
2 least the Council member --

3 Q. Who was proposing the amendment?

4 A. -- who was proposing the amendment that
5 those losses may have to be paid for out of the
6 general fund.

7 Q. Do you remember what reasons were given by
8 the City Council members who voted against the motion?

9 A. I can't remember, but it seemed like the
10 time frame -- they didn't like the time frame about
11 the five years, whether they wanted it earlier or
12 later, it had too much -- I hope I'm remembering this
13 correctly. It was just too specific.

14 (Deposition Exhibit No. 64 was marked
15 for identification.)

16 Q. (By Mr. Jurca) Exhibit 64 is a copy of
17 City Council Resolution No. 39347 as adopted at that
18 meeting on December 15, 2015, correct?

19 A. Yes.

20 Q. Section 2 of the resolution says that "The
21 Utility Board and City Council shall, upon adoption of
22 this Resolution, appoint a Click! Engagement Committee
23 to provide oversight and assistance to Click! in the
24 development of the Business Plan."

25 Then it goes on to describe how the



1 A. It looks like a presentation that would have
2 been put together for the Board at a study session,
3 but it's probably a draft, because on the front pages
4 of the presentations they usually list the date and
5 time -- not the date and time. They list the date and
6 whether it's at a study session or special meeting or
7 something else on the cover sheets.

8 Q. (By Mr. Jurca) Okay.

9 A. So I doubt that it was provided like this.
10 So it's probably a draft. And the time frame, because
11 it's mentioning the 17/18 budget and it's got some
12 listings in here of late 2016, that -- gosh, my guess
13 is it's probably sometime in the middle of 2016.

14 Q. Okay.

15 A. They generally put their capital budgets and
16 things together during the summer. This kind of has a
17 little feeling like that.

18 But the other issue is we don't do our rates
19 until the late fall. But that doesn't match the
20 timeline that's in the back. So if Power was doing
21 their rates, it wouldn't be actually doing them until
22 like November or December --

23 Q. Okay.

24 A. -- because they get passed in January.

25 Q. Okay. Now, would you turn to Exhibit 33.



1 That is a copy of Public Utility Board Amended
2 Resolution Number U-10879 adopted on September 28,
3 2016, correct?

4 A. Correct.

5 Q. That has your signature on it under the
6 heading "Approved as to form and legality," right?

7 A. Yes.

8 Q. The "whereas" clause number 18 on page five
9 says, "WHEREAS the Board has a duty to ensure that
10 Tacoma Power ratepayers pay in their power rates only
11 those costs that are directly and reasonably related
12 to the provision of electric service."

13 Do you agree that the Public Utility Board
14 has such a duty?

15 A. Yes.

16 Q. In this resolution, the Public Utility Board
17 approved Click!'s proposed high-level All-In business
18 plan that is attached as Exhibit A to the resolution,
19 correct?

20 A. Correct.

21 Q. Section 4 says, "Tacoma Power's request to
22 transfer an annual amount to the Click! fund from
23 Tacoma Power electric revenues, to appropriately
24 compensate Power's past, current and future beneficial
25 uses of the telecommunications system infrastructure,



1 Q. Okay. The second page of the attachment
2 after that table there has two bullet points. It
3 says, "It is anticipated that Click! will continue to
4 operate in a deficit situation for the foreseeable
5 future."

6 You understood that that was generally
7 understood by Board members?

8 MR. FILIPINI: Object to form.

9 A. Yes.

10 Q. (By Mr. Jurca) And then the next bullet
11 point says, "The viability of this business plan is
12 contingent upon securing external funding."

13 What was your understanding of what was
14 meant by external funding?

15 MR. FILIPINI: Object to the form.

16 A. Something beyond what they were going to
17 collect from Click! customers.

18 Q. (By Mr. Jurca) Or from Power?

19 A. I -- maybe. I don't recall.

20 Q. Okay.

21 A. But I know it wasn't going to be generated
22 through increases in charges for services for
23 existing -- for telecommunications for existing
24 customers. They either needed a lot more customers or
25 money had to come from someplace else.



EXHIBIT 25
Gaines

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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 GAINES

10:00 A.M.

NOVEMBER 27, 2017

1001 FOURTH AVENUE, SUITE 4200

SEATTLE, WASHINGTON

REPORTED BY: LESLIE POST, CCR No. 2378



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SEATTLE, WASHINGTON; NOVEMBER 27, 2017

10:00 A.M.

--oOo--

WILLIAM GAINES,
sworn as a witness by the Certified Court Reporter,
testified as follows:

EXAMINATION

BY MR. JURCA:

Q. Would you state your name for the record,
please.

A. My name is William Gaines, but I go by Bill.

Q. What is your home address?

A. It's a Post Office box. 64549 in
University Place, Washington.

Q. Can you give me a physical address?

A. I can. It's 1321 South Sunset Drive in
Tacoma.

Q. Thank you. I take it you are presently
employed by the City of Tacoma?

A. I am.

Q. What is your job title?

A. I'm the director of Tacoma Public Utilities.

Q. For anyone who might be reading this



1 transcript someday, I understand as the director of
2 Tacoma Public Utilities, is that analogous to the CEO?

3 A. Yes. It's the chief executive officer role,
4 yes.

5 Q. Would you briefly give me your educational
6 background?

7 A. Yes. I have a bachelor of science degree in
8 electrical engineering.

9 Q. From?

10 A. From Washington State University.

11 Q. What year?

12 A. 1978.

13 Q. Okay.

14 A. I have a master of business administration
15 from the University of Puget Sound. I believe it was
16 in 1984. I attended Stanford University's Executive
17 Program in the summer of 2003.

18 Q. Was there a particular name for that
19 program?

20 A. It's called the SEP, Stanford Executive
21 Program. It's their flagship executive ed program.

22 Q. Thank you. Would you briefly describe your
23 employment background?

24 A. Yes. When I graduated from school --

25 Q. Meaning?



1 A. Undergrad.

2 Q. Okay.

3 A. -- I took a job at Puget Sound Energy in
4 Bellevue, Washington. I was there for 27 years. I
5 started as a student engineer. I left as the
6 vice-president for power and gas supply. I worked
7 most of that time in the business side of the
8 business, not design engineering, but power supply
9 planning, gas supply planning, contracts, regulatory
10 work at both the state and federal level. Really the
11 business side of the business.

12 Q. Okay.

13 A. I left in 2004 thinking I would do some
14 independent consulting. My first client was
15 Seattle City Light. That turned into full-time
16 employment for two years while City Light was going
17 through a fairly large management transformation. I
18 managed the power supply business there, the
19 environmental affairs function, a number of other
20 functions.

21 I left Seattle in 2006 because I was
22 recruited by the then CEO to come to Tacoma and I've
23 been there ever since. So about eleven years.

24 Q. What was your first position with Tacoma?

25 A. I was a student engineer.



1 Q. How long did you stay in that position?

2 A. Well, I went through a -- they have a
3 hierarchy of engineering positions, so I sort of went
4 through a series of three or four engineering
5 positions over a period of I would say roughly ten or
6 twelve years until getting a management job.

7 Q. Can you just sort of take us through the
8 different job titles you've had?

9 A. They have assistant engineer job, associate
10 engineer, engineer, they have a senior engineer
11 position. I sort of progressed through those
12 positions until I was asked to manage a unit in the
13 power supply group.

14 Q. What unit was that?

15 A. It was called power operations planning, so
16 it has to do with the short-run planning for the
17 operation of hydroelectric dams, the buying and
18 selling of power up and down the West Coast,
19 short-term contracting, that sort of thing.

20 Q. How long did you stay in that position?

21 A. You know, I don't have my resume in front of
22 me. I won't have the dates.

23 Q. Just a rough estimate is fine.

24 A. I would say four or five years maybe.

25 Q. From there what did you do?



1 A. So then I became the manager of the entire
2 power supply planning group, so short term and long
3 term both. That involved long-term, multiyear,
4 multi-decade actually, resource planning, computer
5 modeling of the Pacific Northwest hydro system. I got
6 more involved in ratemaking at the State Utilities
7 Commission. I was the company's chief power supply
8 witness for about ten years. I got involved in
9 federal regulation by the Federal Regulatory
10 Commission that regulates wholesale power
11 transactions. I was in that role until 1997.

12 So in 1997 --

13 Q. Let's see. I'm getting confused. When did
14 you -- was it in 2006 or 1996 when you went with
15 Tacoma from Seattle City Light?

16 A. That was in 2006.

17 Q. Okay. So now you were referring to 1997.

18 A. You were taking me through my career at
19 Puget Sound Energy.

20 Q. I'm sorry. I was not -- I wanted the detail
21 information for your career with Tacoma.

22 A. Oh, with Tacoma. You would like me to start
23 in 2006?

24 Q. Yes.

25 A. I was recruited to Tacoma in 2006 to take



1 the Power superintendent role, which is essentially
2 the chief operating officer for the power utility
3 there. The TPU is composed of three operating
4 utilities. The power utility is the largest one. So
5 I was the superintendent there, my first role.

6 Q. You stayed in that position how long?

7 A. About one year.

8 Q. In 07 you became the director of utilities?

9 A. That's right, November of 07.

10 Q. Who preceded you as the director of TPU?

11 A. His name was Mark Crisson. He's kind of an
12 icon in public power.

13 Q. Who succeeded you as the Power
14 superintendent?

15 A. I think the immediate successor was a fellow
16 named Gary Armfield, who had been in the organization
17 for quite some time.

18 Q. Was he then replaced by someone fairly soon?

19 A. Couple three years, two years maybe. He
20 retired and we promoted a fellow named Ted Coates into
21 that role.

22 Q. Just to avoid confusion, was there another
23 fellow named Ted Coates who had something to do with
24 Tacoma Power?

25 A. Yes. We referred to them as junior and



1 Q. Now, again, this would have preceded your
2 arrival at Tacoma Power, but have you come to be aware
3 that something called the Click! Network was formed at
4 some point in the late 90s?

5 A. Painfully aware.

6 Q. Just to help set some sort of timeline
7 milepost, I'd ask you to look at Exhibit 2, which is
8 going to be in one of these notebooks.

9 I don't know if you've ever had occasion to
10 see that before. This is a copy of the City's
11 Ordinance No. 25930, which was adopted in 1996. It
12 officially established the telecommunications system
13 of the City's Light Division. If you turn to page
14 five, you can see that.

15 Sometimes during the deposition I'll be
16 referring to Bates numbers, which are those little
17 numbers in the lower right corner. It's Bates ending
18 in 218.

19 Section 2.1 there says, "The City hereby
20 creates a separate system of the City's Light Division
21 to be known as the telecommunications system."

22 I gather that's what came to be known as the
23 Click! Network?

24 A. Yes.

25 Q. So the Click! Network is a d/b/a?



1 A. Yes.

2 Q. I don't want to spend a lot of time on
3 events that occurred before your arrival at
4 Tacoma Power, but I'm sure you have some familiarity
5 with those events.

6 A. Uh-huh.

7 Q. So can you just -- I think it would be
8 helpful if you could sort of briefly describe how
9 Click! was set up and how it got up and running, if
10 that question makes any sense to you.

11 MR. FILIPINI: Object to form.

12 Go ahead.

13 A. It does. So my understanding is there were
14 a variety of circumstances in the late 90s that led to
15 it. One was the utility's need for high-speed
16 communications services and the difficulty of
17 obtaining those in the private market. The other was
18 that other utilities were building telecommunication
19 systems. Another was that the utility foresaw
20 eventually installing smart meters, intelligent
21 electric meters and needed a telecommunication system
22 to support that. So it was a variety of reasons.

23 Then the idea was that once the system was
24 in place, it could also be used for commercial
25 purposes, ergo Click!, to provide additional revenues.



1 "commercial application" usually refers to the other
2 things, like the cable TV and the Internet and
3 whatnot, that do not support the traditional electric
4 utility functions, is that right?

5 A. Yes.

6 Q. Now, I'm going to sort of jump around in
7 time here a little bit.

8 At least in recent years, has the
9 Click! Network been losing money?

10 A. It's not been recovering its costs.

11 Q. And so its losses have been covered by
12 electric revenues, that is, revenues from the power
13 side of Tacoma Power, is that right?

14 MR. FILIPINI: Object to form.

15 A. Yes.

16 Q. (By Mr. Jurca) Within the TPU, have you
17 heard or read statements to the effect that the
18 electric ratepayers have been subsidizing the
19 Click! Network?

20 MR. FILIPINI: Object to form.

21 A. I think that word's been used.

22 Q. (By Mr. Jurca) Would you agree that that has
23 happened?

24 MR. FILIPINI: Object to form.

25 A. For some reason that word seems to have a



1 lot of hair on it, I'm not sure why. But to say it
2 another way, yeah, I mean, there's -- if the telecom
3 commercial business is not recovering its costs, then
4 there's only one other source and it's the electric
5 ratepayers.

6 Q. (By Mr. Jurca) Okay. Now, when you first
7 arrived at Tacoma Power, it was organized into five
8 business units; namely, Generation, Power Management,
9 Transmission and Distribution, Click! and Energy
10 Services?

11 A. Yes, that's right.

12 Q. We can look at documents if you need to, but
13 do you recall that in 2010, that organization was
14 changed to the effect that Tacoma Power became
15 organized into seven business units and --

16 A. Boy, I don't know that I recall seven.

17 (Deposition Exhibit No. 54 was marked
18 for identification.)

19 Q. (By Mr. Jurca) That's the cover page and one
20 other page from the TPU Annual Report for 2009. I
21 only show that to you because in the first paragraph
22 there under Note 1 to the financial statements it says
23 that Tacoma Power is organized into five business
24 units.

25 A. Uh-huh.



1 and then suddenly in 2010 I see there's a separate
2 business unit formed referred to as Smart Grid.

3 So I'm just wondering, can you explain that
4 somehow?

5 MR. FILIPINI: Object to form.

6 MR. JURCA: It's a terrible question.

7 A. I think I can. Much of it precedes my time
8 at TPU. But I think in the late 90s, as Click! was
9 being formed and deployed, there was a function inside
10 the Click! portion of the organization that had to do
11 with you could almost say an experimental form of
12 smart meters where the utility was actually developing
13 a meter technology internally and deploying it on a
14 prototype or trial basis, the so-called Gateway meters
15 that were ethernet-based communication protocol that
16 was hardwired to the Click! Network. That was
17 still -- those meters were still in operation and are
18 still in operation, although they're being phased out
19 as they fail.

20 Then it was much, much later, probably only
21 within the last three, four, five years that we formed
22 this new unit that's focused on Smart Grid and the
23 deployment of wireless technology.

24 Q. (By Mr. Jurca) Okay. So would it be fair to
25 say that as the system was originally contemplated,



1 the hardwire system, the HFC hardwire infrastructure
2 was thought to be useful both to support the electric
3 utility function as well as the smart meter function?

4 A. Yes.

5 Q. And then as the years rolled by, the
6 usefulness of that infrastructure for supporting smart
7 meter function diminished?

8 A. Yes. If you look at the electric utility
9 industry as a whole, in the late 90s, smart meter
10 technology was in its infancy. No one knew how it
11 would develop over time. But over time it's all
12 become wireless.

13 Q. Okay. Just to sort of complete our exercise
14 here in the business units, I've got the similar
15 excerpts for the subsequent years, but do you recall
16 that in 2014 -- I will represent to you that if we
17 looked at the TPU annual reports for 2011, 2012 and
18 2013, they would also say that Tacoma Power is
19 organized in those same seven business units.

20 But then the annual report for 2014 --

21 MR. JURCA: I'll ask that to be marked.

22 (Deposition Exhibit No. 56 was marked
23 for identification.)

24 Q. (By Mr. Jurca) The last line of that same
25 paragraph starting in this annual report, it says,



1 A. Yes.

2 Q. (By Mr. Jurca) On the second page of this
3 exhibit, I guess it's the third bullet point under the
4 heading of Lonergan, which I gather refers to
5 questions from Council Member Lonergan, the question
6 being, "What would the Power rates be if Power
7 customers didn't subsidize Click!?"

8 The answer there is "Power rates would be
9 lower by two to three percent if the subsidy were to
10 be removed."

11 Do you recall seeing that answer or that
12 response to that question previously?

13 MR. FILIPINI: Object to form.

14 A. I do.

15 Q. (By Mr. Jurca) In the context of this
16 question, when it says power rates would be lower by
17 two to three percent if the subsidy were to be
18 removed, just so it's clear, since Click! is organized
19 as a part of Tacoma Power, the reference to "power
20 rates" in that context means electric rates, is that
21 correct?

22 A. Yes.

23 Q. Would you turn to Exhibit 44. It might be
24 in this book.

25 A. Yes.



1 Q. You're familiar with something called the
2 Sage report?

3 A. I am.

4 Q. Tell us, what was the Sage report?

5 A. Yes. There's a provision in the Tacoma City
6 Charter that requires a management audit of the TPU
7 organization every ten years by an independent
8 management audit firm. So we did that in 2014.

9 Q. Okay.

10 A. Hired Sage to do it.

11 Q. I believe that Exhibit 44 has been
12 previously identified as the portion of that report
13 dealing with Click!.

14 A. Uh-huh.

15 Q. So I'd like to draw your attention to a
16 couple of the statements in this report. On the
17 second page of the exhibit under the heading "Click!
18 Strategic Plan," the last item in that list says, "As
19 a result of the industry changes and the competitive
20 disadvantages, Power has been subsidizing Click! and
21 the subsidies will likely grow over time."

22 First of all, did you agree with that
23 conclusion of Sage?

24 MR. FILIPINI: Object to form.

25 A. Yes, generally.



1 Q. (By Mr. Jurca) Again in the context of that
2 statement, do you understand "Power" to be referring
3 to the electric utility part of Tacoma Power --

4 MR. FILIPINI: Object to form.

5 Q. (By Mr. Jurca) -- as distinguished from the
6 Click! commercial telecommunications part?

7 A. Yes.

8 Q. If you turn to the page, it has Bates number
9 9100, second to the last page of the exhibit, under
10 paragraph eight, it's entitled, "As a result of the
11 industry changes and the competitive disadvantages,
12 Power has been subsidizing Click! and the subsidies
13 will likely grow over time."

14 Would you take a moment and just review that
15 language under that number eight.

16 A. Okay.

17 Q. Do you agree with the conclusions that are
18 set forth there?

19 MR. FILIPINI: Object to form.

20 A. I do.

21 Q. (By Mr. Jurca) On the next page under
22 "Recommendation," it says, "1. Sell, lease or close
23 Click! as soon as reasonably possible and within one
24 year at the latest."

25 Then under that heading, the paragraph



1 begins with the sentence, "The Power subsidy to Click!
2 is unfair to the Power ratepayers and should not
3 continue." Then it goes on to describe some
4 alternatives for ways to go forward.

5 Did you agree with that recommendation?

6 MR. FILIPINI: Object to form.

7 A. Generally, yes.

8 Q. (By Mr. Jurca) Okay. Just so that the
9 record is clear, can you describe what parts did you
10 agree with and what parts did you disagree with? When
11 you say you generally agree with it, can you explain
12 that at all?

13 MR. FILIPINI: Same objection.

14 A. Maybe if I provided a little context.

15 Q. (By Mr. Jurca) Sure.

16 A. Keep in mind this was 2014 and we had a
17 separate analysis of Click!'s business situation and a
18 separate set of consultants engaged helping us with
19 Click! at that time.

20 Q. Was that CCG you're referring to?

21 A. Yes.

22 Q. Okay.

23 A. So that work was going on and had been going
24 on for two or three years.

25 This was a broad management survey of a



1 whole utility. This consultant -- and so it was not
2 the role of this consultant to take a deep dive into
3 Click!. But they insisted in order to do a holistic
4 report management analysis, they at least had to take
5 a cursory look at it. So that's the context for this
6 report.

7 Q. Okay.

8 A. Did I agree that, you know, it has to be
9 sold within one year or that selling it was the only
10 alternative, I probably didn't agree with that.

11 Q. Okay.

12 A. I did agree that there was a financial and
13 potentially a legal problem here, that something
14 needed to be done about it, yes.

15 Q. Okay. Did you agree that the Power subsidy
16 to Click! was unfair to Power ratepayers?

17 MR. FILIPINI: Object to form.

18 A. I do.

19 Q. (By Mr. Jurca) Would you turn to Exhibit 21.
20 I don't know if it's in that book or this one.

21 A. I think I have to go back to the other book.

22 Q. Do you recognize that as a copy of a slide
23 presentation that was made at that March 31 joint
24 Council and Public Utility Board study session?

25 A. Well, we went through a number of versions



1 equipment and --

2 A. Additional investment in the network, yes.

3 Q. Would you turn to Exhibit 20, please.

4 Is that a copy of a memorandum dated May 6,
5 2015 from you addressed to the Mayor and City Council
6 members with copies going to the Public Utility Board
7 and to the City Manager?

8 A. Yes, it is.

9 Q. In this memorandum I gather you are
10 providing responses to some questions asked by
11 council members at that March 31, 2015 joint study
12 session?

13 A. Yes.

14 Q. At some point in time did you make a
15 recommendation to the Public Utility Board to the
16 effect that at least certain assets of the Click!
17 Network should be leased to Wave?

18 Can you explain what you were recommending
19 and why?

20 MR. FILIPINI: Object to form.

21 A. Yes.

22 Q. (By Mr. Jurca) Let's break that question in
23 two parts.

24 Can you explain what you were recommending?

25 A. Again, I think some context would be



1 and position ourselves to be able to deliver gigabit
2 service.

3 Q. In order to more effectively compete with
4 the other businesses in that area?

5 A. Yes, right.

6 Q. Were you of the view that it was not in the
7 interest of Tacoma Power electric ratepayers to
8 proceed with the All-In approach?

9 A. Yes.

10 Q. Would you look at Exhibit 6A.

11 A. Okay.

12 Q. Are there some colored pages? Are they all
13 black and white?

14 A. I think these are black and white.

15 Q. Do you recognize that exhibit as a slide
16 presentation dated May 20, 2015?

17 If you do, my question is; to whom was it
18 presented, if you know?

19 A. I do recognize it as you described it.
20 Again, we went through a number of versions of these
21 presentations. I think this presentation was probably
22 to the City Council, but it might have been to the
23 Council and the Board both.

24 Q. Okay. Would you turn to slide 47. My copy
25 of it is -- I don't know why mine is in color and



1 yours isn't, but it should look like that. If the
2 Bates numbers are easier, it's Bates 8799.

3 A. Okay.

4 Q. Okay. I don't know if you recall this chart
5 well enough to be able to tell me, but the chart is
6 entitled "Click! Revenues & Expenses, 94/6 Cost
7 Allocation," and it includes sort of bar graphs for
8 the years 2013, 2014, 2015 and 2016. And the bottom
9 line, which in my copy is in red, that indicates loss
10 figures or negative numbers for those years 2013, 14,
11 15 and 16.

12 The figure for the year 2014 shown on that
13 line is somewhere between five and \$10 million, it
14 looks like around six or seven, negative six or
15 \$7 million.

16 My question is; are you able to tell me, is
17 the information being shown on this graph for that
18 year, is it your understanding that that shows what
19 the loss would be for Click! if that 94/6 allocation
20 had been used for the year 2014?

21 MR. FILIPINI: Object to form.

22 A. I don't know that for certain.

23 Q. (By Mr. Jurca) Okay. Changing subjects a
24 little bit, would you look at Exhibit 7.

25 A. Okay.



1 Q. Do you recognize that as a copy of a
2 memorandum dated July 16, 2015 from the City Attorney
3 and Chief Deputy City Attorney to the Mayor and
4 City Council members and the Public Utility Board with
5 a cc going to you as indicated on the bottom of the
6 last page?

7 A. I do.

8 Q. I assume you're not a lawyer yourself?

9 A. I'm not.

10 Q. But I take it you did review this memorandum
11 when you received it?

12 A. I did.

13 Q. When you reviewed it, did you understand it
14 to mean that having the electric ratepayers subsidize
15 the commercial telecommunications function of Click!
16 was unlawful?

17 MR. FILIPINI: Object to form and to the
18 extent it calls for a legal conclusion.

19 A. I certainly read it to mean that there was
20 some legal risk.

21 Q. (By Mr. Jurca) Did you have any discussion,
22 separate from just reading the memo, did you have any
23 actual discussion with Bill Fosbre about this memo?

24 MR. FILIPINI: I'll object, it's more in the
25 contents of the discussion.



1 financial entity from the rest of the power utility
2 and then it would issue bonds on its own credit, which
3 of course is a nonstarter because it has negative net
4 income.

5 Q. Okay. On page 23, there's a slide at the
6 top of that page saying "Summary," and the last bullet
7 point on that slide says "Lease is still the best
8 financial option." That apparently was the conclusion
9 of the consultant, CCG Consulting.

10 And as of this time frame, I guess
11 September 2015, did you agree with that conclusion?

12 MR. FILIPINI: Object to form.

13 A. We did, yes.

14 Q. (By Mr. Jurca) When you said "we," I take it
15 you meant not only yourself personally, but the senior
16 staff of Tacoma Power?

17 A. Yes. I think that's important. I mean, I
18 wasn't doing this in isolation. None of us were. The
19 whole senior executive team who was working on this
20 was of a similar view.

21 (Deposition Exhibit No. 57 was marked
22 for identification.)

23 Q. (By Mr. Jurca) Is Exhibit 57 a copy of an
24 email dated December 14, 2015 from you to Bryan Flint
25 on the subject of ISP Internet service provider



1 and cumulatively a negative \$75 million through year
2 nine.

3 Do you recall seeing figures of that general
4 magnitude?

5 MR. FILIPINI: Object to form.

6 A. Yes.

7 Q. (By Mr. Jurca) What did you understand those
8 figures to represent?

9 A. Those were our projections of the cash flows
10 that will result under an All-In business scenario for
11 Click!. The negative cash flows that are in this
12 table are pretty consistent with the magnitude of what
13 all of our analyses were showing.

14 Q. What's your understanding of the present
15 status of the All-In plan?

16 A. I think it's just being -- it was suspended,
17 the planning was suspended and the implementation of
18 the plan was suspended.

19 Q. Was the reason for that, as you understand
20 it, because of the lawsuit that brings us here today?

21 A. Yes.

22 Q. Were it not for the lawsuit, you believe
23 that the All-In plan would have gone forward?

24 MR. FILIPINI: Object to form.

25 A. I don't really know. This whole process has



1 utility services (for example, transmission,
2 distribution, portfolio power supply), including rates
3 and prices, will be designed to," and then there are
4 four items listed. And the third item says, "Minimize
5 cross-subsidies between services or between classes of
6 customers except where specifically authorized."

7 Is that just sort of a --

8 MR. JURCA: I'll withdraw that question.

9 Q. (By Mr. Jurca) Let me direct your attention
10 to Section C, "Policies Applicable to Non-Traditional
11 Energy-Related Services." That section says,
12 "Non-traditional services must," and then there are
13 items listed. The first one is "Return positive net
14 benefits to Tacoma Power's traditional retail electric
15 customers."

16 And at least in recent years and currently,
17 Click! telecommunication services do not return
18 positive net benefits to Tacoma Power's traditional
19 retail electric customers, do they?

20 MR. FILIPINI: Object to form.

21 A. That's correct.

22 MR. JURCA: Mr. Gaines, I thank you for
23 showing up here today and answering my questions. I
24 really appreciate your time.

25 That concludes my questions.



EXHIBIT 26
Gyaltsen

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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
TENZIN GYALTSEN

10:03 a.m.
September 27, 2017
1001 Fourth Avenue, Suite 4200
Seattle, Washington



REPORTED BY: Mindi L. Pettit, RPR, CCR #2519



1 Seattle, Washington; September 27, 2017
2 10:03 a.m.
3 --oOo--
4 TENZIN GYALTSEN,
5 sworn as a witness by the Certified Court Reporter,
6 testified as follows:
7 EXAMINATION
8 BY MR. JURCA:
9 Q. Would you state and spell your name, please.
10 A. My name is Tenzin Gyaltzen. It's spelled
11 T-e-n-z-i-n. My last name is spelled Gyaltzen,
12 G-y-a-l-t-s-e-n.
13 Q. And what is your present residence address?
14 A. My present residence address is 3633 Market
15 Place West, No. 507, University Place, Washington --
16 98366? 98466.
17 Q. Okay. And I take it, you are presently
18 employed. And who is your employer?
19 A. I'm employed, and I'm employed with the City
20 of Tacoma.
21 Q. And what's your job title there?
22 A. My job title is Click Network general manager.
23 Q. Okay. Would you briefly describe your
24 educational background.
25 A. Sure. My undergrad is in accounting. It's a



1 bachelor's of science degree from Metropolitan State
2 College of Denver. And I have an MBA from the
3 University of Colorado Denver.

4 Q. And when did you get your MBA?

5 A. MBA was -- 2003?

6 Q. Was that right after getting your
7 undergraduate degree, or did you do something between?

8 A. It was -- my undergrad was '97, I believe.

9 Q. Okay. Well, let me jump to -- would you
10 briefly describe your employment background.

11 A. Sure. I've been employed both in the private
12 sector and in the public sector. Been in the industry
13 for about 20 years -- the cable television industry.

14 Q. A little -- with a little more specificity.
15 Let's say, starting from the time you got your
16 undergraduate degree --

17 A. Sure.

18 Q. -- who did you work for, during what periods,
19 doing what?

20 A. Sure, sure. So let's see. Going back --
21 prior to getting my undergrad degree, I was already
22 working for a casino -- a casino operation in Denver,
23 Colorado area. I worked as a staff accountant and
24 worked my way up to be a assistant controller for the
25 casino. This is in the 1990 time frame -- 1990 -- '90



1 time frame. And then -- then I went to work for Fanch
2 Communications. It was a telecommunications company in
3 Denver, Colorado.

4 Q. What was the first name?

5 A. Fanch, F-a-n-c-h.

6 Q. Thank you.

7 A. Fanch Communications. It was a company that
8 managed a lot of independent cable companies, cable
9 operations for a variety of different owners. And they
10 had a -- a business on the side that did network
11 integration that did a lot of work for cities and
12 counties, handling all of their telephone circuits --
13 managing telephone traffic, telephone circuits, and
14 integrating new networks. So it was called network
15 solutions -- network solutions -- Network Systems
16 Solutions, Inc. And it was a subsidiary of Fanch. So
17 I started working there.

18 And I came in as a staff accountant there as
19 well, and then I worked my way up to becoming a manager
20 of accounting at the company. And Fanch was a small
21 cable operator back then. Had about a hundred some
22 thousand customers. And then they partnered with a
23 company, Time Warner Cable and then ended up becoming
24 quite large. They ended up with about 750,000 cable
25 customers. This was in the late '90s -- '99 time



1 frame -- '98, '99 time frame.

2 Q. This was still in the Denver area?

3 A. Still in Denver area working for Fanch. So,
4 at that point in time, Fanch created a variety of
5 different divisions to kind of manage all the
6 customers. So I became part of the -- I was brought in
7 from the NSSI division into the Fanch
8 telecommunications operations part of it. And there I
9 came into the industry as a business manager. So
10 basically I was helping all the financial aspect of
11 managing a variety of different systems within the
12 national division of the company.

13 And so I did that for about two years or so,
14 and I got promoted to being -- now instead of working
15 on the financial side, working more on the operations
16 side and became a director of operations and overseeing
17 three or four different states -- operations for three
18 or four different states.

19 And this was late '90s when Charter
20 Communications, owned by Paul Allen, was kind of
21 growing in size. And so they went from being a --
22 Charter went up from being a million customer
23 subscriber company to almost 6 million subscriber
24 company over a couple -- two-year time frame. So, at
25 that point, ended up acquiring a lot of these small



1 systems. So Fanch was one of the companies that they
2 acquired.

3 So, when they acquired Fanch, I got hired on
4 with the division in Denver that was Rocky Mountain
5 group that was running all the disparate systems that
6 Charter ended up owning from Fanch and a variety of
7 other small other acquisitions. So I was brought on to
8 that group, again, as a -- a group director of
9 operations reporting to a VP.

10 And so we started from scratch and cobbling
11 all these systems together and kind of managing from
12 that point on. So we ended up with about 200-some
13 thousand cable customers spread over 13, 14 different
14 states, a number of -- numerous head ends -- that kind
15 of stuff -- so kind of managing, bringing that
16 together.

17 Q. What is a head end?

18 A. Head end is a -- is a -- a -- sort of the
19 brain of a cable television operation where all the
20 signal down -- down link and retransmission of signals
21 that cable television programming is conducted in the
22 head end.

23 Q. Okay.

24 A. Yeah. So that's like our main video
25 transmission and processing center, so to speak.



1 Q. Okay.

2 A. So we had several hundreds of those that we
3 managed in that scenario. So I did that for a couple
4 of years with Charter. Charter, again, growing in size
5 had a lot of these regional operations to kind of
6 manage that -- that growth.

7 And then Charter obviously is a publicly
8 traded company, so with pressures of having to grow
9 customers -- that type of thing -- again, at some point
10 in time, started to kind of shrink the operations and
11 kind of remove all the -- become more -- more
12 centralized versus decentralized.

13 Q. Okay.

14 A. Consolidating some of the operations. So, at
15 that point in time, they moved the -- they collapsed a
16 bunch of the regional offices. They created more group
17 offices into regional offices, and so they collapsed
18 the Denver operations and wanted people to move to St.
19 Louis or -- I was offered go to St. Louis or Texas.
20 And at that point in time, I was doing my MBA program.
21 I didn't want to leave.

22 Q. Um-hum.

23 A. And so I took severance and kind of went back
24 to finishing my MBA program.

25 Q. Okay.



1 A. And then after I finished my MBA program, I
2 was looking for something else to do. At that point in
3 time, I came across this job through one of the trade
4 publications that the City of San Bruno in
5 California -- San Bruno, California, was looking for a
6 cable television director -- somebody to come and
7 manage the cable television operations. So applied for
8 the job, ended up getting the job. This was in 2004
9 time frame. And so went to work for City of San Bruno.
10 Spent eight years there -- almost eight years there.

11 Q. And the City of San Bruno -- they operated the
12 cable system themselves?

13 A. Correct. It's a municipal cable operation
14 just like we have here in Tacoma.

15 Q. Okay.

16 A. And it was a small operation with just a
17 simple cable television operation, provided very basic
18 Internet services -- that type of thing -- and had no
19 debt. And operating at least at -- you know, just
20 barely covering the costs -- that type of thing. And
21 so, when I came on board, I was basically -- the
22 director there had just retired after working there for
23 33 years. So I was brought in to kind of continue the
24 operations.

25 So my role included operating the San Bruno



1 municipal cable TV, the City's IT department, and also
2 the City also had a local channel for broadcasting
3 local city council meetings -- that type of thing.

4 Q. Yeah.

5 A. So managing all those three aspects of the
6 City.

7 Q. Okay.

8 A. So I served on the city manager's team as the
9 director and did that part of it. So my job was to
10 take this -- over the eight years that I was there, I
11 took this company from being a small cable operator
12 being actually more of a telecommunications company.

13 So we kind of basically doubled the -- the
14 revenues we produced, doubled the -- the -- the return
15 on investment the City was enjoying from running the
16 cable operation -- that type of thing. And then took
17 the company into a variety of different areas,
18 essentially providing cable television services,
19 high-speed Internet services, commercial broadband
20 services, telephone services -- all that kind of stuff.
21 So basically transformed the business for the City.

22 Q. Okay.

23 A. So this is 2011 time frame, October time
24 frame. And so, at that point in time, I had done a lot
25 of things and, you know, did as much as I could with



1 the City of San Bruno's operations, and I was looking
2 for something else to do. And I happened to come
3 across the job posting for the City of Tacoma.

4 Apparently the GM here had -- had left. And
5 so they were looking for a replacement. And applied
6 for the job and thought this is a better opportunity,
7 larger system. You know, they were in the process of
8 going retail -- providing retail cable television
9 services. That's something that was exciting to me. I
10 wanted to go work for a larger company, maybe transform
11 this company as well. And so that sort of was
12 attractive.

13 And that's how I -- I left a pretty good job
14 in San Bruno to kind of try to hopefully get a chance
15 to kind of build this system up as well. That's how I
16 ended up in Tacoma in 2011 time frame.

17 Q. All right. Thank you. And do you remember
18 more precisely what month in 2011 you started?

19 A. It was October.

20 Q. Okay.

21 A. October 2011. So yeah.

22 Q. And who was your predecessor as the manager of
23 Click?

24 A. Cindy Wikstrom, I believe was the predecessor,
25 yeah.



1 Q. Okay. And when you started in October of '11,
2 to whom did you report?

3 A. Yeah, I reported to Ted Coates.

4 Q. Okay. And his position at that time was?

5 A. Power superintendent.

6 Q. Okay. All right. And you've held that job
7 title, that job position with Click up to the present
8 day?

9 A. Correct.

10 Q. Okay. And at some point, the person to whom
11 you reported changed from being Ted Coates to someone
12 else?

13 A. Yes.

14 Q. And when was that?

15 A. This was Chris Robinson. And it took place,
16 I'd say, at least two years ago. I would say it's been
17 two years.

18 Q. Okay. Approximately --

19 A. Approximately two years, yeah. Yeah.

20 Q. Okay. All right. Now, you understand that
21 you've been designated by the City of Tacoma to testify
22 on its behalf at this deposition on certain topics that
23 were described in a document, Exhibit 1, which --

24 A. Here.

25 Q. Yeah, you can turn to Exhibit 1 there. Do you



1 Q. Okay. And has that continued up to the
2 present time?

3 A. Yes.

4 Q. Okay.

5 A. Yes.

6 Q. Now, when Click has financial losses,
7 someone -- there has to be some source of revenue to
8 cover those losses, right? And that source is the --
9 is it true that the source used to cover Click's
10 financial losses is the revenue of the power
11 function -- the electricity function?

12 A. Right.

13 MR. FILIPINI: Object to form.

14 But go ahead.

15 A. So basically when we put our budgets
16 together -- our budgets together, our -- our intent is
17 to kind of create a balanced budget. That's our goal.
18 We want to make sure the revenues cover expenditures.

19 And unlike the power enterprise, where you
20 have -- you provide power services and you --
21 essentially a monopoly on the market -- you set the
22 pricing, and everybody sort of pays that, and you have
23 a cost of service model, but in our case, we not only
24 have an obligation to cover our cost, but we also have
25 an obligation to kind of balance that with the market



1 because you just can't --

2 Q. (By Mr. Jurca) Because you've got
3 competitors?

4 A. Competitors. You just can't do that. So we
5 try to balance that. To the extent that we can balance
6 it, we produce a budget that reflects that between
7 market and recovering costs. And that's what my job
8 is, to kind of put together a budget that reflects
9 that.

10 And then as we are a section of Tacoma Power,
11 those budgets get rolled up within the entire Tacoma
12 Power's budget, and ultimately those -- at the end of
13 the day, my view is that the power's budget overall is
14 a balanced budget, so all costs are covered within that
15 entire --

16 Q. I understand. Thank you.

17 A. Okay.

18 Q. All right. As I say, I want to march through
19 a lot of these exhibits just to get them identified.

20 A. Sure. Yeah.

21 Q. Excuse me just a moment. I seem to have some
22 things out of order here. This will be the next
23 exhibit.

24 (Deposition Exhibit 9 was marked for
25 identification.)



1 A. I do not.

2 Q. Okay.

3 A. It's been a long time.

4 Q. Are you -- are you familiar with whatever --
5 whatever the issue was -- the question that was being
6 raised about pole attachment, whether pole attachment
7 costs were capitalized? Can you elaborate on what that
8 issue was?

9 MR. FILIPINI: Object to the form.

10 Go ahead.

11 A. I do not recall --

12 Q. (By Mr. Jurca) Okay.

13 A. -- what the pole attachment issue was at all.
14 I have no idea what that --

15 Q. Fair enough. Okay. Okay.

16 (Deposition Exhibit 10 was marked for
17 identification.)

18 (Discussion off the record.)

19 MR. JURCA: 10?

20 THE REPORTER: Yup.

21 Q. (By Mr. Jurca) Are you able to tell us what
22 Exhibit 10 is? It's some sort of a report. It's
23 entitled "Click Asset and Expense Allocations." It
24 appears to be dated March 18, 2013. It's labeled as a
25 draft, but aside -- I don't see a real indication about



1 who authored it or to whom it was presented. Does
2 this -- are you familiar with this?

3 A. Yes, I am.

4 Q. Who prepared this and what for?

5 A. This report is prepared by rates planning and
6 analysis section of the Tacoma -- Tacoma Power.

7 Q. Okay.

8 A. Finance.

9 Q. Now, is -- is that a section of Tacoma Power,
10 or is it a section of the City's finance department?

11 A. Section of Tacoma Power.

12 Q. Okay.

13 A. Yeah.

14 Q. Is that sometimes known -- or referred to by
15 the acronym RPA?

16 A. RPA, that's correct.

17 Q. Okay. And to -- do you know for whom it was
18 prepared or --

19 A. This is being prepared generally from a Tacoma
20 Power perspective to understand how costs that are
21 related to telecommunications are being -- need to be
22 allocated based on how they utilize the assets and the
23 human resources that -- that the -- under the
24 telecommunications operation, how should those costs be
25 allocated between the two different functions, so to



1 beyond that, yeah.

2 Q. Okay. Do you have -- can you tell us whether
3 it is probable or not that this document was presented
4 in some way to members of the utility board?

5 MR. FILIPINI: Object to form.

6 A. I do not recall.

7 Q. (By Mr. Jurca) Okay.

8 A. I do not recall, yeah.

9 Q. Okay.

10 (Deposition Exhibit 13 was marked for
11 identification.)

12 Q. (By Mr. Jurca) You now have before you what's
13 been marked as Exhibit 13. I will tell you that is a
14 compilation of a lot of different pieces -- excerpts
15 from a lot of different documents. So I'd like to kind
16 of just go through it with you. The first couple of
17 pages are labeled Click Network commercial operations,
18 operational summary, January 31, 2014.

19 A. Um-hum.

20 Q. Is this a document that you received and
21 reviewed on a regular monthly basis -- this kind of
22 document?

23 A. Sure, yeah.

24 Q. Okay. And if you look through the rest of the
25 document, the next two pages are the operational



1 summary for the period ending February 28?

2 A. Um-hum.

3 Q. And then for most of the months, when we could
4 find them, we included the cover sheet.

5 A. Sure.

6 Q. And then there were a couple of months -- I'd
7 like to point those out -- that seemed to be missing --
8 or at least we couldn't find them.

9 A. Okay.

10 Q. So I think the months of 2014 are all
11 reflected there. And then we couldn't find the monthly
12 reports for January and February of 2015. You would --
13 I gather you would assume that they exist somewhere --

14 A. Yes. Yeah.

15 Q. Okay. So we just haven't put our fingers on
16 them yet. Okay. So let's see, March, April, May,
17 June, July, August, September, October, November -- so
18 2015 is -- all the months are there except for those
19 first two, and then in 2016, we have January, February,
20 March, April, May, June, July, August, September,
21 October, November, December. Okay. And I gather there
22 would be similar monthly reports for 2017 up -- at
23 least to date?

24 A. Yes.

25 Q. Okay. And did these kinds of reports come out



1 soon after the month end?

2 A. Not necessarily.

3 Q. Okay.

4 A. Yeah.

5 Q. Can you tell me like, you know, within a week,
6 two weeks, three weeks, or --

7 A. Within a month or two.

8 Q. Okay.

9 A. Yeah.

10 Q. Okay. So let's see, it's now -- I guess
11 today's date is September 27?

12 A. Yup.

13 Q. So the August 2017 monthly report probably
14 would be out -- do you happen to know whether it is
15 out?

16 A. I'm not -- I haven't -- I haven't seen it yet.

17 Q. Okay. But the July report probably would be
18 out?

19 A. Yes.

20 Q. Okay. And the -- the format -- as far as I
21 can tell, the format for these monthly reports seems to
22 have been pretty consistent during this period of 2014
23 through '16, and I gather it still is consistent?

24 A. Consistent, yeah.

25 Q. Okay. Let's take a look then at the first one



1 carrying that amount forward if it's already been
2 accounted for over several prior -- prior years.

3 Q. Okay. All right. Thank you.

4 (Deposition Exhibit 16 was marked for
5 identification.)

6 THE WITNESS: Thank you.

7 Q. (By Mr. Jurca) Exhibit 16 is a two-page
8 document that's labeled inquiries from March 31 joint
9 council, slash, PUB study session. I assume "PUB"
10 stands for public utilities board.

11 A. That's correct.

12 Q. Do you recognize this document, or do you
13 recognize the -- the questions expressed in this
14 document?

15 A. I do.

16 Q. Can you tell us what this document is.

17 A. This is a document that responds to questions
18 that were brought up -- that were raised by board
19 members -- councilmembers -- actually mostly
20 councilmembers at this joint study session.

21 Q. And --

22 A. It's a written --

23 Q. -- I couldn't tell for sure which year that
24 was referring to. Do you know what -- what year?
25 2015?



1 A. I think it's 2015.

2 Q. Okay. And this document has, you know,
3 questions -- for example, the first question, "How much
4 outstanding debt remains on Click bonds? How much" --
5 "How much do are we paying toward Click debt now?"

6 A. Um-hum.

7 Q. And then there's a response to that question.
8 Do you recall who provided this response?

9 A. I think this is the response that I had
10 drafted.

11 Q. Okay.

12 A. Actually this . . . No, actually this came
13 from a combination of myself and potentially RPA.

14 Q. Okay.

15 A. RPA.

16 Q. Okay. But you had input --

17 A. Looking at -- yeah. Yeah. It was my job to
18 put together -- bring all the responses together.

19 Q. Okay. Again, the handwriting that's over on
20 the right-hand side, about midway on the -- down the
21 page?

22 A. Looks like Chris's -- Chris's handwriting to
23 me.

24 Q. Okay. I gather that Ibsen was a
25 councilmember. How about -- on the next page, there is



1 a reference to Lonergan. Was Lonergan also a
2 councilmember?

3 A. He's also a councilmember, yes.

4 Q. Are they both currently on the council, do you
5 know?

6 A. I believe so, yes.

7 Q. Okay. Let me sort of step away from the
8 document and ask a -- sort of a general background
9 question. At some point, somebody made a proposal
10 about entering into some sort of an arrangement with
11 Wave --

12 A. Um-hum.

13 Q. -- as a way of addressing some of the
14 financial problems that people -- that some people
15 thought were associated with Click?

16 MR. FILIPINI: Object to form.

17 Go ahead.

18 Q. (By Mr. Jurca) Is that a fair -- do -- at
19 some point somebody made some proposal about Wave. Can
20 you tell us what that proposal was and how it came
21 about as you understood it.

22 MR. FILIPINI: Object to form.

23 A. The proposal to lease the network to Wave
24 officially was made on March 31st at a joint study
25 council, board -- board, city council study session



1 letter?

2 MR. FILIPINI: Object to form.

3 Q. (By Mr. Jurca) Do you recall whether --

4 A. I don't -- yeah.

5 Q. -- Mr. Robinson asked you how you felt?

6 A. Well, it sounds like he -- I got this note --

7 there's a note with his questions on it. So I don't

8 know whether -- I don't recall the exact --

9 Q. Okay.

10 A. -- incidence, yeah.

11 Q. Understood. That's why I ask.

12 A. Yeah.

13 Q. Okay.

14 (Deposition Exhibit 20 was marked for
15 identification.)

16 THE WITNESS: Thanks.

17 Q. (By Mr. Jurca) Exhibit 20 appears to be a

18 copy of a memorandum dated May 6, 2015, from Bill

19 Gaines addressed to mayor and city councilmembers

20 regarding council inquiries from the March 31, 2015

21 joint study session. Do you recall seeing this

22 document before?

23 A. Yes.

24 Q. This document appears to describe some

25 questions that were asked at the joint study session



1 and appears to give some responses to those questions.

2 Did you provide input into at least some of the
3 responses set forth in this document?

4 A. I did.

5 Q. Can you tell us, you know -- let's go through
6 the questions and tell us which ones you provided input
7 for.

8 A. Do you want to go one by one?

9 Q. Sure.

10 A. The first question under Mayor Strickland.

11 Q. Okay.

12 A. The second question. Probably the third and
13 the fourth question as well. I think under Mayor
14 Strickland, I probably answered all those questions.

15 Q. Okay. All right. How about Councilmember
16 Woodards?

17 A. Both the questions.

18 Q. And why was -- what was Plan B, as referred to
19 in the second bullet point?

20 A. So Plan B is when we were -- when we were
21 provide -- when we were provided direction to go pursue
22 working with the ISPs to generate Internet customers,
23 that was referred to as Plan B.

24 Q. Okay. So was there a Plan A?

25 A. The initial proposal that -- that staff had



1 not generate free cash flows. It's never going to pay
2 off the debt -- pay -- so the debt associated with
3 telecommunications network is never going to be paid
4 off as a result of owning and operating Click . . .
5 Probably true. I mean, yeah.

6 Q. Yeah.

7 A. Yeah.

8 Q. Okay. How about for the second bullet point?
9 The question being, did you agree with that response?

10 A. Click is part of Tacoma Power.

11 Q. Um-hum.

12 A. And that's how we view it. It's a section of
13 Tacoma Power. A lot of the assets associated with
14 Click were paid for by Tacoma Power. So, if there is
15 any lease income that's generated, should go back. So,
16 yeah, I would agree with that.

17 Q. Rather than, for example, to the general fund?

18 A. General fund, correct.

19 Q. Yeah. Okay.

20 A. The third one would have to come from RPA.
21 The fourth one would be myself. The fifth one would be
22 my -- me as well. The sixth one, regarding the rates
23 now and in the future would be RPA or somebody else.

24 Q. Did you understand that response to be saying
25 that under the lease scenario, the likely impact on



1 electricity rates would be a -- a reduction of 2 to 3
2 percent?

3 A. Yes.

4 Q. Okay. All right. We're now ready for the
5 responses to Councilmember Thoms. I'm not sure if we
6 have Slide 26 in front of us or not here in one of
7 these other exhibits. If the reference is to
8 Exhibit 17, unfortunately we have the odd-numbered
9 pages.

10 A. Odd numbers.

11 Q. So we don't have seem to have that Slide 26 at
12 this time.

13 A. The answer would have been provided by me,
14 yeah, I would imagine, yeah.

15 Q. Okay.

16 A. The rest of the questions would have been
17 provided by me on page 6.

18 Q. Okay.

19 A. And the two questions on top as well.

20 Q. Okay.

21 A. Councilmember Mello. I think Question No. 1
22 would have had input from RPA. The second and the
23 third questions would have been --

24 Q. Anyone else besides RPA or pretty much was
25 that in RPA's bailiwick?



1 those loses are captured within that whole section.
2 But not really about the lawfulness of -- whether it's
3 lawful or not, yeah. Does that make sense?

4 Q. (By Mr. Jurca) Okay. I guess it does, yeah.
5 I just want to make sure that I understand correctly
6 that it is your testimony that excluding communications
7 with counsel for the City, you don't recall ever having
8 any discussion with anybody about whether it was lawful
9 for the electric function to subsidize the
10 commercial -- the telecommunications commercial
11 function. Is -- is that correct?

12 MR. FILIPINI: Object to form.

13 A. I would agree, yeah.

14 Q. (By Mr. Jurca) Okay. All right. We're
15 getting close to the end of the pile of documents.

16 (Deposition Exhibit 28 was marked for
17 identification.)

18 Q. (By Mr. Jurca) Okay. Exhibit 28 appears to
19 be a copy of some -- again, some sort of PowerPoint
20 slide presentation entitled "Options for Click
21 Network." It says, "Presented to the City Council and
22 Public Utility Board, September 1, 2015." And this
23 copy has some handwriting on it. My first question
24 is -- I guess I'll ask, do you recognize the
25 handwriting?



1 A. I do not.

2 Q. Okay. And then the next question is, do you
3 recognize the slide presentation?

4 A. I do, yes.

5 Q. And was this another presentation to one of
6 those joint study sessions of the city council and the
7 utility board?

8 A. Yes, that's correct.

9 Q. Okay. And were you present?

10 A. Yes, I was.

11 Q. Did you participate in making this
12 presentation?

13 A. No, I did not.

14 Q. Okay. And, again, are there particular
15 portions of this slide presentation that you helped to
16 prepare? And if so, could you point those out to us.

17 A. This is a presentation prepared by a
18 consultant, CCG, Doug Dawson, so . . .

19 Q. Okay. So do I take it from that, aside from
20 whatever information you might have provided to CCG in
21 prior discussions, you didn't particularly have a hand
22 in preparing this -- these slides?

23 A. That would be true.

24 Q. Okay. I think you said that would be --

25 THE REPORTER: True.



1 A. That would be true.

2 Q. (By Mr. Jurca) Okay. Thank you. And, again,
3 I -- do you recall -- I'm going to ask two different
4 questions. Do you recall expressing to anyone at any
5 time, other than counsel, any disagreement with the
6 accuracy of any of the information set forth in the
7 slide presentation?

8 MR. FILIPINI: Object to form.

9 A. No.

10 Q. (By Mr. Jurca) And now, the second question,
11 which is similar, but slightly different, do you recall
12 having any disagreement with any of that information?

13 MR. FILIPINI: Object to the form.

14 A. No.

15 Q. (By Mr. Jurca) Okay.

16 (Deposition Exhibit 29 was marked for
17 identification.)

18 MR. JURCA: 29?

19 THE REPORTER: Um-hum.

20 Q. (By Mr. Jurca) Again, I don't see your name
21 anywhere in Exhibit 29. But I'll ask, do you happen to
22 recognize this document? Have you seen it before?

23 A. I -- I probably have seen it, but --

24 Q. Do you -- do you recall the -- how it came to
25 your attention?



1 Q. And I guess it speaks for itself, but . . . I
2 don't have any further questions about it at this time.

3 (Deposition Exhibit 39 was marked for
4 identification.)

5 Q. (By Mr. Jurca) You now have before you what's
6 been marked as Exhibit 39. Is that a document you've
7 seen before?

8 A. Yes.

9 Q. What is it?

10 A. It's another report from our consultant, CCG,
11 Doug Dawson.

12 Q. And it's dated November 7, 2016, and you
13 understood it to be -- is -- my copy has the letters
14 D-A-T. I suspect that maybe that's supposed to say
15 draft, but I'm not sure. Is that -- do you -- do you
16 believe that this is a draft of the business plan
17 moving forward, dated November 7, 2016, and if so, was
18 there a final version?

19 A. I believe this is a draft, and I don't think
20 there was a final version.

21 Q. Okay. And what's your understanding -- I
22 mean, what is this? How -- is this -- what were the --
23 how did this come to your attention -- this document?

24 A. This, again, is a continuous engagement with
25 our consultant, Doug Dawson, receiving feedback from



1 the board and council to pursue an alternate plan that
2 led to the forming of the Click engagement committee in
3 early 2016 and the various meetings we had with the
4 engagement committee ultimately arriving at a -- an
5 outline for a business plan. And this document sort of
6 captures those elements in this report.

7 Q. Okay. Thank you.

8 (Deposition Exhibit 40 was marked for
9 identification.)

10 Q. (By Mr. Jurca) What is Exhibit 40?

11 A. It's an email.

12 Q. And it's an email to you from Travis Metcalfe,
13 dated January 4, 2017, correct?

14 A. Correct.

15 Q. And who is Travis Metcalfe?

16 A. Travis Metcalfe is a assistant power section
17 manager within the RPA section of power.

18 Q. Okay. I just wanted to ask you, the -- well,
19 first of all, if you look at the email that's sort of
20 in the middle of the first page that appears to be from
21 somebody named Trina Morris, dated January 3, 2017.
22 Her email says, "Here's the problem with this PDR."
23 Did you understand that acronym PDR to refer to a
24 public document request or something else? And you
25 notice that earlier, on subsequent pages, there --



1 question is coming back to me asking me what are my
2 thoughts, because it appears that they don't have any
3 documents related to debt service. And so the question
4 is should they be creating it. And so -- that's the
5 way I see it. So I don't fully recall --

6 Q. (By Mr. Jurca) That's really what I --

7 A. -- what -- what was happening --

8 Q. That's probably the answer to my question.

9 You don't really recall what they were asking for?

10 A. Yeah, I don't know. Yeah.

11 Q. Okay.

12 (Discussion off the record.)

13 (Deposition Exhibit 41 was marked for
14 identification.)

15 Q. (By Mr. Jurca) Okay. You now have before you
16 Exhibit 41. Is this a document -- well, it says it was
17 prepared by Tenzin -- was prepared by yourself, but do
18 you recall preparing this document on or about January
19 31, 2017?

20 A. Yes.

21 Q. And were you present at a meeting of the city
22 council where these questions were raised, or did you
23 subsequently learn somehow that the questions were
24 raised by a city councilperson and that you were going
25 to be asked to respond?



1 Q. Okay. Are you -- all right. That's fair
2 enough. Okay.

3 A. So what I would say, these are Question 8 and
4 9.

5 Q. Yeah.

6 A. There might be other aspects of this that --

7 Q. I understand. Yeah, and I -- I don't have
8 those, so I don't know what the other -- I don't know
9 whether there are Questions 1 through 7 or not. And I
10 don't know if those questions -- if there are such
11 questions, I don't know if they were raised by Mark
12 Bubenik or someone else. But I'll try to find out.

13 (Deposition Exhibit 43 was marked for
14 identification.)

15 Q. (By Mr. Jurca) All right. This is
16 Exhibit 43. Is Exhibit 43 something you've seen
17 before?

18 A. Yes.

19 Q. And it's entitled, "Click Network Business
20 Plan." Up at the top it says, "Revised 3-20-17," with
21 the initials TJG. I assume that's a reference to
22 yourself.

23 A. Yes.

24 Q. What is this document?

25 A. This is a draft of the -- the Click all-in



1 business plan, based on the final -- based on the
2 resolution adopted by the board.

3 Q. Okay. Is there a -- a -- a more final version
4 than this draft, or this as final as there is as of
5 now?

6 MR. FILIPINI: Object to the scope of
7 the question and form.

8 A. I do not recall. Yeah, there might be. I --
9 I don't recall.

10 Q. (By Mr. Jurca) Okay. All right. I think
11 I've now marked all the exhibits I wanted to get
12 through today, so thank you for your help on that. And
13 I think I just have a couple of more general questions.
14 In -- when we looked at those Click financial --
15 monthly financials -- we can pull them out if you need
16 to, but you probably have them in mind -- those monthly
17 financials showed losses, I believe, for each month --
18 or, you know, most months during the years 2014, '15,
19 and '16, correct?

20 MR. FILIPINI: Object to form.

21 A. If they -- to the extent that they do show,
22 yes. Yeah.

23 Q. (By Mr. Jurca) Okay. To the extent that the
24 Click -- what we've been referring to as the
25 telecommunication or the commercial function has had



1 MR. FILIPINI: Same objections.

2 Q. (By Mr. Jurca) And for the year 2017, as best
3 you can recall -- and I'm not asking you to remember
4 particular numbers, but as best you can recall, has the
5 Click telecommunication commercial function had losses
6 each month of 2017 thus far?

7 MR. FILIPINI: Same objections.

8 A. Year to date, we have a loss, yes.

9 Q. (By Mr. Jurca) Okay. All right. Now, does
10 the all-in business plan that's reflected in
11 Exhibit 43 -- does it call for a substantial investment
12 of further capital in developing further facilities for
13 providing retail Internet service to Click customers?

14 MR. FILIPINI: Object to form.

15 A. Yes, it does.

16 Q. (By Mr. Jurca) And it may be set forth -- I
17 don't have a good enough recall of the content of the
18 exhibit right now. Maybe you can tell us. If you can,
19 great. If not, we'll look at the exhibit later. But
20 can you quantify for us somehow what kind of capital
21 investment is projected under the all-in plan for the
22 next several years? And whatever -- whatever time
23 period allows you to respond to that question, if you
24 can, is the time period that I'll accept.

25 MR. FILIPINI: Object to form.



1 Q. (By Mr. Jurca) I don't know whether it's five
2 years, three years, seven years -- whatever you use.

3 MR. FILIPINI: Same objections.

4 A. So I could talk about the current biennium,
5 which is the 2017-2018 biennium --

6 Q. (By Mr. Jurca) Okay.

7 A. -- which is the first two years of the
8 ten-year projection.

9 Q. Okay.

10 A. In a lot of -- the majority of the capital
11 expenditures -- the major capital expenditures were
12 captured in the first two years of that plan. So that
13 represents about \$13 million of expenditures to upgrade
14 the network to be able to deliver multi gigabit
15 Internet services to the community regardless of
16 whether we are doing it retail or on a wholesale level.

17 Q. Okay.

18 A. Either way, you have customers, and in order
19 to be able to deliver those fast Internet speeds, you
20 have to upgrade the network. So the \$13 million of
21 the -- of the budget represents investments in the
22 network.

23 Q. And under the all-in business plan, do you
24 have any expectation as to where that \$13 million would
25 come from?



1 MR. FILIPINI: Object to form.

2 A. I think if you look at the resolution adopted
3 by the board, 10879, it talks about how some of the
4 funding might -- might arise for funding the all-in
5 business plan.

6 Q. (By Mr. Jurca) Is it a fair summary or a fair
7 characterization to say that under the proposed --
8 well, under the all-in business plan as presently
9 envisioned, the money needed to pay for the network
10 upgrade that you just described in order to deliver the
11 fast service would come from the electric power side of
12 TPU?

13 MR. FILIPINI: Object to form and to the
14 extent that it calls for a legal conclusion.

15 A. In -- I guess the -- there is -- there hasn't
16 been a decision in terms of how the funding would
17 ultimately materialize at this stage.

18 Q. (By Mr. Jurca) Click doesn't have the money,
19 right?

20 A. Not to my --

21 MR. FILIPINI: Object to form.

22 A. Not to my knowledge.

23 Q. (By Mr. Jurca) Okay. Is it projected that
24 there would be an issuance of municipal bonds to raise
25 that money?



1 A. I don't know. It's a policy call. I'm not
2 involved in policy.

3 Q. All right. So you have not been involved in
4 making that sort of analysis or projection; is that
5 correct?

6 A. Correct.

7 Q. Okay. Under the most current version of the
8 all-in business plan, is it correct that at least for
9 the next several years, it is anticipated that the
10 Click telecommunication function will continue to
11 suffer financial losses?

12 MR. FILIPINI: Objection, form and to
13 the extent it calls for a legal conclusion.

14 Go ahead.

15 A. I think to the extent that Click is part of
16 Tacoma Power, is a section of Tacoma Power, and has
17 always been a part of Tacoma Power, I think it's
18 assumed that regardless of what losses or gains Click
19 might have, would all be attributable to power as a
20 whole. And so, from that perspective, I don't think we
21 view Click losses in any other fashion than an
22 operating -- an operating loss. I think that's sort of
23 the overall perception of how it's viewed.

24 Q. (By Mr. Jurca) So it's viewed -- your
25 projection is that there will continue to be operating



1 losses for at least the next several years; isn't that
2 correct?

3 A. Based on the consultants' reports that have
4 been produced and the business plans that you have
5 produced through 43, seem to reflect that we will
6 continue to have losses for the foreseeable future.

7 Q. And -- and for the foreseeable future, those
8 losses will amount to millions of dollars; isn't that
9 correct?

10 MR. FILIPINI: I'll object to the form
11 and to the extent it calls for a legal conclusion.

12 Go ahead.

13 A. Based on the -- based on the projections, yes.

14 MR. JURCA: Thank you, Mr. Gyaltsen. I
15 appreciate your coming here and having the patience to
16 sit through all these questions.

17 THE WITNESS: You're welcome.

18 (Deposition concluded at 2:55 p.m.)

19 (Signature was neither waived nor
20 requested and the deponent will receive
21 notice to read and sign the deposition
22 pursuant to Washington Court Rule
23 30(e).)

24

25



CORRECTION & SIGNATURE PAGE

RE: COATES, et al., vs. CITY OF TACOMA
 PIERCE COUNTY; 17-2-08907-4
 TENZIN GYALTSEN; TAKEN SEPTEMBER 27, 2017
 REPORTED BY: Mindi L. Pettit, CCR No. 2519

I, TENZIN GYALTSEN, have read the within transcript taken September 27, 2017, and the same is true and accurate except for any changes and/or corrections, if any, as follows:

PAGE/LINE	CORRECTION	REASON
7/19	Strike "I'm employed, and"	Clarify
9/10	Strike "a -- a" and insert "another"	Clarify
9/11	insert "," after integration; strike "that" and replace with "they"	Clarify
9/14	Strike "So" and start sentence with "It"	Clarify
10/6	Insert "National Division" after the word "the"	Clarify
10/10	Insert "with" after the word "helping"	Clarify
10/14	Strike "--" and insert "director of operations"	Clarify
10/25	Insert "Charter" before the word "ended"	Clarify
11/4	Strike "with the" and replace with "within their"	
	Insert "called" before "Rocky Mountain"	Clarify
11/6	Strike "owning" and replace with "buying"; strike "and" and insert "among"	Clarify
11/11	Strike "kind of", insert "began"	Clarify
11/18	Strike "is a -- is a --a --sort of"	Clarify
11/21	Strike "that", insert "the", strike "in", insert "from"	Clarify
12/7	Strike "is", replace with "as"	Clarify
12/10	Strike "the", replace with "their"	Clarify
12/11	Strike "kind of"; strike "--" and insert "groups and"; strike "more --"	Clarify
12/15	Strike "moved the -- they"	Clarify
12/16	Strike "regional", insert "group"; strike "created" and insert "went from"	Clarify
12/19	Insert "elsewhere" where you find "--"	Clarify
13/13	Insert "I" after "So"	Clarify
13/9	Insert "I" after "so"	Clarify
13/16	Strike "And", insert "Yes"	Clarify
13/19	Insert "break even" where "--" is found	Clarify
13/21	Strike <u>second</u> "I" and replace with "it"	Clarify
14/2	Insert an 's to make "City's", strike "also had a"	Clarify
14/10	Replace "--" with "Company"	Clarify
14/13	Insert "income" where the "--" are located	Clarify
14/14	Strike "-- the -- the"	clarify

PAGE/LINE	CORRECTION	REASON	147-1
15/5	Strike "And", replace with "T"	clarify	
15/8	Strike "cable television", insert "telecommunication"	clarify	
17/14	Insert "the" after "what"	clarify	
18/7	Strike "those", insert "that"	clarify	
18/9	Strike "those", insert "that"; strike "- that"	clarify	
21/9	Insert "a" before "different"	clarify	
21/10	Strike "s" on the word "functions", strike "than", insert "and"; insert "a" before "different"	clarify	
21/11	Strike "s" on the word "functions"	clarify	
21/12	Insert "was" before "being"	clarify	
22/22	Insert "conclude" for "--"	clarify	
22/14	strike "and", insert "as to"	clarify	
22/15	Insert "cost centers" for "--"	clarify	
22/16	Insert "agreeable or not" for "--"	clarify	
22/17	Insert "to be agreed with" for "--"	clarify	
23/21	Insert "plans in" and strike "-- that --"	clarify	
24/1	Strike "scale", insert "scheme"	clarify	
24/7	Strike "--" insert "time"	clarify	
27/16	Add "," after together; strike "-- our budgets together, our"	clarify	
27/17	Strike "kind of"	clarify	
27/21	Insert "are" before "a"; strike "on", insert "in"	correct	
28/6	Insert "the" after "between"	clarify	
28/10	Strike "as", insert "since"	clarify	
28/12	Strike "those --"	clarify	
28/13	Strike "is" at the end of the line, insert "results in"	clarify	
28/14	Strike "so", insert "so that"	clarify	
29/24	Strike "-- chair", insert "time"	clarify	
30/3	Strike "of", insert "on"	clarify	
31/10	Insert "occurred" after "have"	clarify	
31/11	Insert "this issue" for "--"; insert "would be" after "generally"; strike "prior" and insert "others"	clarify	
32/14	Insert "was about" after "that"	clarify	
33/5	Strike "is" and replace with "was"	clarify	
33/8	Insert "And" before "Finance"	clarify	
33/23	Strike "that -- that the --", Insert "that are"	clarify	
34/17	Insert "he was" after "whether"	clarify	
35/1	Strike "to their --" insert "and"	clarify	
35/2	Strike "that where some of these costs -- the way"	clarify	
35/3	Strike "come of"; strike "where they're", insert "to"	clarify	
35/4	Strike "of what", insert "how"	clarify	
35/6	Insert "I provided" after "input"	clarify	
35/8	Strike "is", insert "was"	clarify	
35/11	Strike "whatever"	clarify	
35/12	Insert "draft" before "document"	clarify	
35/17	Strike "involve", insert "evolve"	correct	
36/2	Insert "Cannot" where "--"	clarify	

PAGE/LINE	CORRECTION	REASON	147-2
38/1	Strike "to", insert "resulting in"; insert "which was" before "prior"	clarify	
38/21	Insert "input" where "--"		
39/25	Strike "if I"	clarify	
43/21	Strike "a", insert "our"	clarify	
44/24/	Insert "to Click!" after "nature"	Clarify	
45/9	Strike "my", insert "our"	clarify	
45/16	Strike "And formerly it was a", insert "The other"; insert "was" before "called"	clarify	
45/19	Strike "And", insert "But"; insert "have" before "combined"	clarify	
46/22	Strike "Probably", insert "They have"	clarify	
47/4	Strike "or -- seven"	clarify	
47/9	Strike "--", insert "commercial broadband companies"	clarify	
47/22	Strike "probably expenditures related to --or"	clarify	
47/24	Insert "for" after "it's"; capitalize "Power"	clarify	
48/22	Strike "-- there is also an INET"	clarify	
48/23	Strike "that the City has, and we provide"	clarify	
48/25	Insert "what's" before "mostly"; strike "related to that"	clarify	
49/1	Strike "service", insert "in the amount."	Clarify	
49/18	Strike "depreciation" at the <u>end</u> of the line, replace with "depreciated"	clarify	
52/9	Strike "had", insert "has"	clarify	
52/16	Strike "of", replace with "or"; strike "be", replace with "have been"	clarify	
52/18	Strike "to"	clarify	
52/20	Strike "that reflects"	clarify	
52/21	Strike "-- Click would have been"	clarify	
53/17	Strike "give", replace with "conduct"	clarify	
53/18	Strike "what"; strike "is" and replace with "part of our business"	clarify	
53/20	Strike "what number --"	clarify	
53/21	Strike "part of -- that's"	clarify	
54/14	Strike "Charlene", replace with "Charleen"	correction	
54/15	Strike "Charlene", replace with "Charleen"	correction	
56/7	Strike "if -- we're" insert "in"	clarify	
56/15	Strike "and I think about at the same time", insert "about"		
	Insert "which" before "had"	clarify	
56/19	Strike "why are we -- why", insert "inquiring"	clarify	
57/1/	Insert "understood" for "--"	clarify	
57/3	Strike "actually", replace with "generally"	correction	
57/4	Strike "acquire", replace with "get"; strike "the", replace With "that"	clarify	
57/5	Insert "generally" after the word "asset"	clarify	
57/11	Make "get" plural; strike "that -- whatever"	clarify	
57/12	Strike "the life --"; strike "the", insert "that"; strike "is"	clarify	
57/16	Insert "that should occur" after "--"	clarify	

<u>PAGE/LINE</u>	<u>CORRECTION</u>	<u>REASON</u>	147-3
57/25	Strike "what's"	clarify	
58/22	Strike "recovering", insert "recovery of"; insert "then" Before "would"	clarify	
58/23	Strike "to -- if you -- if you"	clarify	
58/24	Insert "rather" before "and"; strike "-- and"; strike "that", Replace with "this amount"	clarify	
58/25	Strike "kind of", insert "basically"; strike "sign it", insert "gauge"	clarify	
59/1	Strike "so that you can actually see"; insert "fully" after "to"	clarify	
29/2	Strike "rates", insert "amounts"	clarify	
59/4	Strike "I think"	clarify	
59/7	Strike "is", replace with "was"	clarify	
59/8	Strike "putting", insert "assessing"; strike "there", insert "to Click!"	clarify	
59/9/	Strike "is not covering --", insert "cannot"; strike "covering", Insert "cover"; insert "operating" before "costs"	clarify	
59/13	Strike "are", insert "were"	clarify	
59/15	Insert "it" before "says"	clarify	
59/24	Strike "be", insert "have been"	clarify	
63/6	Strike "--" insert "solution"	clarify	
64/8	Strike "the variety --"	clarify	
64/23	Insert "in" before "January"	clarify	
65/1	Strike "-- my tenure there --"	clarify	
65/2	Strike "tenure here -- or" and "so that -- at"	clarify	
65/3	Strike "decision, the --" and insert "point"	clarify	
65/4	Strike "don't", replace with "not"	clarify	
65/22	Strike "they're making -- and", insert "with"	clarify	
66/4	Strike "So, you know", insert "and"	clarify	
66/12	Insert "or did" after "policymakers"	clarify	
66/17	Strike "to kind of say, he, listen, can you", insert "to"	clarify	
66/19	Strike "can", insert "could"	clarify	
67/5	Strike "based on"	clarify	
67/6	Strike "what was the --"	clarify	
67/7	Strike "--and the"	clarify	
67/8	Strike "receive is"; replace with "received was"	clarify	
67/12	Strike "look", insert "looked"	clarify	
67/13	Strike "kind of"; strike "those --"	clarify	
67/14	Strike "that I -- that are -- that"	clarify	
67/15	Strike "execution"; strike "not a", insert "don't make"	clarify	

PAGE/LINE	CORRECTION	REASON	147-4
67/17	Strike "others have that", insert "executive policy maker"; Make "decision" plural	clarify	
67/18	Strike "direction comes out", insert "decisions are made"	clarify	
68/1	Strike "for the"	clarify	
68/6	Strike "was", insert "is"	clarify	
68/7	Strike "was", insert "is"; insert "head of" before TPU	clarify	
68/8	Strike "director"	clarify	
68/11	Insert "the" at the end of the line	clarify	
68/12	Strike "whatever", insert "policy makers"	clarify	
68/14	Strike "and moved", insert "for moving"	clarify	
70/1	Insert "presentation" after the word "another"; strike "so" Insert "or"	clarify	
78/20	Strike "when we were -- when we were"	clarify	
78/21	Strike "provide"	clarify	
79/14	Strike "a", insert "the"	clarify	
80/6	Strike "a", insert "the"	clarify	
80/11	Strike "prior in", insert "at an"; strike "s" in "time"	clarify	
80/13	Strike "we're not -- we don't --"	clarify	
80/14	Strike "because", insert "as"	clarify	
80/15	Capitalize "power"	clarify	
80/20	Insert "when" after "2013"	clarify	
80/24	Insert "the proposal" for "--"	clarify	
80/25	Strike "doing", insert "working on"	clarify	
81/4	Strike "putting", insert "pursuing"	clarify	
84/2	Strike "-- pay --"	clarify	
84/15	Insert "it" before the word "should"	clarify	
88/16	Strike "what", insert "which"	clarify	
91/25	Strike "Kind of help", insert "It helped"	clarify	
93/11	Strike "for"	clarify	
93/12	Strike "the"	clarify	
93/14	Strike "they're", replace with "we were"	clarify	
94/21	Strike "the study was done --"	clarify	
95/8	Insert ", but" after "done"	clarify	
95/18	Strike "came up at --"	Clarify	
96/9	Strike "the" at the <u>end</u> of the line, insert "it in"	clarify	
96/10	Strike "of" replace with "or"	clarify	
96/25	Insert "say" before the phrase "a hundred"	clarify	
97/1	Strike "and you have --", insert "let's"	clarify	
97/7	Insert "let's" before the phrase "say it's all"; strike "of"	clarify	
97/3	Strike "them, a"	clarify	
97/8	Strike "of the -- at the end"	clarify	
97/10	Strike "where", insert "what"; insert "at" after "arrive"	clarify	
97/12	Insert "centers" before the phrase "are allocated"	clarify	
102/6	Strike "That -- as a -- page 13"; strike "put", insert "input"	clarify	

PAGE/LINE	CORRECTION	REASON	147-5
107/19	Strike "a" and insert "the"	clarify	
110/21	Strike "this -- this -- the"; remove the apostrophe in "number's"		
	Insert "were" before "reiterated"	correction	
111/1	Insert "had" after the word "that"	clarify	
111/6	Strike "are", replace with "were"	clarify	
111/11	Strike "so it was -- so there was", insert "the"	clarify	
111/12	Insert "were" after the word discussions	clarify	
111/13	Strike the word "the", replace with "his"	correction	
111/14	Insert "and" before the word "exchanges"	clarify	
111/25	Insert "personal" before the word "information"; strike "that's what"	clarify	
112/1	Strike "as bought as --"; insert "It" before the word "hired"	clarify	
112/4	Strike "is"; replace with "was"	clarify	
112/7	Strike "it's --"	clarify	
112/22	Strike "A", insert "The"; strike "a", insert "the"; Strike "It's a -- no,"	clarify	
113/16	Strike "with -- we", insert "T"	clarify	
113/19	Strike "were", insert "would be people"	clarify	
113/23	Strike "how certain --"	clarify	
114/2	Strike "different"	clarify	
114/5	Insert "it" after the word "understand"; change "these" to "the"	clarify	
114/6	Remove ",", after cetera; insert "and"; strike "are", insert "were"	correction	
115/16	Strike "whether"; insert "from" after the word "it"; strike "was"	clarify	
115/18	Strike "that how--just from--basically from the"	clarify	
115/19	Strike "perspective from"	clarify	
115/23	Strike "as a"	clarify	
115/24	Strike "the"; Strike "part of"	clarify	
115/25	Strike "that would be"	clarify	
116/1	Strike "section", insert "division"	clarify	
120/6	Strike "arise", insert "have occurred"	clarify	
120/12	Capitalize "Power's"	clarify	
121/8	Capitalize "Power"	clarify	
123/5	Strike "at the end --", insert "was adopted"	clarify	
124/8	Strike "around", insert "at the meeting"	clarify	
124/10	Strike "--I think the"; insert "which" at the <u>end</u> of the line	clarify	
124/12	Strike "and"; revise "resulting" to read "resulted"	clarify	
125/25	Strike "one"; insert "was" after 2015	clarify	
126/2	Insert "to the" before the phrase "joint body"	clarify	
126/3	Strike "to adopt --"	clarify	
126/11	Strike "what culminated in this was"; insert "ultimately the"	clarify	
126/12	Insert "was" after the word "policymakers"	clarify	
126/13	Insert "had" before the phrase "put together"	clarify	
128/13	Strike "the", insert "those"	clarify	
129/6	Strike "did", insert "do"	clarify	
129/21	Insert "looks like" after "--"	clarify	

PAGE/LINE	CORRECTION	REASON	147-6
133/6	Strike "in this report"	clarify	
135/9	Strike "of", insert "for"	clarify	
136/1	Strike "are"	clarify	
136/2	Insert "are" after "thoughts"	clarify	
137/1	Strike "a" and replace with "the"; Strike "I can"	clarify	
137/2	Strike complete line	clarify	
137/3	Strike complete line	clarify	
138/21	Strike "some", insert "something,"	correction	
138/22	Insert "to it." for "--"	clarify	
138/24	Insert "recall whether I was" after "--"; insert "involved or"		
	After the word "directly"	clarify	
139/3	Insert "that's" after "So"; Strike "these are", insert "for"	clarify	
140/21	Insert "do, and" after the phrase "If they"	clarify	
141 Page	Revise power to be capitalized "Power"	clarify	
143/16	Insert "as" before "retail"; strike "level", insert "basis"	clarify	
143/18	Insert "would" before the word "have"	clarify	
144/3	Insert "#" before 10879	clarify	

Signed at Tacoma, Washington,
on this date: 11/2/17
Tenzin Gyaltzen
TENZIN GYALTSEN

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EXHIBIT 27

Klein

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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 Seattle, Washington; September 26, 2017
2 9:56 a.m.
3 --oOo--
4 (Ms. Kazaryan not present.)
5 STEVEN J. KLEIN,
6 sworn as a witness by the Certified Court Reporter,
7 testified as follows:
8 EXAMINATION
9 BY MR. JURCA:
10 Q. And would you give us your name, please.
11 A. Steven -- that's -e-v-e-n -- middle initial J
12 for John, J-o-h-n, Klein, K-l-e-i-n.
13 Q. And what's your present residence address?
14 A. 1712 South Sunset Drive, Tacoma, Washington,
15 but I also own a condo in Queen Anne.
16 Q. Okay. But you spend most of your time at
17 the --
18 A. Now I do. Now that I'm retired.
19 Q. Okay. I was -- my next question was going to
20 be are you employed, and is the answer that you're not
21 because you're retired or --
22 A. Well, it's a little more complicated than
23 that.
24 Q. Okay.
25 A. I do some consulting work. And one of the



1 companies that I work for has me structured as an
2 employee, even though I just do work as is requested or
3 required by the -- by this other entity.

4 Q. Okay.

5 A. But then I have done some individual
6 consulting work too, but -- so technically I am an
7 employee of an organization, but I don't work a 40-hour
8 week, and that company is located in Colorado. So I
9 never see them.

10 Q. Okay. So you're not an employee of the City
11 of Tacoma?

12 A. True.

13 Q. Okay. Can you just tell me briefly your
14 educational background.

15 A. Graduated in electrical engineering from the
16 University of Washington in the mid to late '70s. And
17 I'm a licensed professional engineer in the state of
18 Washington.

19 Q. Did you grow up in --

20 A. Tacoma --

21 Q. Okay.

22 A. -- Washington.

23 Q. Okay. And do you remember the year you got
24 your degree from the UW -- your engineering degree?

25 A. I was thinking it was '76 --



1 Q. Okay.

2 A. -- because I went to work for Boeing Computer
3 Services. Worked there, if I remember correctly, about
4 a year and a half before I started at Tacoma in
5 November of 1978.

6 Q. Okay. You've -- you're right on target seeing
7 my next question. My next question was going to be to
8 ask about your employment background. So you worked
9 for a short while at Boeing?

10 A. Yes.

11 Q. And then went to the City of Tacoma?

12 A. Yes.

13 Q. And in -- what was your -- when did you start
14 at the City of Tacoma?

15 A. November of 1978.

16 Q. Okay. And how -- what was your -- can you
17 just take us through your various job positions as --
18 with approximate times.

19 A. Okay. Yeah, I was hired as an electrical
20 engineer, and they had a designation of one, two, and
21 three, so I was an entry level electrical engineer.
22 Then I got my professional license. The way that goes
23 is you have to work for a couple years under a licensed
24 engineer in order to qualify to sit for the exam. I
25 then got my professional licensing and became a



1 professional electrical engineer or an Engineer 2.

2 (Ms. Kazaryan entered the room.)

3 A. And then ultimately, as I took on more
4 responsibility, it was an Engineer 3, which was called
5 a principal professional electrical engineer.

6 Q. (By Mr. Jurca) Okay.

7 A. Then all of that was within the traditional
8 electrical engineering department. And I was there for
9 about six -- six years when I accepted a request to
10 come work for the power management department. And I
11 transferred to that department, and they have
12 responsibility --

13 (Interruption.)

14 A. -- for generation operations and power --
15 power contracts. And shortly after I had moved into
16 that group, I must have done a good enough job in a
17 relatively short period of time, because the power
18 operations supervisor who I worked for left to become a
19 preacher and went to divinity school. And the power
20 manager made me the power operations supervisor.

21 And that, over time -- different
22 classification studies and so on and so forth and it
23 changed in title, but basically there was a power
24 manager that was head of this department or
25 organization. And I was one of the assistants to the



1 power manager in charge of operations and power
2 contracts and those types of things. Then when the
3 power manager left, I was made the power manager --

4 Q. (By Mr. Jurca) Do you know about when that
5 was?

6 A. I'm thinking -- I'm guessing around '89.

7 MR. JURCA: Okay. And by the way, this
8 is Emma Kazaryan, an associate, who has just joined us.

9 THE WITNESS: Hi, Emma.

10 MS. KAZARYAN: Hello.

11 Q. (By Mr. Jurca) All right. If you would keep
12 going then with your . . .

13 A. Okay. And then -- and it couldn't have been
14 '89, now that I think about it, because the next step
15 is I became the superintendent of light division or the
16 head of Tacoma Power in July of 1993, and I think I was
17 the power manager for at least six years. Everything
18 in my career seemed to go in six-year blocks. So --

19 Q. Maybe '87 would have been --

20 A. Yeah, more closer to that time.

21 Q. Okay. All right. So, from being the head of
22 the -- whatever it was called at the time -- the power
23 management --

24 A. Yeah, management group.

25 Q. -- division or department --



1 A. Yeah.

2 Q. -- you then became the superintendent of
3 Tacoma Power in about '93?

4 A. Yes. July of '93.

5 Q. Oh, okay. And how long did you stay in that
6 position?

7 A. Till April of 2006.

8 Q. And what did you do then?

9 A. I left to become the general manager, CEO of
10 Snohomish County PUD --

11 Q. Okay.

12 A. -- headquartered in Everett.

13 Q. And how long did you stay at Sno PUD?

14 A. Till May of 2015, which is about nine years.

15 Q. Okay. And is that when you sort of retired --

16 A. Yes.

17 Q. -- except for your consulting work?

18 A. Yes, yes.

19 Q. All right. Since you left TPU in April of
20 '06, have you ever done any consulting work for the
21 City of Tacoma or Tacoma Power, other than whatever
22 time you're -- you're spending on -- for purposes of
23 this deposition?

24 A. No. No.

25 Q. Okay. All right. Now, I want to ask you sort



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 been marked with -- those numbers down at the bottom
2 are called Bates numbers. They're put on by the
3 lawyers to help keep track of documents. It's Bates
4 Nos. 20211 through 20243. So I guess my first question
5 is really do you recognize this document?

6 A. Yes.

7 Q. And what is it?

8 A. My recollection is, as it says, it's
9 establishing a telecommunications system, supplementing
10 the Ordinance 23514, and providing for issuance and
11 sale of City's electric system revenue bonds, but as I
12 mentioned earlier, we never ended up issuing bonds, but
13 it was a good management decision to be prepared to, if
14 we so chose to do so. So we never followed through
15 with issuing bonds for the construction. We paid for
16 it in cash.

17 Q. Did this proposed or issuance of bonds -- was
18 it your understanding that that was sort of part of or
19 involved in this declaratory -- this lawsuit that you
20 mentioned that was brought in -- I forget what year --
21 to determine --

22 A. '95, '96 --

23 Q. Yeah.

24 A. -- yeah.

25 Q. Did this proposed bond issuance have a --



1 Q. Okay.

2 A. Now, they might have had that concern, but
3 since we're raising it, saying this makes sense to go
4 do this, then they don't have to --

5 Q. There wasn't anybody in particular banging a
6 drum saying, hey, you guys can't do this?

7 A. No, no. I don't remember that.

8 Q. Okay.

9 THE WITNESS: You take these back, don't
10 you?

11 THE REPORTER: Yes.

12 MR. JURCA: Yeah, she gets very --

13 THE WITNESS: Protective?

14 MR. JURCA: She gets very protective of
15 those documents.

16 (Deposition Exhibit 3 was marked for
17 identification.)

18 (Discussion off the record.)

19 Q. (By Mr. Jurca) All right. Now, Mr. Klein,
20 you have before you now what's been marked as
21 Exhibit 3. That's entitled "Click Network Financial
22 Performance Review," dated April 24, 2000. I think in
23 your testimony earlier today, you referred to a
24 Pricewaterhouse --

25 A. Yes.



1 Q. -- study. Is this what you were referring to?

2 A. This is, yes. Yes.

3 Q. Okay. Well, let me ask you this. Can you
4 describe for us, what was the purpose of -- what was
5 TPU's purpose in asking Pricewaterhouse to do this
6 work?

7 A. The telecommunication business plan was passed
8 unanimously by the city council. Once it was passed
9 and we hired Deb Stewart, who was well known in the
10 telecom industry, that suddenly caught the attention of
11 TCI brass, whereas to date, probably to them, the
12 little backwater town of Tacoma and something stirring
13 around and Barbara Wyatt's got alligators, but they've
14 got bigger fish to try. John Malone and Leo Hendery
15 were taking over the world. But when they suddenly
16 realized -- in particular, Leo Hendery, who went to
17 Bellarmine Prep in Tacoma --

18 Q. I never knew that.

19 A. -- and -- yes. And that's also where Mike
20 Crowley went, who was a city councilmember. And they
21 reconnected. At that point, from a unanimous support,
22 we started getting pushback politically. And it came
23 in different -- different ways. And so the issue
24 around Tacoma electric utility subsidizing the Click
25 Network became a reoccurring theme that came up over



1 know, put value on those sort of things, but an
2 economist could come in and do it, and you could argue
3 until the cows come home.

4 Now, going on forever, at some point, you have
5 to deal with the circumstance with either utilizing
6 more of the system or changing the tenets of the
7 original legislation, but I'm not here to speculate or
8 talk about that.

9 Q. (By Mr. Jurca) Okay. Thank you.

10 MR. JURCA: All right. Let's mark as
11 the next exhibit -- let's take -- off the record for a
12 moment.

13 (Recess taken.)

14 MR. JURCA: Back on the record, and we
15 are ready to mark as the next exhibit . . .

16 (Deposition Exhibit 5 was marked for
17 identification.)

18 MR. JURCA: Okay. This is 5.

19 Q. (By Mr. Jurca) Mr. Klein, you have before you
20 what's been marked as Exhibit 5. Do you recognize
21 that --

22 A. Yes.

23 Q. -- as a copy of what's sometimes referred to
24 as the Virchow Krause report?

25 A. Yes.



1 Q. And it's dated on the bottom of the front page
2 July 23, 2003. I guess I could ask you to describe
3 what the purpose of this was, but I guess it's already
4 given on the second page under the heading foreword.
5 So I'll ask you this. Did Tacoma Power contract with
6 Virchow Krause & Company to assess the reasonableness
7 of its method of allocating the capital investment and
8 operating expenses of Click Network between power and
9 commercial applications?

10 A. We did so at the request of the local
11 politicians.

12 Q. And by "local politicians," who do you mean?

13 A. It was the case where there was another of the
14 rising of the issue to attack Click on the basis of a
15 subsidy.

16 Q. So was --

17 A. My sense -- and this is my sense when I was
18 there, and it's fairly accurate -- is the people in
19 Click were wonderful. The service was wonderful. It
20 was a local utility trying to do and doing good. How
21 do you attack something like that? And so basically
22 the opposition came up with, well, how do you attack
23 it? You make people feel like they're being ripped
24 off. And so every so many years, this theme would
25 build up again, and here -- here it was again.



CORRECTION & SIGNATURE PAGE

RE: COATES, et al., vs. CITY OF TACOMA
 PIERCE COUNTY; 17-2-08907-4
 STEVEN J. KLEIN; TAKEN SEPTEMBER 26, 2017
 REPORTED BY: Mindi L. Pettit, CCR No. 2519

I, STEVEN J. KLEIN, have read the within transcript taken September 26, 2017, and the same is true and accurate except for any changes and/or corrections, if any, as follows:

PAGE/LINE	CORRECTION	REASON
8/4	Change "it" to "I"	Misheard witness
18/4	Change "where" to "when"	Misheard witness
18/18	Change "in" to "from"	Misheard witness
19/23	Change "better customers" to "better customer service"	Misheard witness
23/15	Change "John" to "Jon"	Incorrect name spelling
25/1	Change "John" to "Jon"	Incorrect name spelling
28/2	Change "seers" to "Sears"	Incorrect word/name
29/20	Capitalize "Comprehensive Review"	Formal name
30/11	Change "it's going to be" to "it's got to be"	Misheard witness
31/4	Change "John" to "Jon"	Incorrect name spelling
34/9	Change "John" to "Jon"	Incorrect name spelling
37/7	Change "plain" to "plane"	Incorrect word
38/16	Change "part" to "partner"	Misheard witness
38/18	Add coma after the word "track"	Intended emphasis
46/9&10	Add comas after "infer" and "knowledge"	Intended emphasis



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1	54/12	Change "and" to "had"	Misheard witness
2	54/14&16	Change "Hendery" to "Hindery"	Incorrect name spelling
3		Add "I" before words	
4	55/21	"did not" so it reads - "I did not"	Misheard or overlooked
5	59/16&17	Capitalize "Light Division"	Formal legal name
6		Change "hundred 20 million" to "\$120 million"	
7	61/16&18		Clarification
8	65/20	Capitalize "Light Division"	Formal legal name
9	67/21	Change "Breitbart" to "Bonbright"	Incorrect name
10	71/7, 8, 15, 18&25	Capitalize "Light Division"	Formal legal name
11	76/18	Change "fairly" to "very"	Misheard witness
12	77/10	Change "Hendery" to "Hindery"	Incorrect name spelling
13		Capitalize "Department of Public Utilities, Light Division"	
14	85/17		Formal legal name
15	85/25	Capitalize "Light Division"	Formal legal name
16	86/1	Capitalize "Light Department"	Formal name
17	97/15, 18&23	Change "John" to "Jon"	Incorrect name spelling
18	98/8&14	Change "John" to "Jon"	Incorrect name spelling
19	101/14	Change "Hendery" to "Hindery"	Incorrect name spelling
20	101/19, 20&21	Change "John" to "Jon"	Incorrect name spelling
21			
22	Signed at <u>Tacoma</u> , Washington,		
23	on this date: <u>10/26/2017</u>		
24	<u>Steven J. Klein</u>		
25	STEVEN J. KLEIN		



EXHIBIT 28
Robinson

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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



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Seattle, Washington; September 29, 2017

10:10 a.m.

--oOo--

(Ms. Vander Stoep not present.)

CHRIS ROBINSON,

sworn as a witness by the Certified Court Reporter,

testified as follows:

EXAMINATION

BY MR. JURCA:

Q. Would you state your name, please.

A. Chris Robinson.

Q. And what is your home address?

A. 4708 - 51st Place Southwest, Seattle,
Washington.

Q. I know that you're presently employed, but I
guess I should ask -- what is your present employment?

A. I'm the power superintendent, chief operating
officer of Tacoma Power, Tacoma, Washington.

Q. When you say "power superintendent," you mean,
superintendent of Tacoma Power?

A. That's correct.

Q. Okay. As distinguished from the power
management division of Tacoma Power?

A. That's correct.

Q. Okay.



1 A. Although I used to be that.

2 Q. Yeah. Okay. Well, let me ask first, can you
3 tell us briefly your educational background.

4 A. I have a -- bachelor's degrees in economics
5 and political science and a master's degree in
6 economics.

7 Q. From what school and what year?

8 A. Undergraduate, I -- I graduated from Rutgers
9 University in New Jersey in 1990 and --

10 Q. In economics, did you say?

11 A. In economics and political science. And I
12 received my master's degree from University of Maine, I
13 think in 1993 or '4 -- something like that. No, it was
14 probably '94.

15 Q. Okay. Would you tell us about your employment
16 background, say, since you got out of -- got your
17 master's degree.

18 A. Well, I -- after my master's degree, I took
19 some time off to travel, but after that, I became an
20 independent consultant doing economic studies for
21 various consulting firms that primarily consulted to
22 electric utilities, mostly have -- related to
23 hydroelectric relicensing.

24 Q. And where was your office, or where was your
25 headquarters?



1 A. In Portland, Maine.

2 Q. Okay. And how long did you do that?

3 A. Approximately three years.

4 Q. All right. And so we're up to about what year
5 when you started doing something else?

6 A. Probably we're talking late '90s now.

7 Q. Okay.

8 A. And I did very similar work for -- I joined a
9 consulting firm -- again, these are approximate dates.
10 I don't recall exactly.

11 Q. That's fine. Yeah.

12 A. After I moved to Seattle, I joined a
13 consulting firm, and it was probably in 1999.

14 Q. And what firm was that?

15 A. It was a firm called Kleinschmidt Associates.

16 Q. Okay.

17 A. They have offices around the country, but
18 their corporate headquarters is in Maine. And I was
19 the sole person working for that firm in Seattle for --
20 up until 2001 when I joined Tacoma Power.

21 Q. All right. Would you take us through whatever
22 job positions you had with Tacoma Power up to the
23 present dates.

24 A. I was originally hired as something called the
25 utilities economist in Tacoma Power, which is basically



1 an analyst in the power management section of the
2 utility, which is the power supply area. From there, I
3 had -- was promoted multiple times, positions like
4 senior economist and para-analyst, and I think there
5 was a project manager title at one point. And then I
6 became the assistant power section manager for the
7 power supply area -- power supply planning -- that sort
8 of thing. Then became the power manager.

9 Q. And when was that approximately?

10 A. I've been in this job a little over two years.
11 I think I was the power manager for probably five or
12 six years.

13 Q. Okay.

14 A. And then the assistant power section manager
15 for a year or two prior to that.

16 Q. Okay. And then when did you become the
17 superintendent of Tacoma Power?

18 A. In May of -- well, two years ago. What's it,
19 '17 now? So May of '15.

20 Q. Okay. Without going in -- I don't want to
21 have you tell me about any specific discussions that
22 you had with counsel, but aside from that, can you tell
23 me what you did to prepare for this deposition.

24 A. I just reviewed documents.

25 Q. And were these documents that you selected or



1 did someone else select them for you?

2 A. They were documents that -- that were selected
3 by counsel.

4 Q. Okay. Aside from your discussions with
5 counsel, did you have any discussions with anyone else
6 in connection with preparing for the deposition?

7 A. No.

8 Q. Okay. Now, do you understand that you are --
9 you have been designated by the City of Tacoma to
10 testify on its behalf with respect to -- I believe it's
11 two particular topics -- why don't you turn to
12 Exhibit 1, which is in one of these notebooks? It
13 should be this one. Woops. That's a notice of
14 deposition. Have you seen that document before?

15 A. Yes.

16 Q. Okay. And do you understand that you've been
17 designated by the City to testify on its behalf with
18 respect to Topic 1 at least regarding the period from
19 2006 forward?

20 A. Yes, sir.

21 Q. Okay. And also you've been designated to
22 testify with respect to Topic 7?

23 A. Yes.

24 Q. And I believe those are the only two topics
25 that you've been designated for. Is that your



1 electric because it supports -- the reason Click was
2 originally envisioned was to provide communications
3 infrastructure between our substations. And it still
4 provides those services today and other services
5 relative to electric utility. So it does -- it
6 absolutely supports electric. I'm sorry. Could you
7 repeat your question, so I don't -- I'm not getting to
8 your actual question.

9 Q. Was the shortfall between Click's expenses and
10 its revenues made up by utilizing electric revenues?

11 MR. FILIPINI: Object to form and scope
12 of the question.

13 A. Yes. Given that Click is part of power, if
14 Click does not meet -- or cover -- if revenues from
15 commercial operations do not cover the expenses
16 associated with providing those, it -- it --
17 essentially the budget is -- is met through Tacoma
18 Power operations.

19 And it is -- that's not just revenues. That
20 can be retail revenues; it could be wholesale revenues;
21 it could be campground fees. It could be all sorts of
22 things -- whatever revenue comes in the door. It's not
23 just from elec -- revenues associated with selling
24 electricity. Or it could be interest. I mean, there's
25 lots of things that it could come from.



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 customers to -- to continue to have choice in the
2 market -- that sort of thing. It was the -- from a
3 financial standpoint, it was the best option, as
4 documented in Doug Dawson's reports.

5 Q. (By Mr. Jurca) And the -- the legal risk that
6 was one of the reasons for your recommendation --
7 minimizing the legal risk that was one of the points
8 you just listed, was that the legal risk of it being
9 ultimately determined that it was illegal for electric
10 revenues to be used to pay for commercial expenses?

11 MR. FILIPINI: I'll object to form,
12 scope, and to the extent it calls for a legal
13 conclusion.

14 A. Yes.

15 Q. (By Mr. Jurca) Okay. And I think this point
16 is established, but I just want to make sure. If you
17 turn to -- in Exhibit 13, which is that compilation of
18 monthly financials, if you turn to the Bates page 3798.

19 MR. FILIPINI: Could you just give me a
20 minute, Counsel, again --

21 MR. JURCA: Sure.

22 MR. FILIPINI: It's Exhibit --

23 MR. JURCA: It's Exhibit 13.

24 MR. FILIPINI: 13. And what was the --

25 MR. JURCA: It's 3798.



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 But my question is, can you tell me -- I --
2 the numbers and -- sort of the net cash flow numbers
3 that are shown are -- are different on the two slides.
4 And my question is, are you able to tell me whether
5 that's because one slide is based on the old allocation
6 method and the other slide is based on the newer
7 allocation method?

8 MR. FILIPINI: Objection to form and
9 scope.

10 A. I don't know. It doesn't say on the slide, so
11 I don't know.

12 Q. (By Mr. Jurca) Okay.

13 A. It's a plausible explanation, but I don't
14 know.

15 Q. Okay. Fair enough. Are you aware that --
16 we've seen some reports from CCG Consulting. And was
17 there also an outside consultant named Sage Consulting
18 that was retained to give some recommendations?

19 A. Can you reference the slide --

20 Q. Well, if you --

21 A. -- you're referring to.

22 Q. -- look at Slide 22. And my question is, do
23 you -- you know, who was Sage Consulting, and how did
24 they get in the picture?

25 MR. FILIPINI: And I'll object to the



1 form and scope.

2 A. I believe -- this is to the best of my
3 knowledge. I believe Sage Consulting was the
4 consultant that was brought in to do a ten-year review
5 overall of Tacoma Public Utilities. It's something
6 that's in the charter that there is supposed to be a
7 management review of the utility every ten years. I
8 believe that's what this is. But I could be wrong
9 about that.

10 Q. (By Mr. Jurca) Okay.

11 A. And so this would have been a much broader
12 review, but this would be something that they said
13 about Click.

14 Q. Okay.

15 (Discussion off the record.)

16 Q. (By Mr. Jurca) Based on your years in the
17 industry, you're familiar with Sage Consulting? Are
18 they a well-known firm in the industry?

19 MR. FILIPINI: Object to form and scope.

20 A. I'm only familiar with them related to what I
21 just said about the ten-year review.

22 Q. (By Mr. Jurca) Okay. Do you recall whether
23 you saw a written report from Sage Consulting in the
24 mid -- you know, somewhere in this 2014 time frame --
25 2014 or 2015 time frame?



1 A. My memory has been jogged sufficiently to give
2 you the information that I have provided to you that I
3 think this was part of the ten-year management review.

4 Q. (By Mr. Jurca) Okay. Based on your
5 discussions with other members of the Tacoma Power
6 management team -- that is, the section heads and the
7 superintendent as you've described -- are you able to
8 tell us, was the -- was it your impression that in the
9 2014, 2015 time frame, it was the unanimous view of the
10 members of that management team that as a result of
11 industry changes and the competitive disadvantages, the
12 electric has been subsidizing commercial and that the
13 subsidies will likely grow over time?

14 MR. FILIPINI: Object to form, scope,
15 and to the extent it calls for a legal conclusion.

16 A. So I can't tell you what was in the mind of
17 the other members --

18 Q. (By Mr. Jurca) But you --

19 A. -- of management team.

20 Q. But my question was based on your impression,
21 based not on mind reading, but on what people said, on
22 discussions with the other members of the management
23 team.

24 MR. FILIPINI: Same objection.

25 Q. (By Mr. Jurca) Isn't it a fact, Mr. Robinson,



1 that the members of the management team unanimously
2 believed that electric was subsidizing commercial?

3 MR. FILIPINI: Same objections.

4 A. I -- I don't know if they unanimously believed
5 that. I just don't know. I don't know.

6 Q. (By Mr. Jurca) Okay.

7 A. Not everybody -- everybody doesn't always say
8 what they believe and what they don't believe. But I
9 can tell you that it was evident that the revenues
10 from -- again, using your nomenclature, the revenues
11 from commercial did not cover the expenses from
12 commercial. And according to the business case
13 analyses that our consultant did for us, they weren't
14 likely to do that anytime in the near future.

15 Q. And wasn't it also your own personal view as
16 of the 2014, 2015 time frame that electric was
17 subsidizing commercial?

18 MR. FILIPINI: Same objection.

19 A. Again, I don't -- I don't use the word
20 "subsidizing" because I'm not -- I'm not an attorney.
21 I'm not an accountant.

22 Q. (By Mr. Jurca) Well, "subsidizing" isn't a
23 legal term, is it?

24 A. I don't know if it is or not, but it's not a
25 term that you would hear coming out of my mouth.



1 Q. Okay. Fair enough.

2 A. Again, the way I think about it is -- it might
3 be the same thing; I don't know -- but the way I think
4 about it is, yes, I do believe that -- and it's right
5 in the financial reports that the revenues from
6 commercial were not robust enough to cover the expenses
7 related to providing those commercial products.

8 Q. And electric was making up the shortfall,
9 right?

10 MR. FILIPINI: And --

11 A. It would be --

12 MR. FILIPINI: -- I'll object to the
13 form, to the scope, to the extent it calls for a legal
14 conclusion.

15 A. Okay. So I'm sorry. Can you repeat the
16 question, please.

17 Q. (By Mr. Jurca) And electric made up that
18 shortfall, correct?

19 MR. FILIPINI: Same objection.

20 A. Well, given the fact that Click is a part of
21 electric and the budget has to balance --

22 Q. (By Mr. Jurca) Now, at the outset of this
23 deposition, we tried to get our nomenclature down, and
24 I'm -- we've all agreed we all understand that Click is
25 part of the power division of Tacoma Public Utilities.



1 agree with Mr. Dawson's sentiment that a business ought
2 to be judged on its true economic performance?

3 MR. FILIPINI: Object to form and scope.

4 A. Yes.

5 Q. (By Mr. Jurca) Okay. And did you agree with
6 his sentiment that I've always believed that "if there
7 are subsidies between business units that the subsidies
8 should be recognized so that the proper business
9 decisions can be made"?

10 MR. FILIPINI: Object to form and scope.

11 Q. (By Mr. Jurca) Do you agree with that
12 sentiment?

13 A. Yes, I believe that the -- the costs
14 associated with each part of the business should be
15 recognized --

16 Q. Okay.

17 A. -- for that purpose, yes.

18 Q. Thank you.

19 MR. JURCA: Would you mark this as the
20 next exhibit. I think it's going to be 44.

21 (Deposition Exhibit 44 was marked for
22 identification.)

23 (Discussion off the record.)

24 Q. (By Mr. Jurca) All right. Before we took our
25 lunch break, we talked a little bit about a Sage



1 Management report. And I show you now what's been
2 marked as Exhibit 44. Would you take a moment to
3 familiarize yourself with it, and then I'll ask you a
4 couple of questions. Just let me know when you're --
5 when you've reviewed it.

6 A. Okay. I've reviewed it.

7 Q. Okay. Is -- do you recognize this as a report
8 from Sage Management Consultants dated November 7,
9 2014, that you reviewed in connection with considering
10 issues relating to Click?

11 MR. FILIPINI: Object to form and scope.

12 A. Yeah, this is the -- the TPU performance
13 management review that I referenced earlier before
14 lunch --

15 Q. (By Mr. Jurca) Okay.

16 A. -- and the results of that. And it's been a
17 long time since I've seen the document, but I do
18 vaguely remember it, yeah.

19 Q. Okay. I want to ask you particularly -- I'd
20 like you to look in particular at the section -- I
21 guess it starts on the third page of the exhibit, under
22 the heading background. And he sort of goes into
23 some -- a historical discussion.

24 And I'd like you to review that and tell me if
25 there's anything in his description that you take issue



1 A. I think he's saying --

2 MR. FILIPINI: Object to form and scope.

3 A. I think he's saying that they weren't relevant
4 to his analysis, which was to compare multiple business
5 plans and the financial results associated with those
6 business plans.

7 Q. (By Mr. Jurca) Oh, okay. Thank you. I was
8 having trouble understanding that.

9 A. Yeah, I agree it's not very clear.

10 Q. Okay. That's all on that one. All right.
11 Now, would you turn -- actually there is one in the
12 earlier notebook, Exhibit 7. Maybe you --

13 A. I got it upside down there.

14 Q. Oh.

15 A. Okay.

16 Q. Exhibit 7 is a copy of a memorandum dated July
17 16, 2015, from the then city attorney and then chief
18 deputy city attorney addressed to Mayor Strickland and
19 city councilmembers and public utility board, subject,
20 the City and TPU's authority and obligations relating
21 to providing commercial telecommunications services to
22 the public. Have you seen this memorandum before?

23 A. Yes.

24 Q. And excluding from the scope of my question
25 any discussions you may have had with counsel in



1 preparing for the deposition today, can you tell me the
2 context in which you've seen this memo before. I mean,
3 did you see this memo on or about the date indicated,
4 July 16, 2015?

5 A. Yes. It was copied to me.

6 Q. Okay.

7 A. Yeah.

8 Q. And this -- you understood that this
9 memorandum was not -- apparently was not intended to be
10 kept, you know, confidential or privileged because it
11 was made publicly available, as you understood it,
12 wasn't it?

13 MR. FILIPINI: Object to form.

14 A. Yes, that was my understanding, is it's a
15 public document, yeah.

16 Q. (By Mr. Jurca) Okay. I assume you're not a
17 lawyer, so I'm not asking for a legal conclusion, but
18 counsel may choose to object on that ground anyway.
19 Did you understand the thrust of this memo to be that
20 it was the opinion of the authors that it was unlawful
21 for electric to subsidize commercial?

22 MR. FILIPINI: I'll object to the form
23 to the extent it calls for a legal conclusion.

24 A. What -- what I -- the way I interpreted this
25 memo was that there was legal risk associated with



1 MR. FILIPINI: Object to form.

2 A. Yes.

3 Q. (By Mr. Jurca) And can you describe what
4 discussions you had of that type.

5 A. Well, it's -- it was the legal risks or
6 whatever -- however you want to -- whatever you want to
7 call them.

8 Q. The opinions set forth in the memorandum is
9 what I --

10 A. Yeah. Are essentially a constraint in the
11 analysis. They were -- it was considered -- again, we
12 were -- that's why -- that's the number one reason why
13 all of the CCG reports were seeking a business plan
14 that would -- if we were to end up in positive net
15 benefits from an economics standpoint.

16 Q. And you --

17 A. It was discussed openly --

18 Q. Widely within -- at the upper management
19 level?

20 A. Yes.

21 MR. FILIPINI: Object to form.

22 Q. (By Mr. Jurca) Okay. Does it seem to you,
23 Mr. Robinson, that the decision of the city council and
24 a majority of the public utility board to pursue the
25 all-in proposal was contrary to the legal advice set



1 forth in this memorandum?

2 MR. FILIPINI: Object to the form,
3 scope, and calls for a legal conclusion.

4 A. Pursuing the all-in business plan as modeled
5 by CCG, I agree, as it would be inconsistent with the
6 recommendations -- the legal advice --

7 Q. (By Mr. Jurca) Okay.

8 A. -- in this memo --

9 Q. Okay.

10 A. -- yes.

11 Q. And you referred in your -- in that answer to
12 the all-in model reflected in the CCG proposal. And I
13 want to now have you get -- respond to that same
14 question, but with reference to the all-in proposal
15 that's reflected in the resolution that was adopted
16 fairly recently by the city council.

17 MR. FILIPINI: Object to form.

18 Q. (By Mr. Jurca) Do you know what I'm referring
19 to?

20 A. Yes.

21 MR. FILIPINI: Object to form, scope, to
22 the extent it calls for a legal conclusion.

23 Q. (By Mr. Jurca) And wouldn't your answer be
24 the same with respect to that?

25 A. Yes, I consider them the same thing.



1 identification.)

2 Q. (By Mr. Jurca) Okay. Same question.

3 Exhibit 47 appears to all be in the same handwriting,

4 but do you recognize that handwriting?

5 A. I do not.

6 Q. Okay. Those were the easy ones then. All

7 right. We're almost done, but not quite. We don't

8 want our trees to survive, so . . . I guess we can do

9 these three at a time here.

10 (Discussion off the record.)

11 (Deposition Exhibits 48 through 50 were

12 marked for identification.)

13 MR. JURCA: These would be 48, 49, and

14 50?

15 THE REPORTER: Um-hum.

16 Q. (By Mr. Jurca) Is Exhibit 48 a copy of the

17 Tacoma Power 2014 annual financial report?

18 A. It appears to be.

19 Q. Is Exhibit 49 a copy of the Tacoma Power 2015

20 annual financial report?

21 A. Yes.

22 Q. And does that report include, starting at page

23 67 or Bates No. 487, the 2015 superintendent's report

24 from you as the Tacoma Power superintendent?

25 A. Yes.



1 Q. Okay. Oh, have I already distributed -- yes,
2 I guess I have. Is Exhibit 50 a copy of the Tacoma
3 Power 2016 annual financial report?

4 A. Yes.

5 Q. And that -- does that include the 2016
6 superintendent's report starting at page 65?

7 A. Yes.

8 (Deposition Exhibit 51 was marked for
9 identification.)

10 Q. (By Mr. Jurca) Now, Exhibit 51 is a copy of
11 the City of Tacoma official statement for an issuance
12 of electric system revenue bonds, Series 2017. Is that
13 correct?

14 A. Yes.

15 Q. And in your capacity as Tacoma Power
16 superintendent, you have some familiarity with the
17 issuance of electric system revenue bonds and what the
18 purpose of an official statement is, correct?

19 MR. FILIPINI: Object to form and scope.

20 A. Yes.

21 Q. (By Mr. Jurca) Okay. Would you agree with me
22 that an official statement such as Exhibit 51 is a very
23 important document and that, in issuing an official
24 statement, the City of Tacoma makes every effort --
25 every possible effort to make sure that everything



1 contained in the official statement is as accurate as
2 possible?

3 MR. FILIPINI: Object to form and scope.

4 A. Yes.

5 Q. (By Mr. Jurca) Okay. Now, if you turn to
6 page 15, sort of a description of the utility at the --
7 well, on page 14, there's a description of the City and
8 then a description of the department of public
9 utilities and then, on page 15, a description of Tacoma
10 Power.

11 And it says there, "Tacoma Power is organized
12 into six business units." And those units are
13 generation; power management; transmission and
14 distribution; rates, planning and analysis; Click
15 Network; and utility technology services. Correct?

16 MR. FILIPINI: Object to form and scope.

17 A. Yes.

18 Q. (By Mr. Jurca) I don't know whether -- I --
19 let's not take the trouble to look at it now. In the
20 complaint that initiated this lawsuit, there was an
21 allegation that Click Network was a business unit of
22 Tacoma Power. And that allegation was denied by the
23 City. Is Click Network a business unit of Tacoma
24 Power?

25 MR. FILIPINI: I'll object to the form,



1 sentence of the first paragraph says, the network --
2 referring to the Click Network -- the network currently
3 covers approximately 66 percent of the households in
4 Tacoma Power's service territory.

5 So I think that's consistent with what you've
6 told me before -- that the electric service area is
7 larger than -- than the Click -- than the available
8 Click service area. And this gives us a -- the
9 accurate number here -- that about 66 percent of the
10 households -- I guess that means residential
11 customers -- well, let me restate it?

12 Is it correct that about 34 percent of the
13 households in Tacoma Power's electric service territory
14 are not located geographically in areas that are --
15 where Click tele -- commercial telecommunication
16 service is available to them?

17 MR. FILIPINI: Object to form and scope.

18 A. Yeah, based on what it says in the official
19 statement, which I assume is accurate information, I
20 would say that's probably correct.

21 Q. (By Mr. Jurca) Okay.

22 A. And it's -- it's consistent with my general
23 knowledge of it --

24 Q. Okay.

25 A. -- yeah.



December 28 2017 2:40 PM

KEVIN STOCK
COUNTY CLERK
HONORABLE SUSAN BERRY
NO. 17-2-08907-4

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4

DECLARATION OF MARK BUBENIK
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT GRANTING
DECLARATORY RELIEF

Mark Bubenik declares as follows:

1. I am a plaintiff in this action. I have personal knowledge of the matters set forth below.

2. My wife and I own a small apartment building and do business in Tacoma as Steele Manor Apartments. We are electric ratepayers of Tacoma Power, through our apartment manager as agent.

3. Prior to my retirement, I served as an Assistant City Attorney for the City of Tacoma's Department of Public Utilities ("TPU") for more than 25 years. For the last 15 years

DECLARATION OF MARK BUBENIK IN SUPPORT OF
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
GRANTING DECLARATORY RELIEF - 1

Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

1 of that period I was the supervising attorney and Chief Assistant City Attorney for TPU. I
2 have devoted virtually all of my professional career to serving and protecting the interests of
3 utility ratepayers and the people of Tacoma.
4

5 4. As an interested citizen and electric ratepayer, I have been trying to follow
6 recent developments regarding Tacoma Power's unlawful subsidies for the Click! Network's
7 commercial telecommunications business and the city's plan to increase the amount of those
8 unlawful subsidies under the so-called "All-In Plan." I am dismayed and disappointed by the
9 city's apparent disregard of (i) well established legal principles prohibiting such subsidies, (ii)
10 the sound advice and recommendations of the city's own utility professionals and outside
11 consultants, and (iii) the best interests of electric ratepayers.
12

13 5. Attached hereto as Exhibit A is a copy of a letter dated September 28, 2016 that I
14 sent to the members of the city's public utility board, with copies to Mayor Marilyn Strickland,
15 Tacoma Power Superintendent Chris Robinson, and Director of Utilities Bill Gaines.
16

17 6. Attached hereto as Exhibit B is a copy of a memorandum I co-authored and sent
18 to the mayor and city council on or about October 15, 2016.

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

21 Signed and dated this ^{the} 20 day of December, 2017, at ^{Big Harbor,} ~~Tacoma~~, Washington. ^{MS}

22
23 

24 Mark Bubenik
25

EXHIBIT A

Mark Bubenik
8415 104th St. NW
Gig Harbor, WA 98332

September 28, 2016

Mark Patterson, Chairman, and
Members of the City of Tacoma Public Utility Board,
Department of Public Utilities
3628 So. 35th St.
Tacoma, WA

Re: Light Division's Subsidy to Click

Dear Chairman Patterson and Members of the Board:

By way of background, I served as an Assistant City Attorney for the City of Tacoma's Department of Public Utilities for more than 25 years, and for my last 15 years was the supervising attorney. In 1995 – 1997 I was involved with the Light Division's undertaking its telecommunications project including obtaining the Pierce County Superior Court Decision that allowed the excess fiber optics capacity to be used for television, internet and possibly telephone service (which was later named "Click"). At that time the primary television and internet provider in the Tacoma area was AT&T, and because Click's rates were expected to be substantially less than AT&T's rates, it was believed that Click would obtain substantial market share very quickly. It was always envisioned that Click would pay for itself and pay back to the Light Division its share of the capital costs to build the telecommunications system.

Click has not been as successful as was initially envisioned, so the Light Division management earlier proposed to enter into a contractual arrangement that allowed another entity to manage and operate Click. However, this was resisted by members of the City Council, and various options were evaluated which brings us to where we are today. It is my understanding that all of the various options that are now being proposed include a continued subsidy by the Light Division to Click, and this Light Division subsidy is now an approximate 3% extra cost for all electric rate customers. Also, a couple of the proposed options will increase this subsidy.

You have excellent attorneys representing the City Attorney's office who I would expect have on several occasions advised you (and the City Council) that the Light Division's continued subsidy for Click is not legal. Several laws including state law, RCW 43.09.210, the Accountancy Act, RCW 80.04.210 standards for electric rates, Tacoma City Charter Section 4.5 that limits the use of Light Division revenue and assets, and the Washington State Constitution Article VIII,

Sec. 7 prohibition on making gifts and loans, all prohibit the City's Light Division from subsidizing its telecommunications and television customers. In addition, I expect that your attorneys have communicated that the extra fiber optic capacity that Click now uses is not essential for the Light Division's electric services. Therefore, City Charter Section 4.6 allows for the lease of this excess capacity to another entity.

Assuming that the Public Utility Board and City Council want to comply with state law and the City Charter, the continuation of the Light Division subsidy for Click must end. Therefore, the only logical option is to enter into a lease arrangement with another entity that will take over the management and operation of this system.

If the Board and City Council opt to continue this illegal subsidy, I and other Light Division customers (or Comcast) will commence appropriate legal action to terminate this subsidy. And because the City Council has caused this several month delay since the lease option was proposed, if litigation is commenced, there is also the risk that the City General Government will be required to repay to the Light Division the amount of subsidy that has occurred since the lease option was proposed.

It should be obvious that this subsidy is really hurting the Light Division's low income electric customers who are already having a difficult time paying for their electric service. A portion of the millions of dollars that are currently used for this subsidy could go a long way toward expanding the City's low income assistance program. I personally would like to see you pursue a much more generous low income assistance program.

Sincerely,

Mark Bubenik

cc. Marilyn Strickland, Mayor
Chris Robinson, Light Division Superintendent
Bill Gaines, Director of Utilities

EXHIBIT B

MEMORANDUM

October 15, 2016

To: Honorable Marilyn Strickland, Mayor and members of the Tacoma City Council

From: Mark Bubenik (Retired Assistant City Attorney) and John La Fond (Retired Law Professor)

Re: Tacoma Public Utilities (TPU) Is Legally Prohibited from Using Electric Utility Revenue to Subsidize Click's Commercial Telecommunications Services

Tacoma City Charter Section 3.6 provides that the City Attorney is the legal advisor to the City Council, Manager, and all officers, departments, and boards of the City in matters relating to City affairs. The City Attorney by Memo dated July 16, 2015 provided a legal opinion on "the City and TPU's authority and obligations related to providing commercial telecommunication services (cable television and broadband internet) to the public". This Memo analyzed applicable state laws and City Charter provisions. After careful consideration it concluded that "electrical utility revenue may not be used to pay for the costs directly associated...with providing commercial telecommunications services...to the public." It further concluded that costs "associated with providing both electricity to utility customers and commercial telecommunication services to the public must be allocated and then paid separately by the two enterprises." Simply put, it would be unlawful for TPU to use its electric utility revenue to subsidize Click's commercial telecommunications services.

We agree with the City Attorney's legal opinion dated July 16, 2015. Moreover, we are not aware of any written legal opinion that concludes to the contrary.

CONSEQUENCES OF REQUIRING TPU'S ELECTRIC RATEPAYERS TO SUBSIDIZE CLICK'S COMMERCIAL TELECOMMUNICATIONS SERVICES

1. **TPU'S Moderate and Low Income Electric Ratepayers Cannot Afford to pay This Subsidy.** Approximately 50% of TPU's residential electric ratepayers reside outside the City and Click is not available for a substantial portion of these customers. We estimate that approximately 60% of TPU's electric residential ratepayers live in moderate to low-income households. The U.S. Supreme Court has ruled that electricity is a basic essential residential service and that a due process hearing is required before this service may be terminated. It is very probable that every month thousands of Tacoma Power's residential electric ratepayers struggle to pay their electric bills and every year more than a thousand of these customers have their electric service terminated for non-payment. Asking TPU's

residential electric utility customers to subsidize Click is hurting thousands of TPU's customers who have substantial difficulty paying for electricity and other basic necessities.

2. **Lawsuit to Enjoin Illegal Subsidy.** We believe that if TPU's electric revenue subsidy to Click is not immediately terminated, it is highly likely that a lawsuit will be filed contending that the subsidy and the proposal to increase the subsidy, is unlawful and that TPU's electric utility must be enjoined from doing so.
3. **Recovery of the Total Amount TPU Illegally Subsidized Click.** Assuming the court enjoins the payment of the subsidy to Click, plaintiffs would also likely ask that the past illegally paid subsidy be returned to TPU's electric utility for the benefit of its electric ratepayers. Such recoveries could be substantial.
4. **Recovery of Attorney Fees.** Washington law allows the recovery of attorney fees and costs when the plaintiffs' attorney is successful in representing a class of people to enforce a state law. Plaintiffs' attorney fees and costs could be substantial.
5. **Personal Liability.** City Code Section 1.12.920 provides to the effect that city officers and employees who are acting within the scope of their employment will be provided legal defense and indemnity if there is an award of damages. However, if the actions are outside the scope of their employment, then the city will not provide and/or pay for legal defense or for indemnification of an award of damages. When city council members are involved in a lawsuit, Code Section 1.12.940 provides that the city attorney may make the decision whether their action is within the scope of employment, and that the city attorney may refer this question to the Superior Court. As we explained above we believe the City Attorney has made it crystal clear that TPU's electric utility revenue cannot be used to subsidize Click's commercial telecommunications services. Therefore, in view of the City Attorney's opinion, it is very possible that the city attorney or a court could conclude that both City Council members and TPU board members who supported the subsidy to Click, acted outside the scope of their employment and in contravention of clearly applicable law. In such a case, the court might determine that these individuals are not eligible for legal defense and indemnification of any award of damages.

CONCLUSION. The City Council should not approve the proposal by three members of the Public Utility Board to increase the subsidy for Click's commercial telecommunications services. And the Council and Public Utility Board should take immediate action to eliminate all of TPU's electric utility revenue subsidy to Click.

February 07 2018 3:27 PM

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

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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

DEFENDANT'S OPPOSITION TO PARTIAL SUMMARY
JUDGMENT MOTION

K&L GATES LLP
925 FOURTH AVENUE, SUITE 2900
SEATTLE, WA 98104-1158
TELEPHONE: +1 206 623 7580
FACSIMILE: +1 206 623 7022

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; Gyaltsen 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 *Flessner 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
25

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.

24 ¹¹ Plaintiffs take references to “subsidies” in TPU’s 2013 Management Review (the “Sage Report”) out of
25 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
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
25 impacting Power Fund financials and electric ratepayers. *Id.*

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.

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

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

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

17 18. Historical review of the financial statements of Tacoma Power show that
18 total costs incurred by Click exceed the revenues generated by Click. Neither Moss
19 Adams LLP, the accounting firm that audits Tacoma Power every year, nor the
20 Washington State Auditor's Office has raised an issue with the losses recorded in the
21 Click sub-fund. The reason why this has never been an issue for Moss Adams LLP or the
22 Washington State Auditor's Office is because the telecommunications system, including
23 Click's sale of excess capacity on the telecommunications system, is part of the Power
24 Fund and only the Power Fund must have positive cash balance at year-end.
25

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.

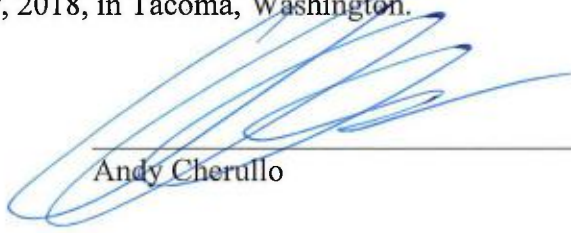
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EXHIBIT A



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

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

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

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

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

17	18	19	20
	Authorizing	Bonds	Principal
	Ordinance	Dated	Amount Issued
21	23663	July 1, 1986	\$ 30,000,000
22	24073	May 1, 1988	60,400,000
23	24296	May 1, 1989	48,500,000
24	25004	December 1, 1991	13,800,000
25	25004	December 5, 1991	42,400,000
26	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 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
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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
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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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1 necessary to pay principal of and interest on Bonds, and may be used to pay any Rebate
2 Amount.

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

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

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

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

15 **ARTICLE VII**

16 **SALE OF BONDS**

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

19 Section 7.2. Official Statement; Insurance. The Director and/or Deputy Director of
20 Utilities are authorized to prepare a preliminary official statement for the marketing of the
21 Bonds and to solicit bids for bond insurance. The Bond Sale Resolution shall approve the
22 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

2. Requesting Department/Division/Program Tacoma Public Utilities/Light Division	Sponsored By Steve Klein	Phone/Extension 8203
3. Contact Person (for questions): Steve Klein	Phone/Extension 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 that reads '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)

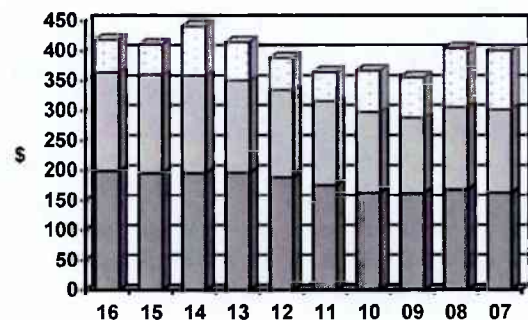
<u>Description</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>16/15 Increase (Decrease)</u>	<u>15/14 Increase (Decrease)</u>
Net Utility and Non-Utility Plant	\$ 1,033,591	\$ 1,002,993	\$ 979,067	\$ 30,598	\$ 23,926
Current Assets, Other Assets and Special Funds	384,884	392,482	525,770	(7,598)	(133,288)
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.

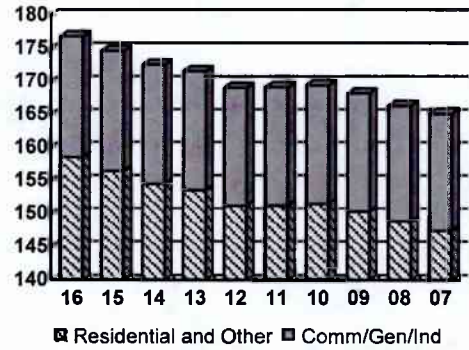
Distribution operations expense decreased \$3.6 million (26.4%) primarily due to the updated cost allocation between Power and Click! and the implementation of GASB 68, resulting in a \$1.3 million decrease in pension expense.

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.

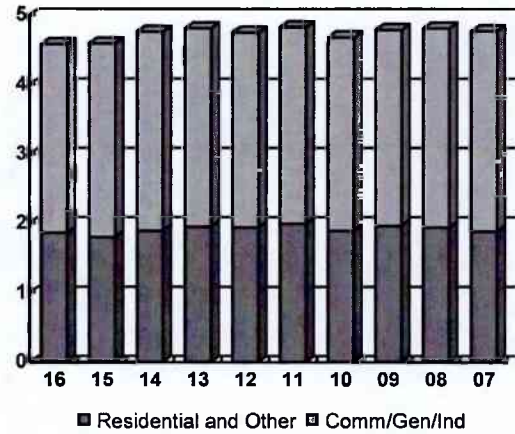
NUMBER OF CUSTOMERS
(in thousands)



Megawatt-hours Billed

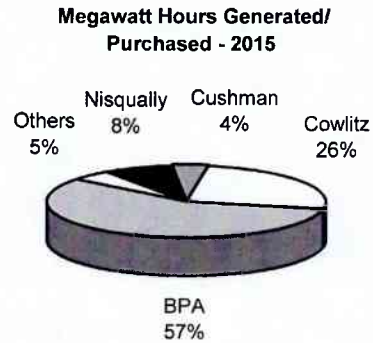
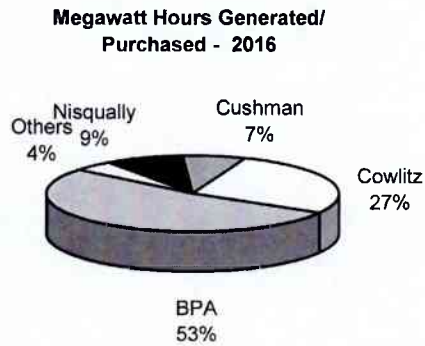
Megawatt-hours billed to residential and other customers increased 3.3% in 2016, while commercial / general / industrial billings decreased 2.5%. Wholesale power billed in 2016 was 2,731,076 megawatt-hours compared to 1,917,685 in 2015, an increase of 813,391 megawatt-hours or 42.4%. During 2016 hydro 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)



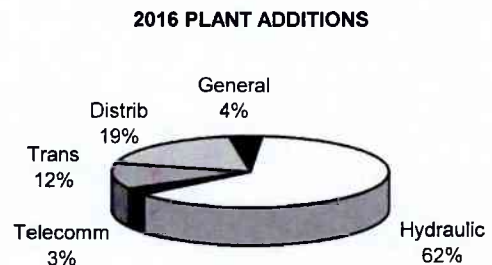
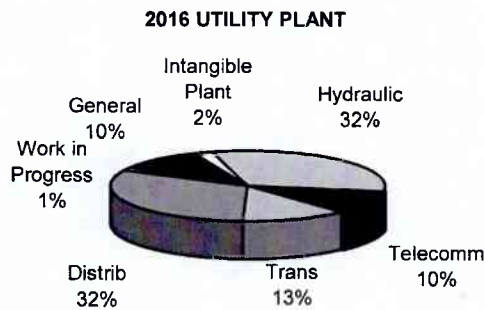
Sources of Power

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.

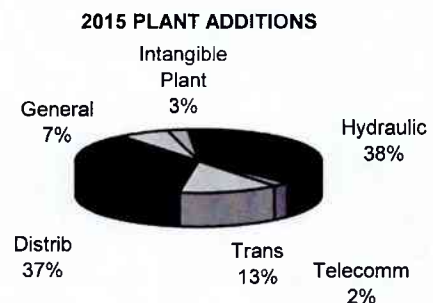
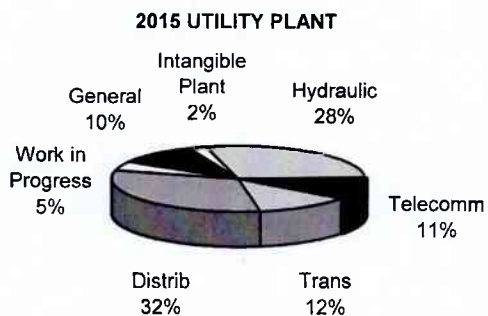


Utility Plant and Plant Additions

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 Increase (Decrease)</u>	<u>15/14 Increase (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

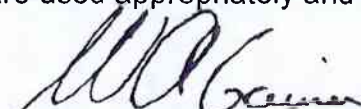
Tacoma Power is required by its bond covenants to maintain a debt service coverage ratio of 1.25. In 2016, principal and interest were covered 2.94 times compared to 2.54 times in 2015 and 2.26 times in 2014.

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				Balance
	December 31, 2015				Additions
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)

	Balance December 31, 2014	Additions	Retirements	Transfers & Adjustments	Balance December 31, 2015
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 General Plant	17,537,662	609,899	-	-	18,147,561
Telecommunications Plant	197,036,437	3,204,314	-	(80,328)	200,160,423
Total Utility Plant in Service	207,244,967	953,617	-	-	208,198,584
Less Accumulated Depreciation	1,817,897,475	47,034,053	(3,708,611)	(80,328)	1,861,142,589
Construction Work In Progress	893,801,525	57,381,578	(3,518,449)	(1,381,301)	946,283,353
Net Utility Plant	924,095,950	(10,347,525)	(190,162)	1,300,973	914,859,236
	54,789,325	80,107,465	-	(46,945,152)	87,951,638
	<u>\$ 978,885,275</u>	<u>\$ 69,759,940</u>	<u>\$ (190,162)</u>	<u>\$ (45,644,179)</u>	<u>\$ 1,002,810,874</u>

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:

	Principal	Interest
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
	\$ 371,065,000	\$ 276,112,740

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:

Issue	Amount
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
	\$ 57,385,000

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	<u>262</u>
Total active members	<u>2,927</u>
Total membership	<u><u>5,805</u></u>

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)	<u>\$ 19,468,207</u>	<u>\$ 1,257,024</u>
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	<u>\$ 82,741,128</u>	<u>\$ 10,890,990</u>

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	630,483,000	511,592,000	118,891,000	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	507,618,000	272,457,000	235,161,000	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	1,989,438,000	1,630,130,000	359,308,000	22.0%
Generated - Wynoochee	37,209,000	12,680,000	24,529,000	193.4%
Generated - Hood Street	2,942,400	1,889,500	1,052,900	55.7%
Tacoma's Share of Priest Rapids	26,975,000	25,360,000	1,615,000	6.4%
Tacoma's Share of GCPHA	253,625,000	258,679,000	(5,054,000)	-2.0%
TOTAL KWH GENERATED - TACOMA SYSTEM	3,448,290,400	2,712,787,500	735,502,900	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	(2,438,369,000)	(1,569,981,000)	(868,388,000)	55.3%
TOTAL KWH GENERATED, PURCHASED AND INTERCHANGED ..	4,817,291,400	4,816,946,500	344,900	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	(24,475,004)	3,429,073	(27,904,077)	-813.7%
TACOMA SYSTEM FIRM LOAD	4,808,421,479	4,827,286,347	(18,864,868)	-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	4,627,527,570	4,587,347,213	40,180,357	0.9%
Bulk Power Sales	2,731,076,000	1,917,685,000	813,391,000	42.4%
TOTAL KWH BILLED	7,358,603,570	6,505,032,213	853,571,357	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

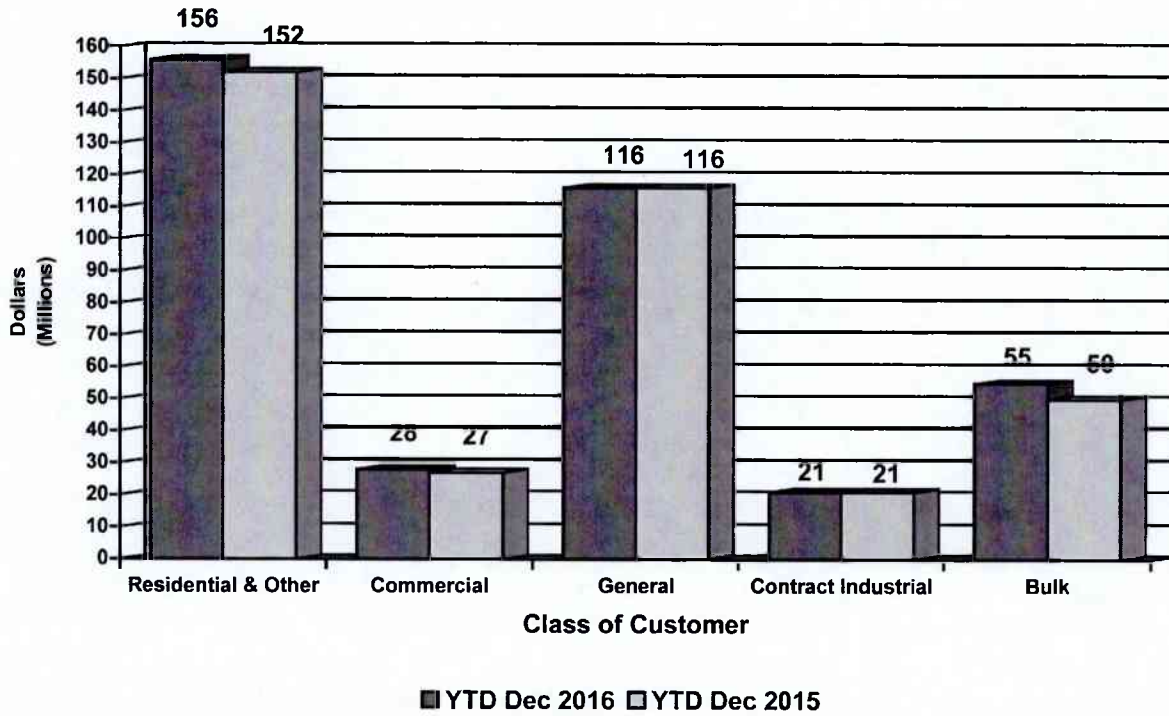
Customer Charge	\$210.00 per month
Energy (all energy measured in kilowatt-hours)	\$0.035175 per kWh
Delivery (all kilowatts of Billing Demand delivered)	\$4.00 per kW

Other schedules also now in effect are:

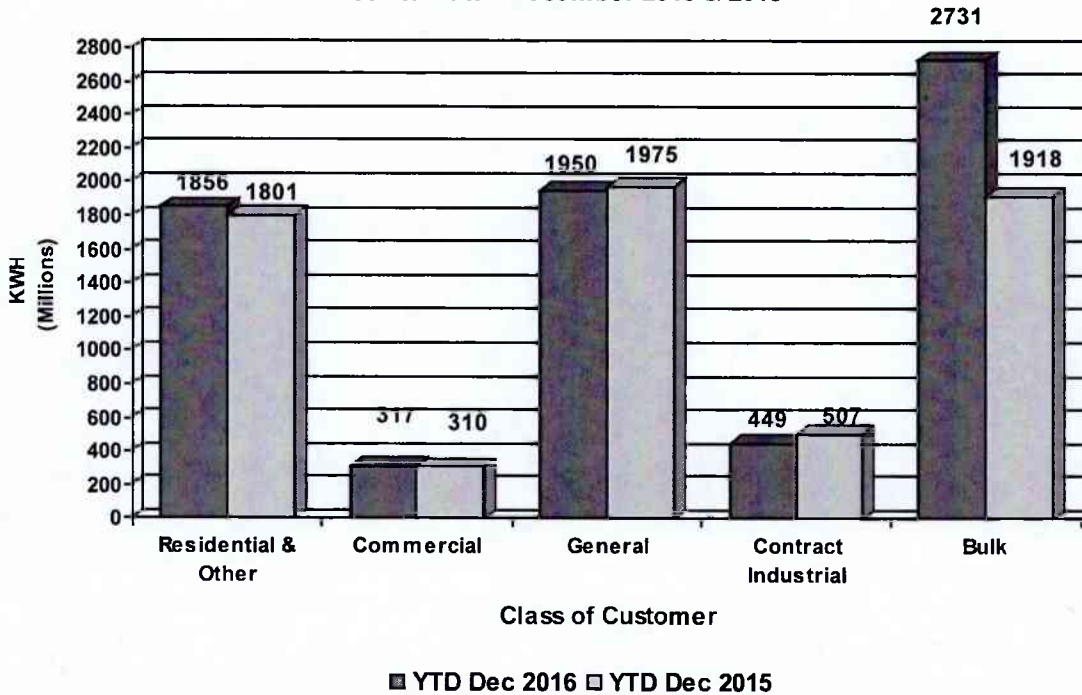
- CP - Contract Industrial Service (major industrial power use - written contract required)
- H-1 - Street Lighting and Traffic Signal Service
- H-2 - Private Off-Street Lighting Service

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

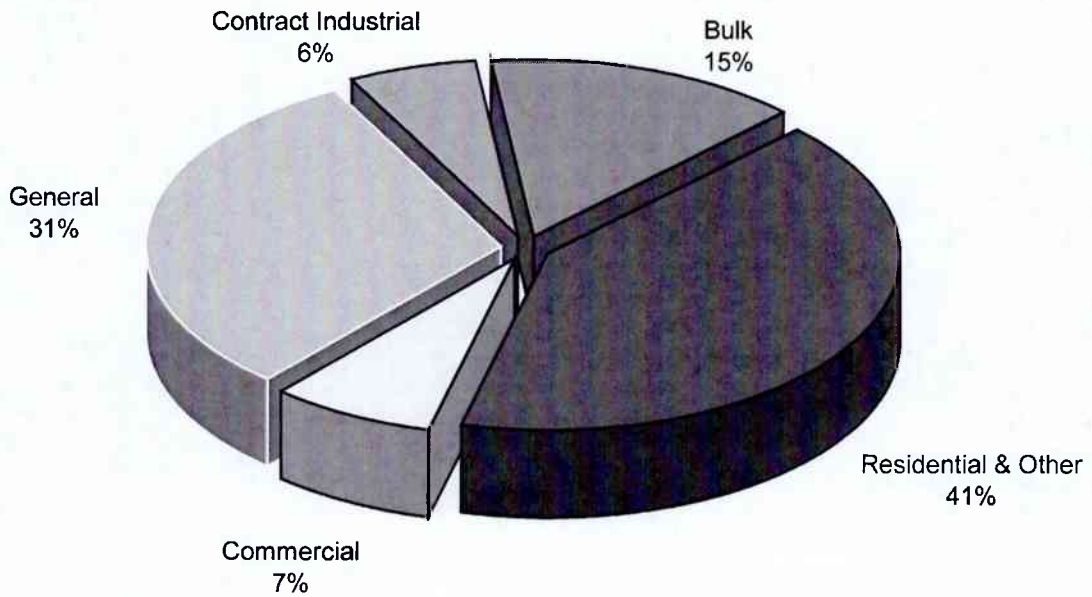
SALES OF ELECTRIC ENERGY
Year to Date - December 2016 & 2015



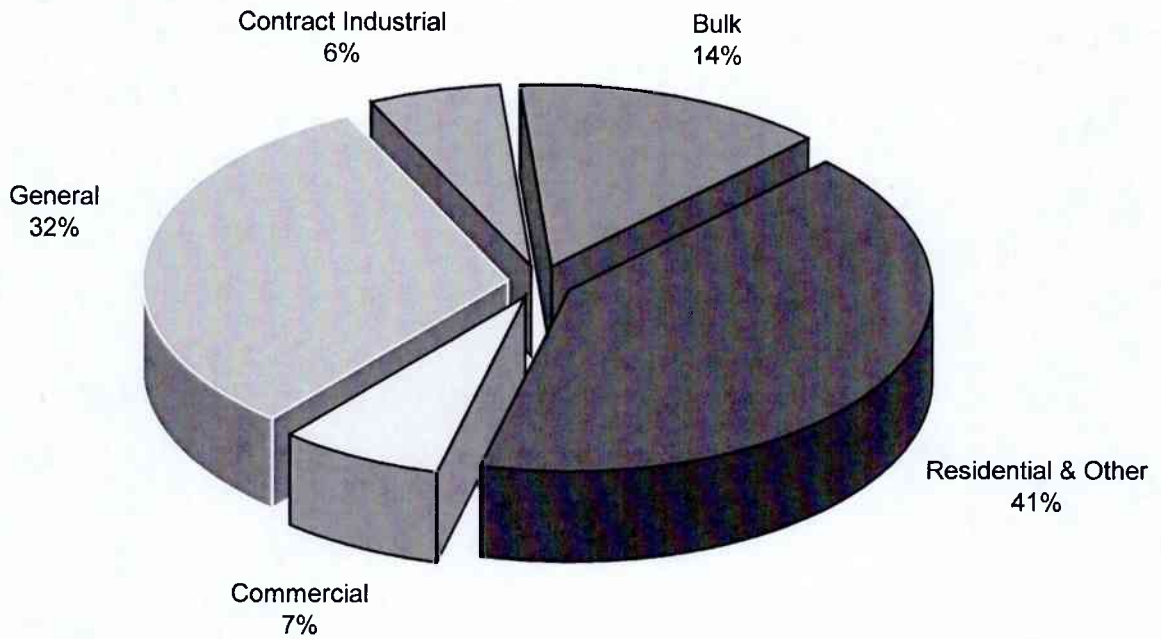
TOTAL POWER BILLED
Year to Date - December 2016 & 2015



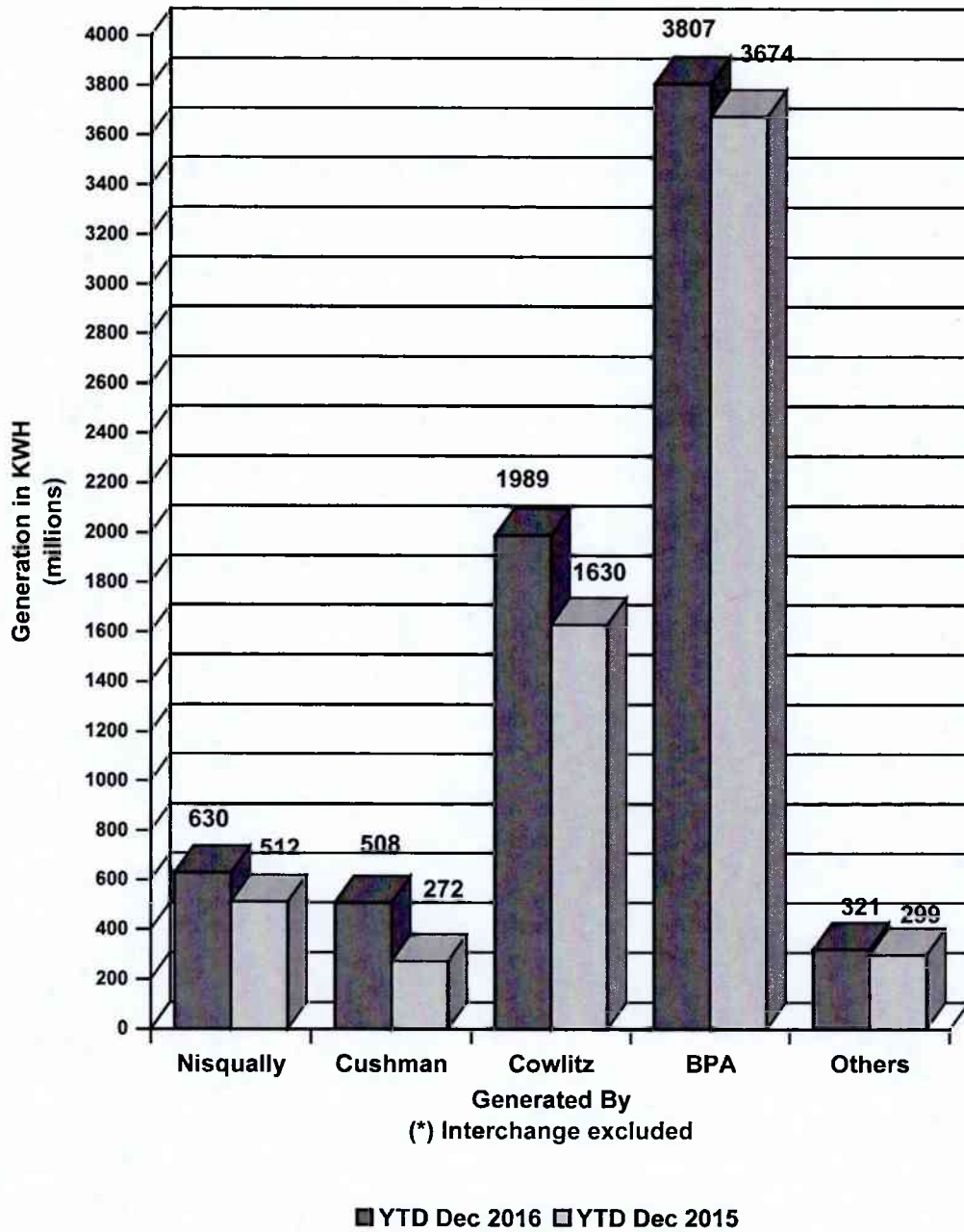
SALES OF ELECTRIC ENERGY
Year to Date - Dec 2016 (\$374,249,290)



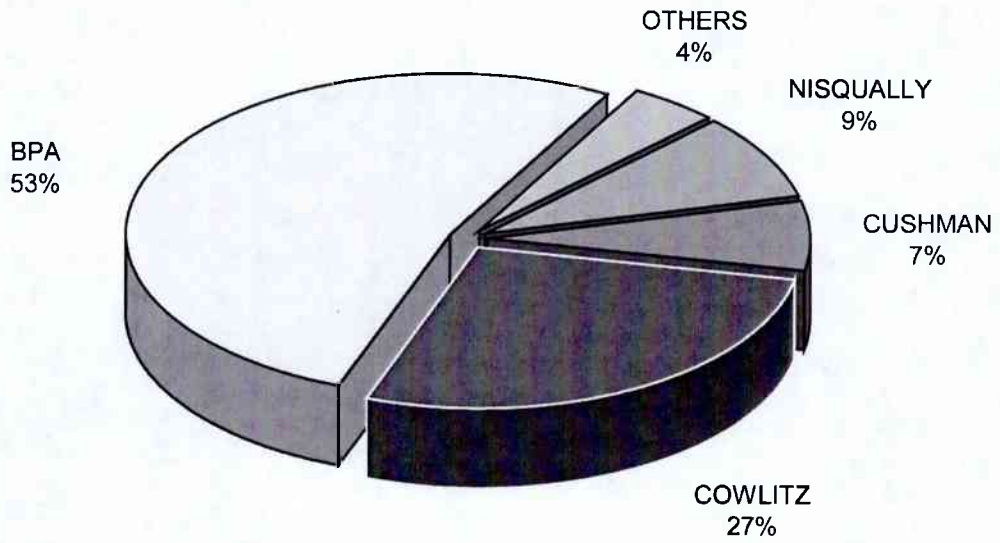
SALES OF ELECTRIC ENERGY
Year to Date - Dec 2015 (\$366,263,055)



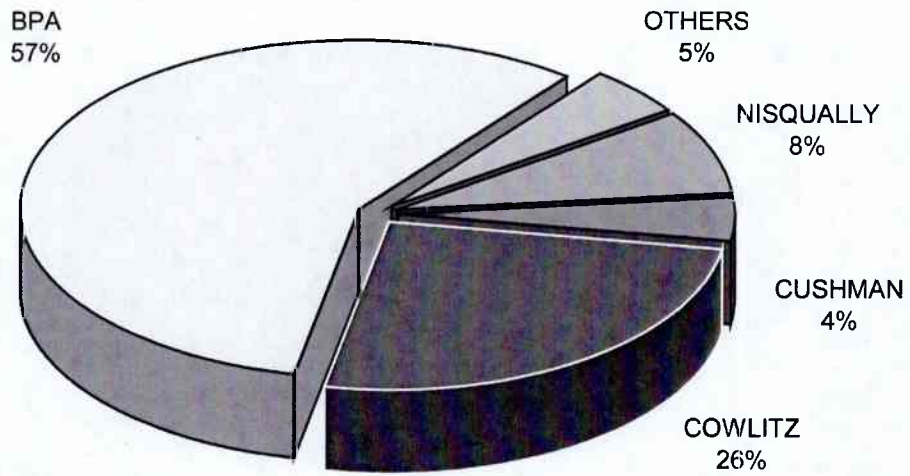
POWER SOURCES (*) Year to Date December 2016 & 2015



POWER SOURCES (*)
Year to Date - December 2016

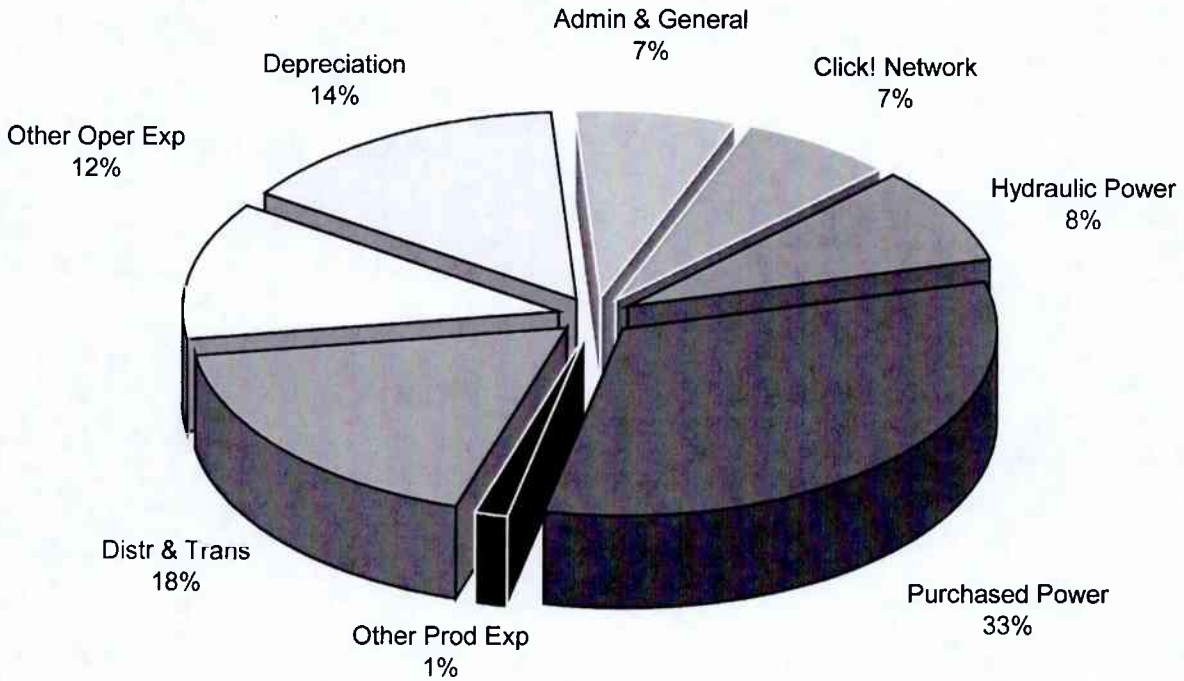


POWER SOURCES (*)
Year to Date - December 2015

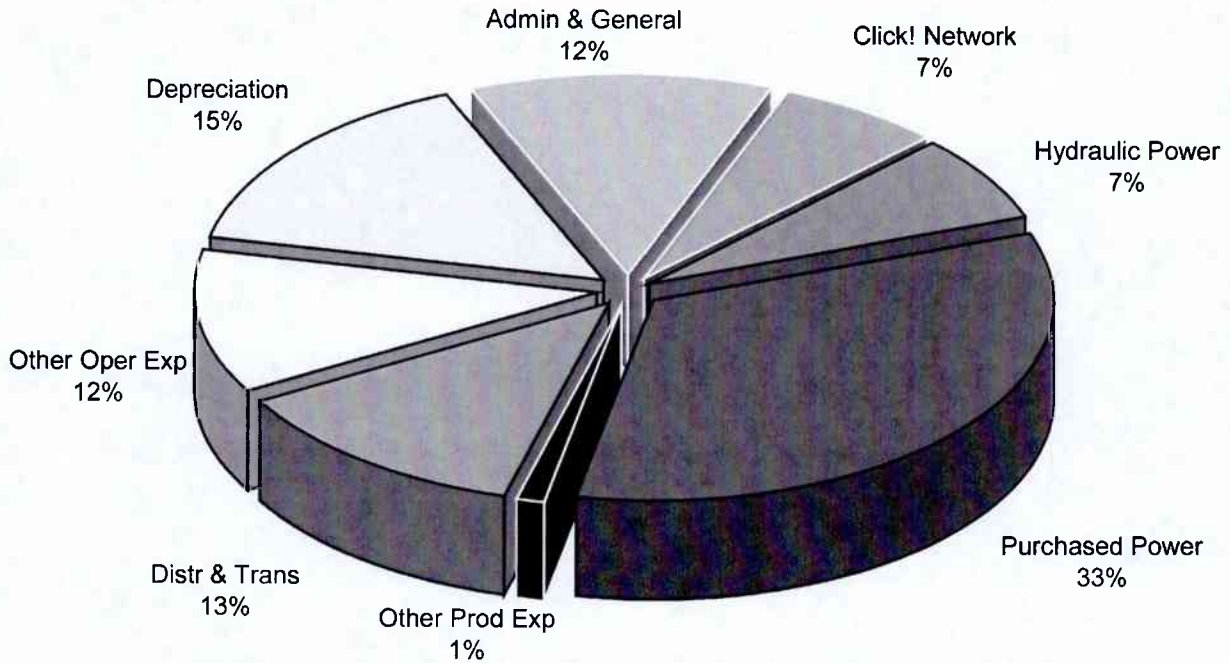


(*) Interchange excluded

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

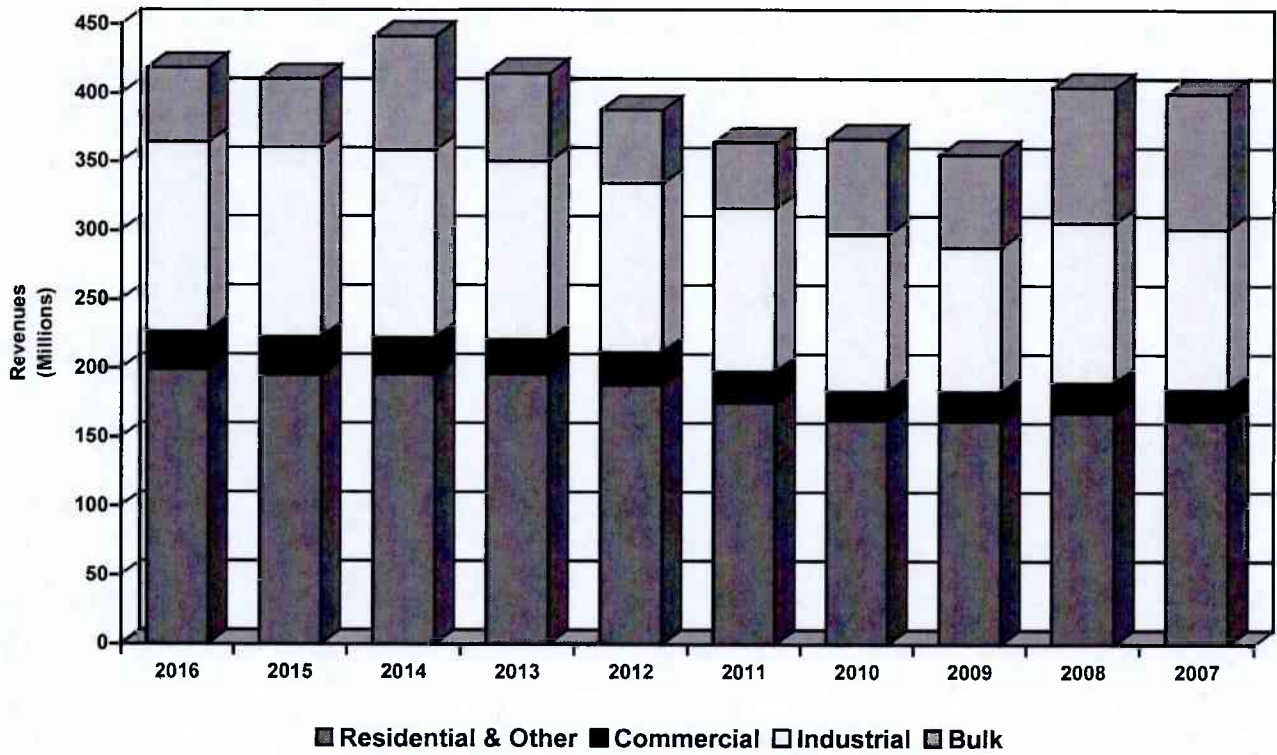


TOTAL OPERATING EXPENSES *
Year to Date - Dec 2015 (\$376,576,115)

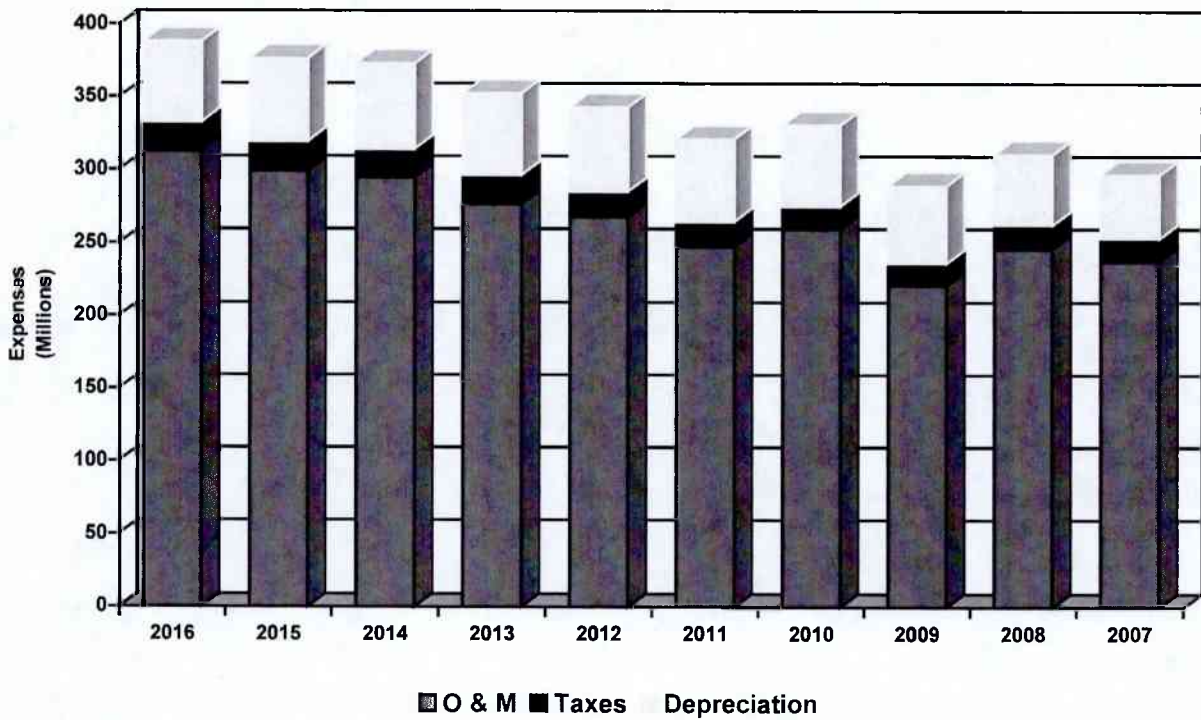


* City Gross Earnings Taxes are not included in Total Operating Expenses.

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.

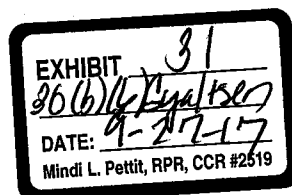
Background

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.



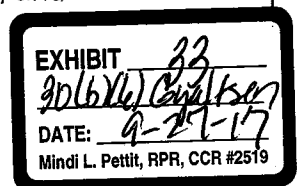
AMENDED RESOLUTION NO. U-10879

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
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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 Murt
Activity Murt's group

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%)	\$ 1,920,554
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

DECLARATION OF GARY SALEBA
IN SUPPORT OF DEFENDANT’S OPPOSITION
TO PARTIAL SUMMARY JUDGMENT - 1

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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.

DECLARATION OF GARY SALEBA
IN SUPPORT OF DEFENDANT'S OPPOSITION
TO PARTIAL SUMMARY JUDGMENT - 2

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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

DECLARATION OF GARY SALEBA
IN SUPPORT OF DEFENDANT'S OPPOSITION
TO PARTIAL SUMMARY JUDGMENT - 3

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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

DECLARATION OF GARY SALEBA
IN SUPPORT OF DEFENDANT’S OPPOSITION
TO PARTIAL SUMMARY JUDGMENT - 5

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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.

DECLARATION OF GARY SALEBA
IN SUPPORT OF DEFENDANT'S OPPOSITION
TO PARTIAL SUMMARY JUDGMENT - 6

K&L GATES LLP
925 FOURTH AVENUE SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

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.

DECLARATION OF GARY SALEBA
IN SUPPORT OF DEFENDANT'S OPPOSITION
TO PARTIAL SUMMARY JUDGMENT - 7

K&L GATES LLP
925 FOURTH AVENUE SUITE 2900
SEATTLE, WASHINGTON 98104-1158
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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

DECLARATION OF GARY SALEBA
IN SUPPORT OF DEFENDANT'S OPPOSITION
TO PARTIAL SUMMARY JUDGMENT - 8

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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

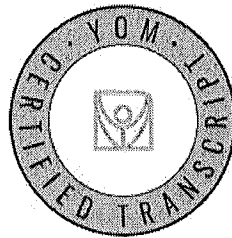
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SUPERIOR COURT OF WASHINGTON, PIERCE COUNTY

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).)	

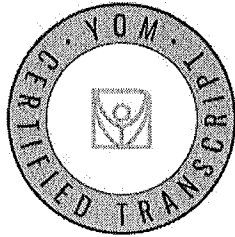
30(b)(6) Deposition Upon Oral Examination of
 CITY OF TACOMA
 ANDREW CHERULLO

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

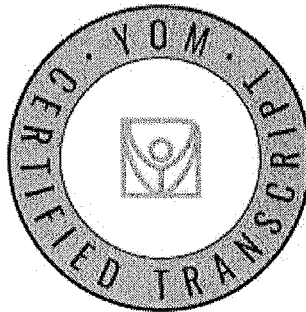
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SUPERIOR COURT OF WASHINGTON, PIERCE COUNTY

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



1
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



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

4 B. In this Eighth Supplemental Ordinance:

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

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

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

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

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

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

20 Section 1.3. Authority for this Eighth Supplemental Ordinance. This Eighth
21 Supplemental Ordinance is adopted pursuant to the provisions of the laws of the State of
22 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
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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.



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
12 accordance with such call for redemption) interest on said Bonds so called for redemption shall
13 cease to accrue.

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

20 This bond shall be transferable by the registered owner at the principal offices of the
21 Bond Registrar upon surrender and cancellation of this bond, and thereupon a new registered
22 bond or bonds of the same principal amount and interest rate and maturity will be issued to the
23 transferee as provided in the Bond Ordinance. The City, the Bond Registrar, the Paying
24 Agents and any other person may treat the person in whose name this bond is registered as the
25 absolute owner hereof for the purpose of receiving payment hereof and for all purposes and
26 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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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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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 _____ 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

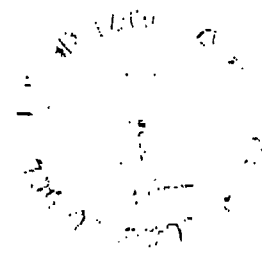
I, the undersigned, the duly chosen, qualified and acting City Clerk of the City of Tacoma, Washington, and keeper of the records of the City Council (herein called the "Council"), DO HEREBY CERTIFY:

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.

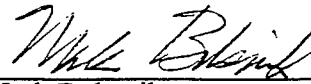
PRESTON GATES & ELLIS

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

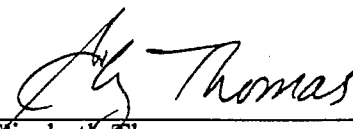
1 This Court should grant the City's request to appoint Harold E. Nielsen, Jr., as the taxpayer
2 and ratepayer representative. Nielsen, a real estate appraiser in the Pierce County Assessor-
3 Treasurer's Office and a former member of the Tacoma City Council, Tacoma Civil Service Board,
4 and Tacoma 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.

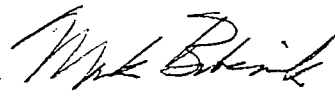
13 The City does not believe that it is necessary to specify a particular amount of attorney's fees
14 and costs to be paid to counsel for Nielsen. The City anticipates that all parties and their counsel will
15 take appropriate actions to litigate thoroughly the issues in this matter without incurring 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
26

MEMORANDUM IN SUPPORT OF CITY OF TACOMA'S
MOTION TO APPOINT TAXPAYER REPRESENTATIVE AND
TO ALLOW FEES AND COSTS - 2

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SEATTLE, WASHINGTON 98104-7078
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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.

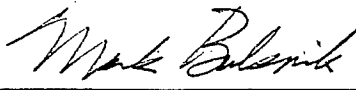
7 5. Mr. Nielsen holds an associate of liberal arts degree from Tacoma Community College
8 and attended the University of Puget Sound.

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
20 
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

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,)
Plaintiff,)
v.)
THE TAXPAYERS AND THE RATEPAYERS)
OF THE CITY OF TACOMA,)
Defendants.)

No. 96 2 09938 0
MOTION FOR CERTIFICATION
OF CLASS ACTION AND FOR
APPOINTMENT OF CLASS
REPRESENTATIVE

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

By *Mark Buberik*
by Elizabeth Thomas
Mark Buberik, WSBA # 3093
Chief Assistant City Attorney

Attorneys for Plaintiff City of Tacoma

MOTION FOR CERTIFICATION OF CLASS ACTION AND FOR
APPOINTMENT OF CLASS REPRESENTATIVE - 2

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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,)
)
) 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

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.
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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 Bubbenik*
9 By *Elizabeth Thomas*
10 Mark Bubbenik, 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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A.M. **AUG 16 1996** P.M.
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

Received
AUG 19 1996
Preston Gates & Ellis

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

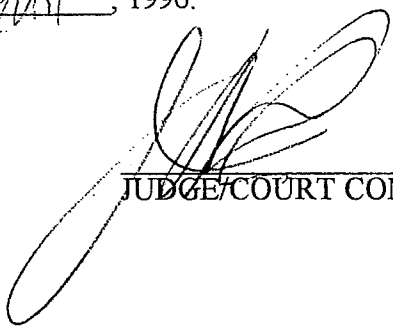
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TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

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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.

DATED this 16 day of August, 1996.



JUDGE/COURT COMMISSIONER

Presented by:

PRESTON GATES & ELLIS

By Elizabeth Thomas
Elizabeth Thomas, WSBA # 11544

City of Tacoma

By Mark Bubenik
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
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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FILED IN COUNTY CLERK'S OFFICE

REC'D BY SUPERIOR COURT ADMINISTRATION

The Honorable Grant L. Anderson

NOV 06 1996

PIERCE COUNTY, WASHINGTON
TED RUFF, COUNTY CLERK
BY _____ DEPUTY

3:00 pm

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RESIDENTIAL CONSERVATION

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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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 Telecommunications Service. 10

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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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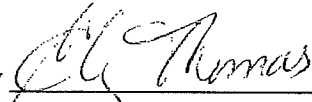
VI. CONCLUSION

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

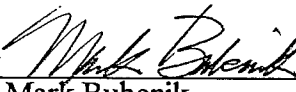
By 
Mark Bubenik, WSBA # 3093
Chief Assistant City Attorney
Attorneys for Plaintiff City of Tacoma

EXHIBIT H

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The Honorable Grant L. Anderson

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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:

- 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.

25
26
**DECLARATION OF JON ATHOW IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 4**

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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.

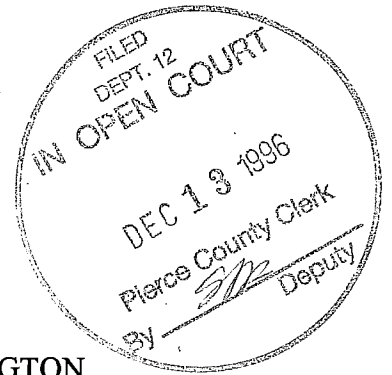
9 THOMPSON, KRILICH, LA PORTE,
10 TUCCI & WEST, P.S.

11
12 By: 

13 Ronald E. Thompson, WSB #4005
14 Heidi E. Imhof, WSB #23083
15 Attorneys for Defendants
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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

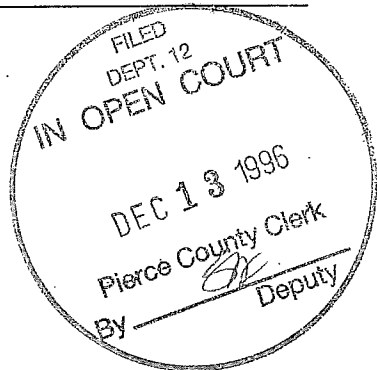
JUDGE

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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Honorable Grant L. Anderson

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THOMPSON, KRILICH, LAPORTE
TACOMA, WASH. 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. 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
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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 been alleged.

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13 The City requests that the Court enter judgment declaring that:

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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,
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1 dated November 5, 1996 ("First Athow Decl.") and the Second Declaration of Jon Athow in Support
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3 Plaintiff, the City of Tacoma, is a municipal corporation and a city of the first class of the
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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*
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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
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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
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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
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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
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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
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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
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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,

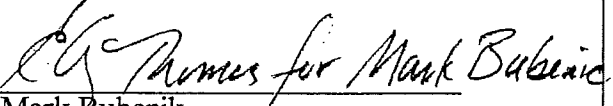
11 PRESTON GATES & ELLIS

12
13 By 

14 Elizabeth Thomas, WSBA # 11544

Laura A. Rosenwald, WSBA # 25722

15 CITY OF TACOMA

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17 By 

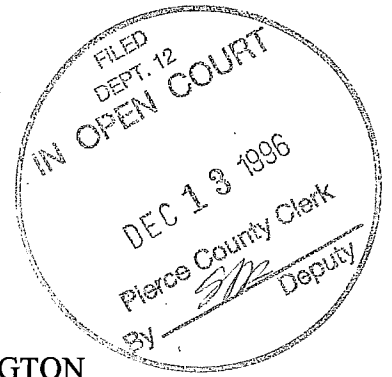
18 Mark Bubenik, WSBA #3093

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,)
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) Plaintiff,)
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) v.)
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) 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

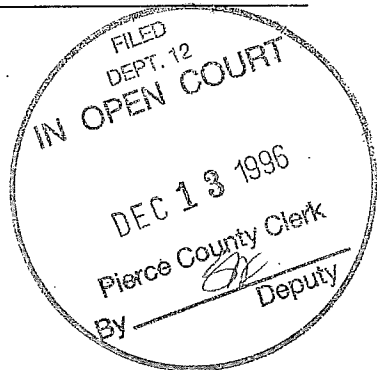
JUDGE

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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THOMPSON, KRILICH, LAPORTE
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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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8 DATED this 11th day of April, 1997.

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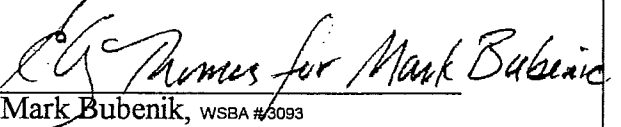
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Laura A. Rosenwald, WSBA # 25722

15 CITY OF TACOMA

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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
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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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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
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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

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WHEREAS the City of Tacoma, Department of Public Utilities, Light Division desires to: (1) develop a state-of-the art fiber optic system to support enhanced electric system control, reliability and efficiency; (2) develop capability to meet the expanding telecommunications requirements in an evolving competitive electric market, the most critical of which is real-time, two-way interactive communications with individual energy consumers, (3) create greater revenue diversification through new business lines (i.e. internet transport, cable TV, etc.), (4) enhance traditional products and services, and (5) maximize return on Light Division assets, and

WHEREAS these desired capabilities can be provided with a broad band telecommunications system for all of the Light Division's service area, and

WHEREAS a broad band telecommunications system will have available capacity for future City Light Division needs and will also have the capacity to provide telecommunications services for data transport, high speed internet access, full cable television service, and other uses, and

WHEREAS the Light Division has retained consultants to review and analyze the feasibility of a broad band telecommunications system for the Light Division's service area, and a business plan has been prepared for this purpose (copies are on file with the Clerk), and

WHEREAS the cost of constructing, installing and commencing to operate a broad band telecommunications system will be approximately \$65 million dollars, but the benefits to the Light Division, the City and the Light Division customers are projected to exceed and justify the initial cost, and

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



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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

heil136051Response.sj

THOMPSON, KRILICH, LA PORTE,
TUCCI & WEST, P.S.
ATTORNEYS AT LAW
524 TACOMA AVE. SO.
TACOMA, WASHINGTON 98402-5416

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821

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,

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DEFENDANT'S RESPONSIVE MEMORANDUM IN
OPPOSITION TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT- 2

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TACOMA, WASHINGTON 98402 5416

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

26 DEFENDANT'S RESPONSIVE MEMORANDUM IN
OPPOSITION TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT- 3

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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
11 The municipal bond issue is extremely important. The credit rating of cable
12 companies is normally substandard and risky, and the city of Tacoma has not even
13 considered the affect of a lower credit rating for their municipal bonds. (Declaration of W.
14 Cary Deaton) The City of Tacoma has been proceeding full speed ahead with this project
15 with a blind eye towards the legality of issuing bonds on this project. Mr. Steve Klein, City
16 Light Superintendent, still doesn't know how much the project will cost or where exactly the
17 money is coming from or what it is being spent on. (Excerpts from City Council meeting
18 dated 4/8/97)
19

20 If and when this telecommunications system is finished, only 3% of the revenues to
21 pay for the system will come from utility services. This project cannot be paid for without
22 cable television and internet services. Yet, on page three (3) of the City's own motion they
23 state only that they "may . . . provide cable television service."
24

25 Even with providing cable television services, the City's financial plan is seriously

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DEFENDANT'S RESPONSIVE MEMORANDUM IN
OPPOSITION TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT- 4

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TACOMA, WA 98501-3002

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
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26

DEFENDANT'S RESPONSIVE MEMORANDUM IN
OPPOSITION TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT- 5

heil13605\Response.sj

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.

DEFENDANT'S RESPONSIVE MEMORANDUM IN
OPPOSITION TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT- 6

hei13605\Response.sj

THOMPSON, KRILICH, LA PORTE,
TUCCI & WEST, P.S.
ATTORNEYS AT LAW
524 TACOMA AVE. SO.
TACOMA, WASHINGTON 98501-3116

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

DEFENDANT'S RESPONSIVE MEMORANDUM IN
OPPOSITION TO CITY OF TACOMA'S MOTION
FOR SUMMARY JUDGMENT- 7

heil13605\Response.sj

THOMPSON, KRILICH, LA PORTE,
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ATTORNEYS AT LAW
524 TACOMA AVE. SO.
TACOMA, WASHINGTON 98402-5416

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
26

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

heil13605\Response.sj

THOMPSON, KRILICH, LA PORTE,
TUCCI & WEST, P.S.
ATTORNEYS AT LAW
524 TACOMA AVE. SO.

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)
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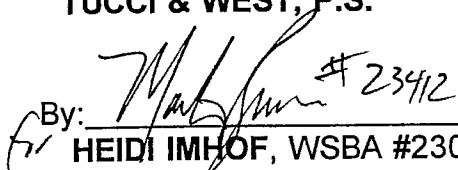
25 The cable television service and the telephony services are not incidental to the City's
26

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

hei136051Response.sj

EXHIBIT N

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The Honorable Grant L. Anderson

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SUPERIOR COURT
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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").

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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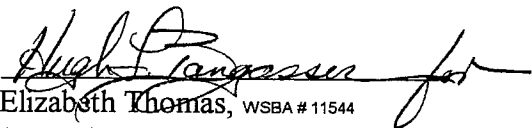
IV. CONCLUSION

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

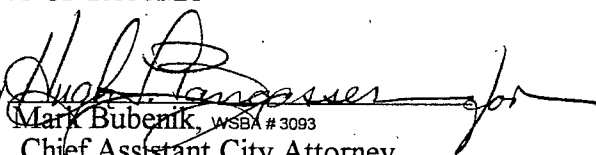
By 
Mark Buberik, WSBA # 3093
Chief Assistant City Attorney
Attorneys for Plaintiff City of Tacoma

EXHIBIT O

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The Honorable Grant L. Anderson

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SUPERIOR COURT
ADMINISTRATION

MAY 5 1997

THOMPSON, KRILICH, LAPORTE
ATTORNEYS AT LAW

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A.M. MAY 05 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

DECLARATION OF STEVEN J. KLEIN
IN SUPPORT OF CITY'S REPLY

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

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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.

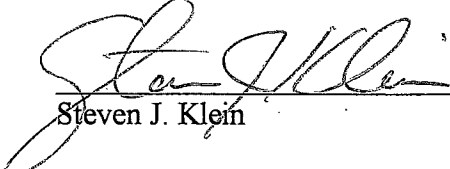
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25 Steven J. Klein
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EXHIBIT P

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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

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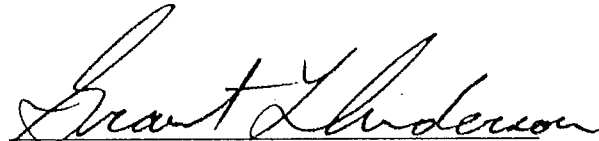
11/1 however the court is making no finding as to the financial feasibility of the Project or as to the legality of any future bond issues. 11/16

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.

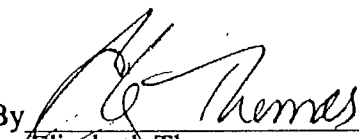
5 The City has authority under the laws of the State of Washington and the United States to
6 issue the Bonds for the purposes set forth in paragraphs (3) and (4) in this Court's Order dated
7 December 13, 1996 and in the manner set forth in the Bond Ordinance.

8 DONE IN OPEN COURT this 9th day of May, 1997.

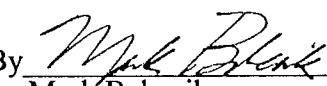
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10 
11 JUDGE


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

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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.

DECLARATION OF CHRIS ROBINSON
IN SUPPORT OF DEFENDANT'S OPPOSITION
TO PARTIAL SUMMARY JUDGMENT - 1

K&L GATES LLP
925 FOURTH AVENUE SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

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

DECLARATION OF CHRIS ROBINSON
IN SUPPORT OF DEFENDANT’S OPPOSITION
TO PARTIAL SUMMARY JUDGMENT - 4

K&L GATES LLP
925 FOURTH AVENUE SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

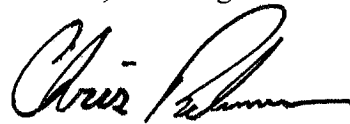
1 in Tacoma Power's service territory. I also understand that the telecommunications
2 system is valuable to internet service providers and cable television providers, which is
3 evidenced by the lease proposal that Tacoma Power received from WAVE Broadband in
4 2015. This may include the latent value 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.

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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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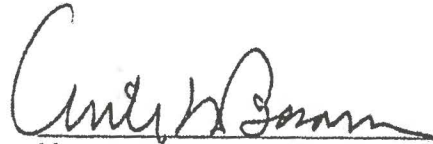


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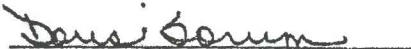
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

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.

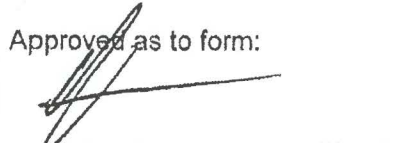
Adopted FEB 10 2009


Mayor

Attest:


City Clerk

Approved as to form:


Assistant City Attorney



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 WHEREAS Tacoma Power has determined that the properties are no
16 longer needed for continued utility services, and has declared them surplus
17 property to its needs, and

18 WHEREAS Tacoma Power requests that the Utility Board and Tacoma
19 City Council approve the Declaration of Surplus of these properties in
20 anticipation of their eventual sale; Now, Therefore,

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

22 That the nine substation properties (as further described in Exhibit A)
23 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, Fairmount 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, Rosted'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

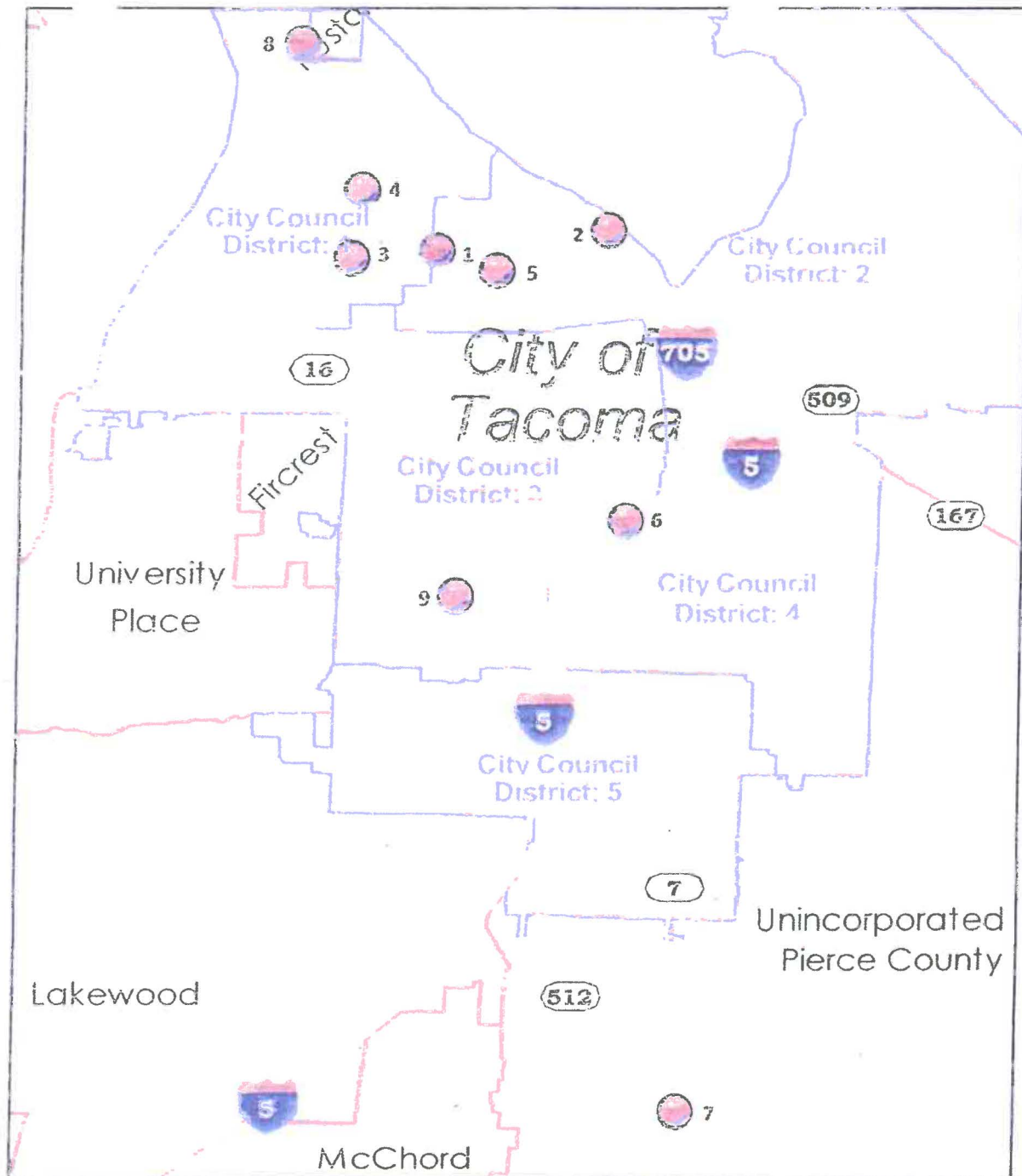


EXHIBIT "B"

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> Chief Deputy City Attorney	<u>Aaron Hake</u> Secretary
<u>Charles Jacobs</u> Clerk	Adopted <u>10-11-17</u>

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.

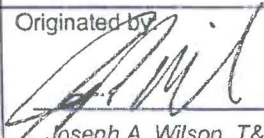
4. Attachments:

- 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

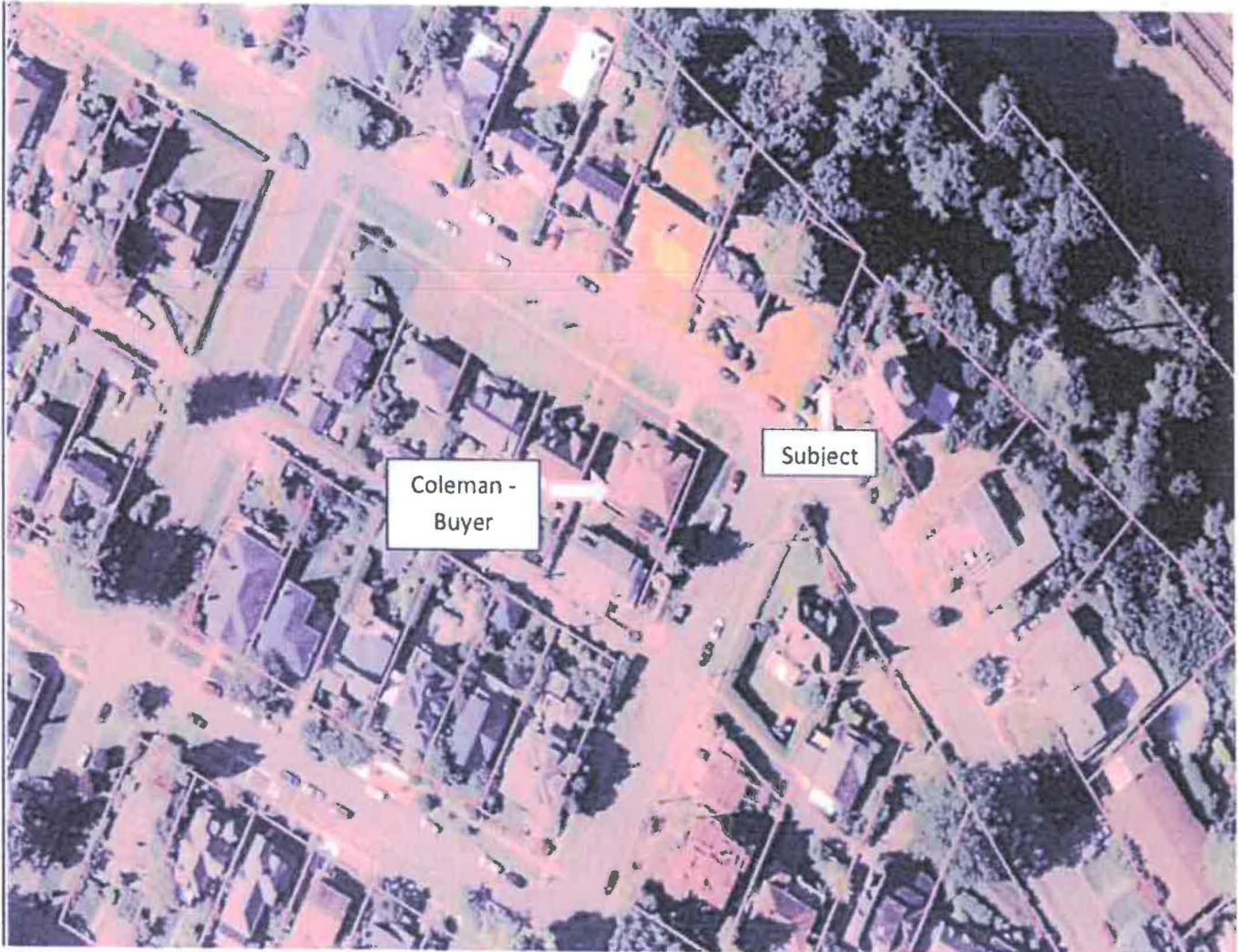
Pierce County Tax Parcel No. 0321322021

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

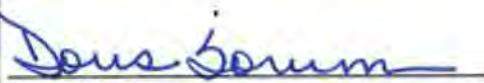


1 property to Ronald L. and Linda R. Coleman for the amount of \$72,100, said Quit
2 Claim Deed to be substantially in the form of the deed on file in the office of the
3 City Clerk.
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5 Adopted NOV 21 2017
6

7 
8 Mayor

8 Attest:

9 
10 City Clerk

11 Approved as to form:

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14 City Attorney

15 Requested by Public Utility Board
16 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
- 15 1) At its sole expense, Pierce Co. will complete the property segregation
16 process to include preparation of associated easements as needed to
17 reconfigure that portion of Tacoma Water's Tax Parcel No. 0419141000
18 property included in the sale.
 - 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



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the Property surplus to Tacoma Water's needs pursuant to RCW 35.94.040 and
TMC 1.06.272-.278; Now, Therefore,

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

Sec. 1. That it is in the best interests of the City of Tacoma to approve
the negotiated sale in fee of approximately 106 acres of property located east of
the McMillin Reservoirs at 13004 Reservoir Road E, Puyallup, in Pierce County,
Washington, with reservation of identified easements, and as more fully
described in the documents on file with the Clerk of the Board, to the Pierce
County Department of Parks and Recreation.

Sec. 2. That the Property is not essential for continued effective utility
service by Tacoma Water and is properly declared surplus property and excess
to Tacoma Water's needs.

Sec. 3. That in order to complete the transaction, Pierce County will
complete the segregation process to include preparation of associated
easements needed to reconfigure a portion of the property included in the sale,
and Tacoma Water will seek Board and Council approval for a declaration of
surplus property and approval of sale by December 29, 2017.

Sec. 4. That the City Council is requested to hold a public hearing on this
matter pursuant to RCW 35.94.040, and thereafter approve this recommended
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

Charlene [Signature]
Clerk

Monique [Signature]
Chair

[Signature]
Secretary

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

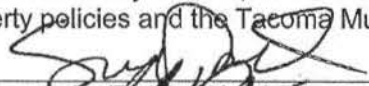
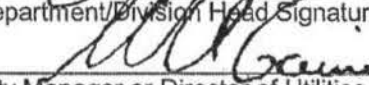
- Declaration of Surplus Personal Property
 Declaration of Surplus Real Property
 Declaration of Unusable Personal Property¹

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



TAC_PRA_HF_0009093

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.

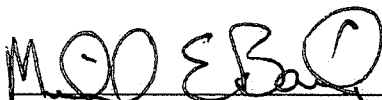

Michael Bailey

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

DECLARATION OF STEVEN KLEIN
IN SUPPORT OF DEFENDANT’S OPPOSITION
TO PARTIAL SUMMARY JUDGMENT - 1
500998202 v3
500998202 v4

K&L GATES LLP
925 FOURTH AVENUE SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

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

DECLARATION OF STEVEN KLEIN
IN SUPPORT OF DEFENDANT'S OPPOSITION
TO PARTIAL SUMMARY JUDGMENT - 2
500998202 v3
500998202 v4

K&L GATES LLP
925 FOURTH AVENUE SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

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

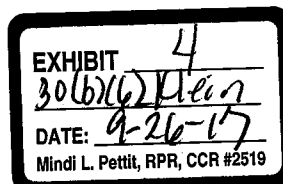
Payment of the principal of and interest on the Series A Bonds maturing in the years 2010 through 2017, inclusive, and the Series B Bonds maturing in the years 2006 through 2016, inclusive (collectively, the "Insured Bonds") when due will be insured by bond insurance policies to be issued by Financial 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

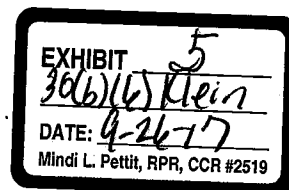
**Click! Network
Tacoma Power
Tacoma, Washington**



**Virchow Krause
& company**

Virchow, Krause & Company, LLP
Ten Terrace Court
P.O. Box 7398
Madison, WI 53707-7398

July 23, 2003



TAC_PRA_HF_0017087

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.

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.

1 12. Click has thousands of customers and considerable goodwill, but would
2 quickly lose both if it has to curtail or end operations due to a lack of funds. An immediate
3 loss of Click's customers in the event of a ordered shutdown would in turn impede or
4 derail the City's imminent search for a partner entity for future System use, as authorized
5 by the TPU Board through Resolution U-10988 on January 24, 2018, and as authorized by
6 the City Council through Resolution 39930 on January 30, 2018.

7 13. Attached as Exhibit C is an accurate and complete copy of a report
8 prepared by the consultants at CTC Technology & Energy that was provided to the TPU
9 Board and City Council at their January 23, 2018 joint study session prior to their votes on
10 TPU Board Resolution U-10988 on January 24, 2018, and City Council Resolution 39930
11 on January 30, 2018. CTC discusses Click's goodwill among its customers at Section 2.3
12 of the report.

13 14. Depriving Click of revenue it has always relied upon as a unit of Tacoma
14 Power would likely lead to employee layoffs and the interruption or cessation of cable and
15 internet services to Click and ISP customers. This is particularly true if the disruption
16 were immediate. The affected customer base for Click and the ISPs includes elderly and
17 low income individuals, as well as public schools, local universities and government
18 offices.

19
20 I declare under penalty of perjury that the foregoing is true and correct:
21

22 EXECUTED this 7th day of February, 2018, in Tacoma, Washington.
23

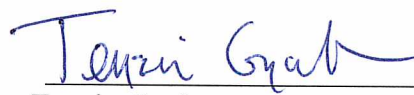
24 
25 Tenzin Gyaltzen

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



to offer retail services to customers paid for by electric utility funds and forwarded
1 the plan to the City Council for review and concurrence, and

2 WHEREAS, since referring the high-level plan for review, customers of
3 Tacoma Power have filed a claim for damages and lawsuit related to
4 implementation of an all-in retail services plan paid for in part by electric utility
5 funds, specifically challenging that the plans required the use of Tacoma Power
6 revenues generated from electricity sales to fund potential deficits in Click!
7 operating expenses and capital improvement costs related to implementing the all-
8 in retail services plan, and
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10

11 WHEREAS no action on the high-level plan was taken by the City Council,
12 and it is now apparent that Click! revenues alone will not support completion of an
13 all-in retail services (including internet, CATV, and voice over internet protocol)
14 plan, nor are such revenues sufficient to make necessary capital improvements
15 related to implementing such a retail services plan, and
16

17 WHEREAS the City Council and the Board have re-examined the long-
18 standing community policy goals for providing Click! telecommunications services
19 (television, internet, telephone, etc.) to customers, and the City Council and the
20 Board remain deeply committed to Click! and continue to support community
21 policy goals related to the purposes for and use of Tacoma Power's assets
22 comprising Click!, including the following community policy goals:
23

24 (1) Continuing public ownership of the telecommunications assets,
25 especially those assets necessary for Tacoma Power operations;
26



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.
23

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,
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25 and
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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,



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and market conditions, and has determined that the City cannot meet some of the community's policy goals related to Click! using an all-in retail services plan that is paid for in part by electric utility funds, and

WHEREAS, due to the above factors, it is now deemed to be in the best interests of the customers of Tacoma Power, including Click! customers, and residents of the City of Tacoma to pursue alternative courses which do not involve Click! directly providing all-in retail services to customers that are paid for in part by electric utility funds, and

WHEREAS, instead, the above policy goals will be utilized in shaping a new course for the use and preservation of the assets of Click!; Now, Therefore,

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

Section 1. That Board Amended Resolution U-10879, passed September 28, 2016, approving a high-level business plan requiring Click! to offer all-in retail services to customers paid for in part by electric utility funds is rescinded, and the City Council is requested to concur in the rescission and is requested to likewise rescind the direction given to the Board through City Council Amended Resolution No. 39347, which requested the Board to develop such a plan.

Section 2. That the community policy goals listed above in the recitals are approved by the Board, and the Board requests the City Council to concur in this approval at the City Council's January 30, 2018, meeting.

Section 3. That the Board and City Council will meet jointly on January 23, 2018, to describe and detail the community policy goals related to maximizing the 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:

Marin W. Smith
Chief Deputy City Attorney

Morgan J. Jankovsk
Chair

Arena Jankovsk
Secretary

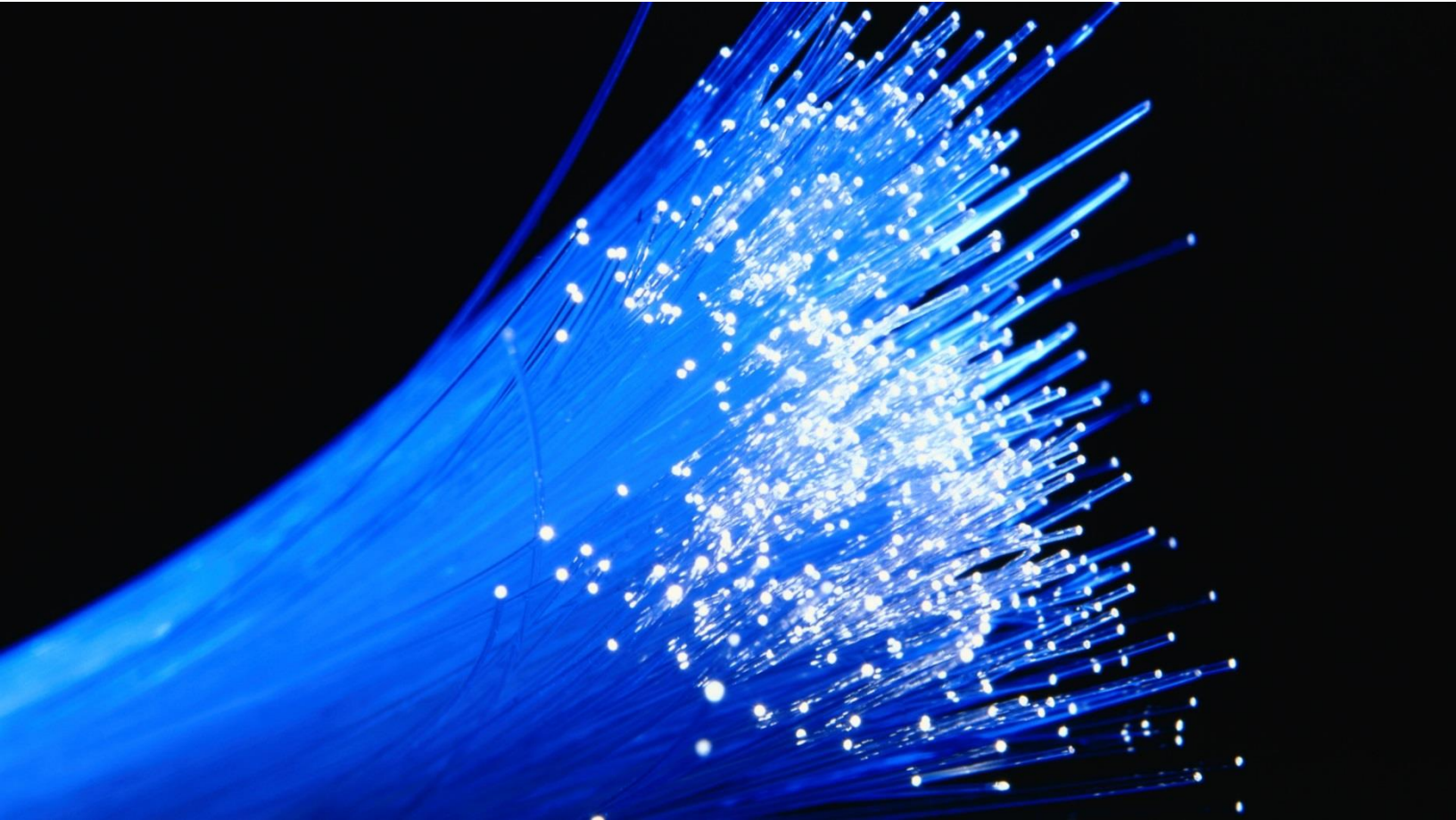
Charlene Jacobs
Clerk

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

10613 Concord Street • Kensington, MD 20895 • Tel: 301-933-1488 • Fax: 301-933-3340 • www.ctcnet.us
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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.

February 22 2018 1:39 PM

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

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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
MOTION TO STRIKE PORTIONS
OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

I. RELIEF REQUESTED

Defendant, the City of Tacoma (the "City") respectfully requests that this Court strike portions of Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief ("Plaintiffs' Motion") that include inadmissible legal conclusions, hearsay, and unsupported speculation. These portions of the Plaintiffs' Motion are improper and may not be considered in deciding a motion for summary judgment.

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II. STATEMENT OF FACTS

On December 28, 2017, Plaintiffs filed an opening brief in support of their motion for partial summary judgment with accompanying declarations. Docket Nos. 50506427-50506431. In their Motion, Plaintiffs seek the entry of partial summary judgment on their primary claim that “electric utility revenues and funds may not be used to pay for Click expenses or capital improvements that are attributable or properly allocable to commercial telecommunication services rather than electric utility service.” Docket No. 50506427 at 3-4 (“Plaintiffs’ Motion”). Plaintiffs’ Motion relied heavily on quotes and legal analysis from a memorandum written by the Tacoma City Attorney’s office in 2015 (the “2015 Memorandum”). Plaintiffs’ Motion at 2, 3, 4, 5, 11, 14, 16, 16-17, 17, and 18. It also includes legal conclusions taken from deposition transcripts, as well as unsupported speculation by Plaintiffs. Plaintiffs’ Motion at 4-5, 11-13, 12, 17-18.

II. STATEMENT OF ISSUES

- 1. Should the portions of Plaintiffs’ Motion that contain inadmissible legal conclusions and hearsay be stricken from the summary judgment record?
- 2. Should the portions of Plaintiffs’ Motion that contain unsupported speculation presented as fact be stricken from the summary judgment record?
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1 **III. LEGAL ARGUMENT AND AUTHORITY**

2 **A. Inadmissible Legal Conclusions May Not Be Considered on Summary**
3 **Judgment, and Should be Stricken from the Record.**

4 It is axiomatic that “Courts will not consider legal conclusions in a motion for
5 summary judgment.” *Ebel v. Fairwood Park II Homeowners' Ass'n*, 136 Wn. App. 787,
6 791, 150 P.3d 1163 (2007). In addition, “[a] trial court may not consider inadmissible
7 evidence when ruling on a motion for summary judgment.” *Cano-Garcia v. King Cty.*,
8 168 Wn. App. 223, 249, 277 P.3d 34 (2012). This includes inadmissible hearsay - a
9 statement introduced to prove the truth of the matter asserted. *See Dan J. Evans Campaign*
10 *Comm.*, 86 Wn.2d 503, 506–07, 546 P.2d 75 (1976); ER 801(c).

12 Plaintiffs repeatedly attempt to introduce and incorporate legal conclusions, rather
13 than making their own legal arguments as required by CR 7(b)(1). For instance, the
14 second page of Plaintiffs’ Motion includes a long block quote of pure legal analysis from
15 the 2015 Memorandum. Plaintiffs’ Motion at 2. Shortly thereafter, Plaintiffs incorporate a
16 deposition excerpt focused on the question by Plaintiffs’ counsel: “In your opinion, is it
17 lawful for revenues of the electric utility to be used to cover the losses of the Click!
18 commercial telecommunications services?” Plaintiffs’ Motion at 4-5. This is a pure
19 question of law, and is inappropriate for both a deposition of a witness and a summary
20 judgment proceeding. Additionally, Plaintiffs attempt to present a legal conclusion from
21 Tacoma Power Superintendent Chris Robinson about the All-In Plan and the 2015
22 Memorandum as a fact, when it provides no factual information and is simply a second-
23 hand legal conclusion. Plaintiffs’ Motion at 12. Most egregiously, Plaintiffs begin the
24
25

1 substantive portion of their argument section by saying:

2 The City Attorney's July 2015 memorandum to the mayor, city council and public
3 utility board (Ex. 1) sets forth adequate legal authority for granting the relief
4 sought by this motion for partial summary judgment. We ask the Court to review
5 that memorandum thoroughly and to consider it as part of the legal support for this
6 motion.

7 Plaintiffs' Motion at 14. Each of these is an entirely inappropriate use of exhibits, which
8 are supposed to provide the factual foundation for a motion, not a substitute for or
9 supplement to its legal arguments. These examples, as well as the others throughout
10 Plaintiffs' Motion, should be stricken from the summary judgment record as inappropriate
11 legal conclusions.¹

12 In addition, each of these statements represents inadmissible hearsay that cannot
13 be considered on summary judgment. While statements by a party-opponent may be
14 exceptions to the hearsay rule, this does not apply to hearsay statements that concern
15 "solely an abstract issue of law." 5B KARL B. TEGLUND, WASHINGTON PRACTICE:
16 EVIDENCE LAW AND PRACTICE § 801.38, n. 9 (6th ed. 2016) (citing BROUN, MCCORMICK
17 ON EVIDENCE § 256 (7th ed. 2013)).² Additionally, even factual admissions by an agent of
18 a party-opponent are only admissible when the agent had "speaking authority" to make the
19 statement on behalf of the party-opponent. *Lockwood v. AC & S, Inc.*, 109 Wn.2d 235,
20 262, 744 P.2d 605 (1987). None of the statements in the 2015 Memorandum are provided
21

22 ¹ Additional inappropriate references to the 2015 Memorandum are found on pages 3
(twice), 4, 5, 11, 14, 16, 16-17, 17 (twice), and 18.

23 ² Even when Washington has allowed admission of statements that could be construed as
24 "legal conclusions," the statements tend to prove some fact that is revealed by the
25 admission. For instance, in *State v. Cloud*, the Court of Appeals allowed the introduction
of the statement "there has been a murder in your house" not because it established the
legal requirements of murder, but because it could potentially reveal facts that were
helpful to the jury. 7 Wn. App. 211, 498 P.2d 907 (1972).

1 to support any factual issue or claim in Plaintiffs' Motion, and are instead purely
2 presented to prove that the legal conclusions contained therein are true. Furthermore, to
3 the extent that Plaintiffs claim the 2015 Memorandum provides factual information,
4 neither Elizabeth Pauli nor William Fosbre had express or implied authorization from the
5 City to make such statements *on behalf of the City*, and any such statements therein are
6 not admissible as admissions of a party-opponent.³ Therefore, the statements should be
7 stricken as inadmissible hearsay because they are "solely an abstract issue of law," and
8 any facts arguably embedded in the 2015 Memorandum are not admissions of a party-
9 opponent.
10

11 **B. Factual Statements Presented in Plaintiffs' Motion that Lack Evidentiary**
12 **Support Should Be Stricken from the Summary Judgment Record.**

13
14 Plaintiffs' speculation about what the world would look like if the City had
15 proceeded with the "All-In Plan" to expand Click's operations should also be stricken.

16 _____
17 ³ Plaintiffs have provided no evidence that the 2015 Memorandum was approved or
18 adopted by the City, and as such there was no express authority to make any factual
19 statements about Click on the City's behalf. *See Lockwood v. AC & S, Inc.*, 109 Wn. 2d
20 235, 262, 744 P.2d 605, 620 (1987); *see* Declaration of William Fosbre in Support of
21 Defendant's Motion to Strike Portions of Plaintiffs' Motion for Summary Judgment
22 ("Fosbre Decl."), ¶ 5. Where there is no express authority to speak on behalf of the party-
23 opponent, courts look to the "overall nature of his authority to act for the party" to
24 determine if someone qualifies as a "speaking agent." *Id.* Here, neither author of the
25 memorandum had authority to act on behalf of the City with respect to the *administration,*
organization, funding, or accounting of Click or Tacoma Power more broadly. Fosbre,
Decl., ¶ 6. As such, neither had authority to speak for the City with respect to any of those
factual topics. Additionally, any factual information that could possibly be gleaned from
the 2015 Memorandum is based on information gathered by Pauli and Fosbre from other
individuals, rather than their own practice and experience, and the statements are therefore
subject to a double-hearsay analysis. *See Carden v. Westinghouse Elec. Corp.*, 850 F.2d
996, 1002 (3d Cir. 1988); Fosbre Decl., ¶ 7. Under this analysis, unless Plaintiffs can also
show that whoever provided the authors with information was exempt from hearsay
requirements, the statements must be excluded. *See Carden v. Westinghouse Elec. Corp.*,
850 F.2d 996, 1002 (3d Cir. 1988).

1 Plaintiffs' Motion at 11-13, 17-18. ER 104(b) requires that when the relevancy of
2 evidence depends on fulfillment of a condition of fact, "the court shall admit [the
3 evidence] upon, or subject to, the introduction of evidence sufficient to support a finding
4 of the fulfillment of the condition." ER 104(b). Plaintiffs' discussion of the All-In Plan is
5 only relevant, if at all, in discussing the future use of electric utility revenues to fund Click
6 operations. However, Plaintiffs have failed to meet their burden of proof with respect to
7 the factual conditions necessary to move that discussion beyond the realm of pure
8 speculation. *See State v. Soper*, 135 Wn. App. 89, 99, 143 P.3d 335 (2006) ("It is
9 generally held that the foundation evidence should be deemed sufficient if, after viewing
10 all of the evidence in the light most favorable to the proponent, a reasonable juror could
11 find the condition to be more probably true than not." (citations omitted)).
12
13

14 In order for the All-In Plan's financial effects to be relevant, Plaintiffs would have
15 to show that 1) the version of the plan they discuss was going to come to fruition and 2)
16 the future financial effects of that plan are knowable and known. The "All-In Plan"
17 approved by the Tacoma Public Utilities Board (the "Board") was two pages long, and
18 was described by the Board as a "high-level 'All-in' plan." Fosbre Decl., ¶ 8, Ex. A, at §
19 1. No corresponding resolution by the Tacoma City Council (the "Council") was ever
20 adopted, which means that even this high-level version of the plan was never actually
21 implemented by the City. Fosbre Decl., ¶ 9. The financial effects of a version of the All-In
22 Plan that was not specifically approved by the Board, or approved at all by the Council,
23 does not provide sufficient foundation for Plaintiffs' claims regarding the All-In Plan, and
24 references to the All-In Plan should therefore be stricken from their motion as
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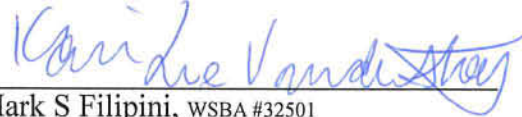
1 inadmissible. *See Cano-Garcia v. King Cty.*, 168 Wn. App. 223, 249, 277 P.3d 34 (2012).

2
3 **IV. CONCLUSION**

4 For the foregoing reasons, the City respectfully requests that the Court strike the
5 portions of Plaintiffs' Motion that rely on inappropriate and inadmissible legal
6 conclusions, hearsay, or speculation.

7
8 DATED this 22nd day of February, 2018.

9 K&L GATES LLP

10
11 By 
12 Mark S Filipini, WSBA #32501
13 Kari L. Vander Stoep, WSBA #35923
14 Attorneys for Defendant City of Tacoma
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February 22 2018 1:39 PM

Honorable Susan K. Seiko
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, et. al.,

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

No. 17-2-08907-4

DECLARATION OF WILLIAM
FOSBRE IN SUPPORT OF
DEFENDANT'S MOTION TO
STRIKE PORTIONS OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

I, William Fosbre, 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 City Attorney for the City of Tacoma (the "City").

3. In July 2015, when I was an Assistant City Attorney for the City, I co-authored a memorandum with then-City Attorney Elizabeth Pauli regarding "The City and TPU's Authority and Obligations Related to Providing Commercial Telecommunications Services to the Public" (the "2015 Memorandum").

4. The 2015 Memorandum did not and does not reflect the official legal position of the City and was simply a high-level, preliminary analysis intended to make

DECLARATION OF WILLIAM FOSBRE IN
SUPPORT OF DEFENDANT'S MOTION TO
STRIKE PORTIONS OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT - 1

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1 the City Council generally aware that legal risks may arise regarding the allocation of
2 expenses between Tacoma Power generally and the Click! unit of Tacoma Power
3 (“Click”).

4 5. We did not draft the 2015 Memorandum under any express or implied
5 authorization from the City to make any factual statements on behalf of the City about
6 Tacoma Power (including Click) or its administration, organization, funding, or
7 accounting.

8 6. At the time the 2015 Memorandum was drafted, neither Ms. Pauli nor
9 myself had any authority to make decisions for the City regarding Tacoma Power
10 (including Click) or its administration, organization, funding, or accounting.

11 7. In addition, neither of us had roles that directly related to Tacoma Power
12 (including Click) or its administration, organization, funding, or accounting, and any of
13 the facts that informed our opinion in the 2015 Memorandum were based on information
14 that we gathered speaking with other City employees, rather than our own personal
15 knowledge.

16 8. In 2016, the Tacoma Public Utility Board adopted Amended Resolution
17 No. U-10879, which approved a high-level plan to expand Click’s operations known as
18 the “All-In Plan.” Amended Resolution No. U-10879 is attached hereto as **Exhibit A**.

19 9. The City Council never adopted a resolution approving the All-In Plan, and
20 as a result, the City has never begun the process of implementing the All-In Plan.
21

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DECLARATION OF WILLIAM FOSBRE IN
SUPPORT OF DEFENDANT’S MOTION TO
STRIKE PORTIONS OF PLAINTIFFS’ MOTION
FOR SUMMARY JUDGMENT - 2

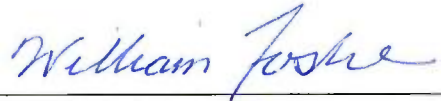
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I declare under penalty of perjury that the foregoing is true and correct:

EXECUTED this 22 day of February, 2018, in Tacoma, Washington.



William Fosbre

DECLARATION OF WILLIAM FOSBRE IN
SUPPORT OF DEFENDANT'S MOTION TO
STRIKE PORTIONS OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT - 3

501046188 v2

K&L GATES LLP
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EXHIBIT A



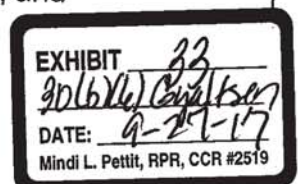
AMENDED RESOLUTION NO. U-10879

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

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

11 #2. WHEREAS the 1997 business plan contemplated that the revenues
12 associated with telecommunications services related to city government
13 communications, cable television ("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

19 #3. WHEREAS many of the functions of the telecommunications system
20 envisioned in the 1997 business plan have been achieved in their entirety since
21 the infrastructure improvements were completed in 1999 including: conventional
22 substation communication functions, distribution automation, city government
23 communications functions, CATV service, and transport of signals for service
24 providers offering telecommunications services (the last three functions are
25 "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
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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
7

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

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

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

#23. WHEREAS the Board has determined that along with enhanced product offerings, the new business plan should also grant Click! management flexibility to change product offerings, prices, and marketing strategies, excluding the leasing of the entire network, without prior Board or Council approval so as to effectively compete with private companies offering similar products and services, and



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#24. WHEREAS the Board finds it to be in the best interests of its electric customers and the citizens of Tacoma that a new business plan be approved for Click! functions; Now, therefore,

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

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

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

Sec. 3. TPU's request that Click! management be delegated authority to make changes to products and service offerings, prices (within the limitations set forth in the Click! rates/charges ordinance approved by the Board and Council), and marketing strategies contained within the Business Plan without further approval by the Board and City Council is approved, and the Council is requested to concur in such approval. All significant material changes to the Business Plan that would remove TPU as the primary operator of Click! including, but not limited to, the sale or lease of telecommunications system equipment or capacity, outsourcing of work, permanent discontinuance of products or services, etc. shall be brought to the Board and City Council for approval. Such delegation includes approval of contracts allowing thlrđ parties to use surplus portions of the network to supply services to their customers so long as such use does not materially interfere with Click!'s operations of the 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.

Sec. 4. Tacoma Power's request to transfer an annual amount to the Click! fund from Tacoma Power electric revenues, to appropriately compensate Power's past, current and future beneficial uses of the telecommunications system infrastructure, which shall be used to pay Click! operating, maintenance, taxes, capital costs and debt, is approved. Tacoma Power's transfer from 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

Woodrow 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.

February 26 2018 3:26 PM

KEVIN STOCK
COUNTY CLERK

Honorable Susan K. Serkis **NO: 17-2-08907-4**

Hearing Date: March 2, 2018

Hearing Time: 9:00 a.m.

SUPERIOR COURT 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,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4

PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT GRANTING
DECLARATORY RELIEF

Plaintiffs' motion for partial summary judgment asks the Court to declare what state and city law and the Tacoma City Attorney have already said: that electric utility revenues may not be used to pay for non-utility expenses of the City's cable TV and internet business. The City's opposition to plaintiffs' motion boils down to two main arguments: (1) that plaintiffs' claims are barred by prior declaratory judgment rulings, and (2) that since the City chose to organize Click's cable TV and internet business, along with the electric utility, as part of the "Tacoma Power" division within the Department of Public Utilities, Click and the electric utility must be

PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT
GRANTING DECLARATORY RELIEF - 1

Helsell Fetterman LLP
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Seattle, WA 98154-1154
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1 deemed one single entity for purposes of the City Charter and the Accountancy Act. The City
2 also argues that the Court should disregard the City Attorney's July 2015 legal opinion. There
3 is no merit to either of those arguments.

4 In considering plaintiffs' motion and the City's opposition, the Court should keep in
5 mind two important observations:
6

7 *First*, despite the large volume of paper it filed, the City has not contradicted any of the
8 facts set forth in plaintiffs' motion. Those facts are entirely undisputed for purposes of this
9 motion.

10 *Second*, much of the material submitted by the City addresses claims not made by the
11 plaintiffs and issues not raised by the present motion. Plaintiffs are not challenging the City's
12 right to own and operate the Click commercial telecommunications business; plaintiffs are not
13 challenging the City's right to issue bonds to finance the building of Click's HFC network;
14 plaintiffs are not claiming that Click must be shut down immediately or in the future; plaintiffs
15 are not claiming that Click cannot be organized administratively as part of the Light Division
16 (a/k/a "Tacoma Power") of TPU; and plaintiffs are not claiming that Click is not a valuable
17 asset. Plaintiffs are merely claiming, as the City Attorney correctly opined in 2015, that electric
18 utility revenues cannot lawfully be used to pay for Click expenses that are not properly
19 allocable to the electric utility. Addressing plaintiffs' claims does not require the Court to
20 determine what portions of Click's expenses are or are not allocable to the electric utility. The
21 City has already done that for us. We are not challenging the City's cost allocations for
22 purposes of this motion.
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1 **A. Plaintiffs' Claims Are Not Barred by the Prior Declaratory Rulings.**

2 Declaratory judgments do not have the same *res judicata* effect as other judgments.
3 Contrary to the City's arguments, a declaratory judgment only precludes subsequent litigation
4 of claims that were actually litigated and decided; it does not preclude subsequent litigation of
5 claims or issues that *might* have been or *could* have been litigated or decided but were not. *See*
6 Restatement (Second) of Judgments § 33 (1982):

7
8 A valid and final judgment in an action brought to declare rights or other legal
9 relations of the parties is conclusive in a subsequent action between them as to the
10 matters declared, and, in accordance with the rules of issue preclusion, as to any
11 issues actually litigated by them and determined in the action.

12 (Emphasis added); 22A *Am. Jur.2d*, Declaratory Judgments § 244 (“A declaratory judgment is
13 only a bar to matters which were actually litigated, not to those that might have been litigated.
14 Nor is it an absolute bar to subsequent proceedings where the parties are seeking other remedies
15 even though based on claims that could have been asserted in the original action.”); *see also* 15
16 *Wash. Prac.*, Civil Procedure §§ 35:41, 42:25 (2d ed.).

17 The City relies on two prior court orders making declaratory rulings. The first, dated
18 12/13/1996 (VanderStoep Dec., Ex. J), declared only that (1) the court had jurisdiction over that
19 case, (2) the 1996 bond ordinance establishing Click as a “separate system” of the Light
20 Division was properly enacted, (3) the City had legal authority to provide cable TV service, and
21 (4) the City had legal authority to lease telecommunications facilities and capacity to other
22 telecom providers. The plaintiffs in this case are not challenging any part of those rulings.
23 Nothing in the City's complaint in that declaratory action (VanderStoep Dec., Ex. D), or in the
24 briefing leading up to that 1996 order, raised any issue about the legality of using electric utility
25

1 revenues to pay for Click expenses not attributable or allocable to the electric utility, and
2 nothing in the court’s order indicated that the court considered that issue at all.

3 The second court order, dated 5/9/1997 (VanderStoep Dec., Ex. P), declared only that
4 the City had legal authority to issue \$1 million of revenue bonds for the purposes set forth in
5 paragraphs 3 and 4 of the 12/13/1996 order.¹ Again, plaintiffs are not challenging any part of
6 that ruling. And again, there was nothing in the briefing leading up to the second order about
7 whether it was legal to use electric utility revenues to pay for Click expenses that were not
8 attributable or allocable to the electric utility. The City points to an isolated statement in the
9 city-chosen defendant’s opposition to the City’s second summary judgment motion in that case
10 to the effect that revenue shortfalls from the proposed telecommunication system might lead to
11 rate increases “or borrowing from the general fund” (*see* VanderStoep Dec., Ex. M at 3, 8),² but
12 there was not one word in any of the briefing in that case about whether it would or would not
13 be legal to use electric revenues to pay for Click expenses. The court in that case was not asked
14 to rule on that issue, and it did not.
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19
20 ¹ Interestingly, the court refused to include in its order the City’s proposed finding that “the facts set forth in the
21 Declarations of Jon Athow and Steven J. Klein are true.” The court scratched out that language in the proposed
22 order and instead inserted, “however the court is making no finding as to the financial feasibility of the Project or
23 as to the legality of any future bond issues.” *See* VanderStoep Dec., Ex. P at 2, handwritten interlineation at line 2.
24 Thus, the court went out of its way to make it clear that its declaratory ruling was strictly limited to the validity of
25 the proposed \$1 million bond issuance then before the court and was not addressing other financial issues.

² The City’s characterization of that isolated statement is misleading. The City asserts that the declaratory
defendant argued that the proposed telecom revenues would result in “electricity rate increases for all Tacoma
Power customers.” (Opp. Br. at 4, line 11). Actually, the defendant in that case did not make that statement. He
merely said that telecom revenue shortfalls could lead to increased utility rates “or borrowing from the general
fund” (VanderStoep Dec., Ex. M at 3, 8) (emphasis added), and he said nothing at all about whether it might be
illegal to pay for such shortfalls using electric revenues. Plaintiffs in the present case are not challenging the
legality of borrowing from the general fund as an alternative funding source to cover Click’s financial losses.

1 In its opposition to the plaintiffs’ present motion in this case, the City contends that “[i]n
2 reaching its decision [in the 1996-97 declaratory judgment action] this Court knew that . . .
3 Power Fund revenues would be used for System activities . . . [and] those revenues could
4 include retail electric rates if the excess capacity did not prove as fruitful as hoped.” (Opp. Br.
5 at 12, lines 9-13). What the trial judge in that case might have “known” or thought at the time it
6 made its rulings in 1996 and 1997 is pure speculation and is irrelevant to the legal issue
7 presented by the City’s *res judicata* argument. The question now before this Court is whether
8 the 1996 and 1997 declaratory rulings decided the issue of whether electric utility revenues
9 could lawfully be used to subsidize Click’s telecom expenses. But in 1997 the City urged the
10 court not to even consider the question of whether Click’s telecom revenues would be adequate
11 to pay its expenses:
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14 [Ratepayers/taxpayers’] brief also argues extensively that revenues from the
15 Telecommunications System may be inadequate to cover debt service on the
16 Bonds. This factual argument is simply not material to the question of the City’s
17 authority to issue the Bonds, and therefore cannot raise a “genuine issue as to
any material fact[.]” CR 56 (emphasis supplied). Moreover, the issue is outside
the scope of the Court’s review.

18 City’s Reply Brief (VanderStoep Dec., Ex. N) at 2, lines 10-14 (emphasis added). It takes
19 considerable *chutzpah* for the City to argue that an issue that was outside the scope of the
20 court’s review in 1997 is now foreclosed from consideration because of the 1997 ruling.
21

22 Furthermore, even under the broader *res judicata* principles applicable to judgments
23 other than declaratory, plaintiffs’ claims would not be barred by the 1996 and 1997 rulings. A
24 party asserting a *res judicata* defense has the burden of showing that the prior case and the
25 current one have (i) the same subject matter, (ii) the same cause of action, (iii) the same persons

1 and parties, and (iv) the same qualities of persons. All four elements are necessary for *res*
2 *judicata*. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 865-866, 93 P.3d 108 (2004).

3 Here, the prior case was about whether the City had legal authority to establish a cable
4 TV and internet business (Click) and issue bonds to pay for it. Plaintiffs are not seeking to re-
5 litigate those issues. The current case is about whether electric revenues can lawfully be used to
6 pay for Click's telecom expenses. That issue was not raised or decided in the prior case. In
7 fact, as shown above, in 1997 the City argued that concerns about whether Click's telecom
8 revenues would be adequate to cover expenses were "outside the scope of the Court's review."

9 The subject matter and causes of action in the two cases are not the same, even though
10 both cases involve the same City, the same Light Division (a/k/a "Tacoma Power") of TPU, and
11 the same "separate system" (Click) within the Light Division. Washington courts have held
12 that for *res judicata* purposes two cases do not necessarily have the same subject matter even if
13 they involve the same parties and share underlying facts. For example, in *Hisle v. Todd Pacific*
14 *Shipyards Corp.*, *supra*, union members brought an action for retroactive overtime payments
15 under the Minimum Wage Act. The employer argued that the employees' claims were barred
16 by the *res judicata* effect of a prior lawsuit (*Adams*) dismissing with prejudice the employees'
17 claim that a collective bargaining agreement was invalid. The trial court ruled that the
18 employees' claims for overtime payments were barred by *res judicata*, but the court of appeals
19 reversed. The Washington Supreme Court affirmed the court of appeals
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24 We find that this case involves a different subject matter than *Adams*. Whereas
25 *Adams* concerned the procedures used to adopt the new CBA and sought to
invalidate the new CBA, the current claim presumes the validity of the agreement
and seeks to apply the MWA to it. Because we find that identity of subject matter

1 does not exist, and because the res judicata test is a conjunctive one requiring
2 satisfaction of all four elements, we do not analyze the other res judicata
requirements.

3 *Hisle*, 151 Wn.2d at 866. Similarly, the prior lawsuit here was about the validity of the 1996
4 city council resolution establishing Click and authorizing a bond sale, whereas the present
5 lawsuit presumes the validity of the ordinance and bond sale but challenges the legality of the
6 City's subsequent and ongoing use of electric utility revenues to pay for Click telecom
7 expenses. Just as the Supreme Court held in *Hisle*, there is no identity of subject matter
8 between the two cases, and plaintiffs' claims in this lawsuit are not barred by any *res judicata*
9 effect of the 1996-1997 declaratory rulings.
10

11 **B. The Court May Properly Consider the City Attorney's 2015 Opinion.**

12 It is a central fact in this case that in 2015 the City Attorney advised the city council and
13 public utility board that the Click subsidy was illegal,³ but the City refused to end the subsidy
14 and instead doubled down by calling for an "All-In Plan" that would have greatly increased
15 subsidies.⁴ Plaintiffs filed this lawsuit only after the city council and a majority of the public
16 utility board thumbed their collective nose at the City Attorney and began to implement a plan
17 that was projected to increase the very subsidies that the City Attorney had advised were illegal.
18 The City Attorney memo is undeniably part of the factual fabric of this case.
19
20
21

22 _____
23 ³ See 7/16/2015 Opinion Memo (Jurca Dec., Ex. 1) at 7: "state law and the City Charter prohibit the use of electric
24 utility ratepayer revenues to pay for costs solely associated with providing these commercial telecommunication
services. Telecommunication system costs associated with providing both electricity to utility customers and
commercial telecommunications services to the public must be allocated and then paid separately by the two
enterprises."

25 ⁴ See Plfs Motion at 11-12. In January 2018, seven months after this lawsuit was filed and while the present
motion was pending, the City reversed course and decided not to go forward with the All-In Plan. Opp. Br. at 11.

1 The memo is not hearsay, because it is an admission by a party-opponent. *See* ER
2 801(d)(2) (surely the City Attorney is acting within the scope of his or her authority in advising
3 the city council and public utility board as to matters of municipal law). The memo constitutes
4 an official public record, because it has been duly attested to under oath by one of its authors,
5 Mr. Fosbre, the present City Attorney. *See* RCW 5.44.040, ER 803(a)(8), and CR 44(a) & (c).
6 The memo is not offered as proof of any disputed fact (there are no disputed facts for purposes
7 of this motion). It is submitted both as part of the historical factual background of what gave
8 rise to this litigation, and as a cogent explanation of applicable municipal law.
9

10 While the legal opinions expressed in the City Attorney memo are not controlling upon
11 this Court, they are certainly entitled to some weight; indeed, we submit that they are entitled to
12 considerable weight, especially since those opinions were expressed by experienced counsel
13 with special expertise in the subject area and were made outside the context of any lawsuit or
14 threat of litigation. For similar reasons, Washington courts have often held that Attorney
15 General Opinions are entitled to considerable weight. *See, e.g., Thurston County ex rel. Bd. of*
16 *County Com'rs v. City of Olympia*, 151 Wn.2d 171, 177, 86 P.3d 151 (2004) (“Although not
17 controlling, attorney general opinions are entitled to great weight”).
18
19

20 There is no reason why the City Attorney memo should be treated differently. The
21 Court has latitude to consider any persuasive authority, whether a judicial decision from another
22 jurisdiction, a learned treatise, a law review article, a lawyer’s brief, or, as here, a well-reasoned
23 opinion memo from experienced counsel with special expertise in the subject area, who just
24 happen to be the defendant city’s previous and current officially designated City Attorney who
25

1 “shall be legal advisor to the City Council, Manager, and all officers, departments, and boards
2 of the City in matters relating to City affairs.” Tacoma City Charter §3.6 (Jurca Dec., Ex. 6).
3 The Court certainly can, and should, consider the 7/16/2015 City Attorney memo in making its
4 own analysis of the legal issues presented in this case.
5

6 **C. Organizing the Click Telecom Business Administratively within Tacoma Power**
7 **Does Not Make It Part of the Electric Utility.**

8 As explained in the City Attorney memo, Click’s telecom (cable TV and internet)
9 business is not a statutorily authorized “utility.” It is a non-utility proprietary business that
10 “exists separate and apart from the City’s electric utility functions.” Jurca Dec., Ex. 1 at 7.⁵
11 This conclusion is further supported by the fact that City Charter §4.7 prohibits the City “from
12 granting any franchise, right or privilege to sell or supply water or electricity within the City,”
13 yet the City does grant franchises to provide cable TV and internet service. Those franchises
14 are allowed notwithstanding Charter §4.7 only because providing cable TV and internet service
15 is not an electric utility function. Indeed, the Washington Supreme Court held explicitly in *City*
16 *of Issaquah v. Teleprompter Corp.*, 93 Wn.2d 567, 611 P.2d 741 (1980), that “cable television
17 is not a public utility as contemplated by RCW 35A.80 and 35.92.” 93 Wn.2d at 574 (emphasis
18 added). As the City Attorney explained, “When a city provides commercial telecommunication
19 services to the public, it is not acting as a public utility.” Jurca Dec., Ex. 1 at 3.
20
21
22

23 ⁵ RCW 35.92.010 - 060 authorizes cities to own and operate specified kinds of utilities, including water, sewer,
24 stormwater, solid waste, gas, and electricity utilities, as well as asphalt plants, cold storage plants, and
25 transportation systems. Cable TV, internet and other telecom services are not included within the statutorily
authorized utilities. Tacoma City Charter §4.1 (“General Powers Respecting Utilities”) authorizes the City to own
and operate statutorily authorized utilities, including those providing water, light, heat, power, transportation,
sewage, and refuse collection services. Again, cable TV, internet and other telecom services are not mentioned.

1 Thus, the City’s efforts to paint Click’s telecom business as part of the electric utility are
2 unavailing. The 1996 ordinance creating Click explicitly established the telecom business as a
3 “separate system” of the Light Division (a/k/a Tacoma Power). Jurca Dec., Ex. 7, §2.1. That
4 was not a matter of accidental semantics. The commercial telecom function is not a “utility”
5 function at all and is certainly separate from the electric utility function, although both the
6 telecom business and the electric utility share the use of certain parts of the wired HFC network,
7 just as the electric utility and the water utility share the use of the TPU building and share the
8 use of other city services like the Finance Department. It is because of such shared usage that
9 the Accountancy Act and Charter §§4.5 and 4.20 require the shared expenses to be allocated.⁶
10

11 The City’s reliance on *Rustlewood Ass’n v. Mason County*, 96 Wn. App. 788, 981 P.2d
12 7 (1999) (Opp. Br. at 16-17), is misplaced. That case was about whether costs needed to be
13 allocated among different geographic areas (residential subdivisions) served by the same utility.
14 In contrast, this case is about allocation of expenses between an electric utility and a separate,
15 non-utility business being operated by the same city, and whether the City can lawfully use
16 electric utility revenues to subsidize a separate non-utility business.
17

18 The City’s argument that Click is merely one of six component units of Tacoma Power
19 (and therefore should be regarded as part of the electric utility) falls flat. The other five units of
20 Tacoma Power (Generation, Power Management, Transmission and Distribution, Rates
21

22
23
24 ⁶ Charter §4.5 says that a utility’s revenues shall only be used for its own expenses. Charter §4.20 says that “each
25 utility shall be operated as a separate entity” and that “[w]here common services are provided, a fair proportion of
the cost of such services shall be assessed against each utility served.” See also City Attorney memo at 2, 6, 7;
Plfs Motion at 16.

1 Planning and Analysis, and Utility Technology Services) are integrally involved in supplying
2 electricity to customers. Click telecom is not. That is why PriceWaterhouseCoopers and other
3 consultants, starting in April 2000 and continuing to this day, have advised Tacoma Power to
4 account for Click’s telecom revenues and operating and capital expenses separately from the
5 revenues and expenses of the electric utility, making appropriate allocations of expenses where
6 there is shared usage of facilities or services. And that is why Tacoma Power has been doing
7 exactly that for Click but not for the other business units within Tacoma Power. *See* Plfs
8 Motion at 8-10; Jurca Dec., Exs. 12-14, 16. As explained in the Jurca Supplemental
9 Declaration, submitted herewith, the City’s Finance Department prepares monthly financial
10 reports for Tacoma Power. Those reports include a separate breakout for Click’s monthly
11 “commercial telecommunications” revenues and expenses, but there is no such separate
12 breakout of revenues and expenses for Tacoma Power’s other business units. That is because
13 the other business units, unlike Click, are integral parts of the electric utility.
14
15

16 In sum, Click’s commercial telecom functions are not electric utility functions; Click
17 was established as a “separate system” within Tacoma Power; and its telecom revenues and
18 expenses are accounted for separately from those of the electric utility. Organizing Click
19 administratively within the rubric of Tacoma Power does not make it part of the electric utility
20 and does not make it lawful to use electric utility revenues to cover Click’s financial losses.
21

22 **D. Conclusion**

23 The material facts upon which plaintiffs’ motion is based are undisputed. While the
24 City’s very able litigation counsel try hard to put a different spin on those facts, the facts
25

1 themselves and the applicable law – which is well summarized in the City Attorney’s 7/16/2015
2 opinion memo – compel the conclusion that the electric utility has been unlawfully subsidizing
3 Click’s money-losing commercial telecommunications business for years. The utility’s senior
4 management and its outside consultants, as well as the City Attorney, have recognized this in
5 their own internal documents and in reports and recommendations to the public utility board
6 and the city council. Yet the subsidies continue. It is time for them to end.

8 We ask the Court to grant plaintiffs’ motion for partial summary judgment declaring that
9 electric utility revenues cannot lawfully be used to pay for Click expenses or capital
10 improvements that are attributable or properly allocable to commercial telecommunications
11 service rather than electric utility service. Further remedies can await later determination.

12 *Respectfully submitted* this 26th day of February, 2018.

13
14 HELSELL FETTERMAN LLP

15
16 By David F. Jurca
17 David F. Jurca, WSBA #2015
18 Andrew J. Kinstler, WSBA #12703
19 Emma J. Kazaryan, WSBA #49885
20 Attorneys for Plaintiffs
21
22
23
24
25

February 26 2018 3:26 PM

KEVIN STOCK
COUNTY CLERK

Honorable Susan K. Serkis **NO: 17-2-08907-4**

Hearing Date: March 2, 2018

Hearing Time: 9:00 a.m.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4

SUPPLEMENTAL DECLARATION OF
DAVID F. JURCA IN SUPPORT OF
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT GRANTING
DECLARATORY RELIEF

David F. Jurca declares as follows:

I am an attorney for the plaintiffs in this action. I have personal knowledge of the matters set forth below.

1. Attached hereto as Exhibit A is a copy of a document entitled "June 2016 Tacoma Power Financial Report," as produced by the City in discovery in this action with document production numbers ("Bates Nos.") TAC_PRA_HF_0003666-36692. The same document (without the Bates Nos.) is available on the City's internet website at web address cms.cityoftacoma.org/Finance/Financial_Reports/Monthly/06_16Power.pdf.

SUPPLEMENTAL DECLARATION OF DAVID F. JURCA
IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT GRANTING DECLARATORY RELIEF - 1

Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

1 2. Exhibit A is an example of the monthly Tacoma Power financial reports
2 regularly prepared by the City's finance department for Tacoma Power and available on the
3 City's website. See deposition of City Finance Director Andrew Cherullo (Jurca Dec., Ex. 23)
4 at 40-43.
5

6 3. The June 2016 monthly operational summary for Click! Network Commercial
7 Operations is shown on page 12 of Exhibit A, with year-to-date information shown on page 13
8 (Bates Nos. 3683-3684). There is no similar financial information separately broken out and
9 shown in Exhibit A, nor in the other monthly financial reports regularly prepared for Tacoma
10 Power, for the other five business units within Tacoma Power (Generation, Power Management,
11 Transmission and Distribution, Rates Planning and Analysis, and Utility Technology Services).
12

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

15 Signed at Port Ludlow, Washington this 25th day of February, 2018.
16

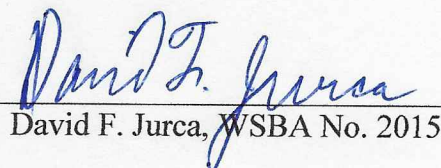
17 
18 _____
19 David F. Jurca, WSBA No. 2015
20
21
22
23
24
25

EXHIBIT A

JUNE

TACOMA POWER

2016

**FINANCIAL
REPORT**



Public Utility Board

MARK PATTERSON

Chair

MONIQUE TRUDNOWSKI

Vice-Chair

WOODROW JONES

Secretary

BRYAN FLINT

Member

KAREN LARKIN

Member

WILLIAM A. GAINES

Director of Utilities/CEO

CHRIS ROBINSON

Power Superintendent/COO

ANDREW CHERULLO

Finance Director

DEPARTMENT OF PUBLIC UTILITIES
CITY OF TACOMA

MANAGEMENT DISCUSSION AND ANALYSIS

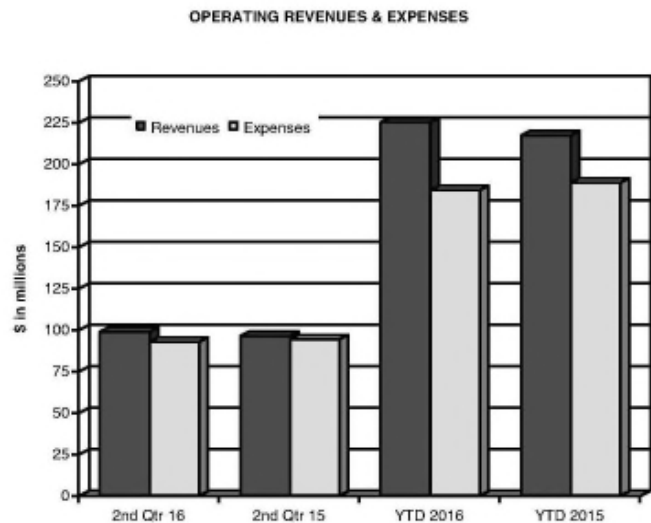
Overview of the Financial Statements

Summary

Tacoma Power's operating income at the end of the second quarter was \$40.9 million compared to \$28.5 million a year earlier. Operating revenues increased \$7.9 million (3.6%), and operating expenses decreased \$4.5 million (2.4%) compared to the prior year. Tacoma Power is reporting net income of \$24.5 million year-to-date in 2016 compared to \$8.6 million in 2015, an increase of \$15.9 million.

Revenues

Operating revenues were \$225.1 million at the end of the second quarter of 2016, compared to \$217.2 million a year earlier, an increase of \$7.9 million (3.6%). Total electric energy sales increased \$7.9 million (4.1%) year-to-date 2016, compared to the same period a year earlier. Sales to residential customers increased \$4.6 million (5.5%). Wholesale energy sales increased \$1.5 million (5.1%). Prices have decreased, but the decrease has been more than offset by an increase in volume. Streamflows in 2016 are 108% of average and 142% of 2015 inflows.



Expenses

Operating expenses decreased \$4.5 million (2.4%) at the end of the second quarter of 2016 compared to the same period in 2015.

Total purchased power expense decreased \$2.4 million (3.6%). Total BPA purchases decreased \$1.6 million. BPA Slice Contract Purchases increased \$1.8 million. That increase was offset by larger credits for the Energy Conservation Agreement (ECA). Credits of \$3.6 million have been received in 2016 compared to \$0.1 million in 2015. Purchases from Grand Coulee Project Hydroelectric Authority increased \$0.3 million. Other portfolio purchases decreased \$1.5 million. Volume is down due to increased generation reducing the need to purchase, with the majority of the decrease due to lower prices.

Transmission expense increased \$3.9 million and distribution expense increased \$4.2 million. Tacoma Power conducted a review of expenses in 2015 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.

Hydraulic power production expenses increased \$0.9 million and other production expenses increased \$0.5 million primarily because of the reclassification of expenses previously mentioned.

Customer accounts expenses increased \$0.6 million. This is mostly due to an increase of \$0.5 million in customer records and collection expense.

Conservation and other customer assistance expense increased \$0.4 million primarily because of increased amortization of deferred conservation costs.

Administration and general expenses decreased \$11.6 million. The credit for capitalized administrative and general costs increased \$0.6 million. Plant maintenance expenses decreased \$0.4 million. Outside services employed and regulatory commission expense each decreased \$0.2 million. The remainder is primarily due to the reclassification of costs discussed above.

William A. Gaines
Director of Utilities/CEO

Andrew Cherullo
Finance Director

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION
Doing Business As

TACOMA POWER

TABLE OF CONTENTS

Note: These financial statements are interim, unaudited reports prepared primarily for the use of management. Not all transactions reported in these statements have been recorded on the full accrual basis of accounting or in accordance with generally accepted accounting principles.

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CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

COMPARATIVE BALANCE SHEET - June 30, 2016 AND June 30, 2015

ASSETS AND DEFERRED OUTFLOWS	<u>2016</u>	<u>2015</u>
UTILITY PLANT		
Electric Plant in Service	\$1,906,467,713	\$1,825,752,110
Less Depreciation and Amortization	(971,853,011)	(921,268,406)
Total	<u>934,614,702</u>	<u>904,483,704</u>
Construction Work in Progress	77,323,590	73,099,150
Net Utility Plant	<u>1,011,938,292</u>	<u>977,582,854</u>
NON-UTILITY PROPERTY	<u>182,051</u>	<u>182,051</u>
RESTRICTED ASSETS		
Cash and Equity in Pooled Investments:		
2010B Construction Fund	1,369,288	12,053,581
2013 Construction Fund	33,639,296	32,399,157
2015 Construction Fund	223,943	250,243
Provision for Debt Service	15,877,907	19,906,909
Special Bond Reserves	4,997,639	4,997,639
Wynoochee Reserve--State of Washington	2,553,882	2,530,240
Total Restricted Assets	<u>58,661,955</u>	<u>72,137,769</u>
CURRENT ASSETS		
Cash and Equity in Pooled Investments:		
Current Fund	170,497,898	256,967,537
Customers' and Contractors' Deposits	2,932,577	3,015,803
Conservation Loan Fund	3,514,514	3,965,088
Rate Stabilization Fund	48,000,000	48,000,000
Receivables:		
Customers	15,716,271	15,711,086
Accrued Unbilled Revenue	29,427,771	28,750,681
Others	11,551,865	8,090,806
Provision for Uncollectibles	(1,580,951)	(1,264,576)
Materials and Supplies	6,290,896	5,784,890
Prepayments and Other	5,370,150	4,827,937
Total Current Assets	<u>291,720,991</u>	<u>373,849,252</u>
OTHER ASSETS		
Regulatory Asset - Conservation	46,554,413	43,972,872
Net Pension Asset	3,823,476	-
Conservation Loan Fund Receivables	1,397,052	1,267,992
Total Other Assets	<u>51,774,941</u>	<u>45,240,864</u>
Total Assets	<u>1,414,278,230</u>	<u>1,468,992,790</u>
DEFERRED OUTFLOWS		
Deferred Outflow for Pensions	9,077,586	-
Unamortized Loss on Refunding Bonds	949,968	6,740,879
Total Deferred Outflows	<u>10,027,554</u>	<u>6,740,879</u>
TOTAL ASSETS AND DEFERRED OUTFLOWS	<u>\$1,424,305,784</u>	<u>\$1,475,733,669</u>

These statements should be read in conjunction with the Notes to Financial Statements contained in the 2015 Annual Report.

NET POSITION, LIABILITIES AND DEFERRED INFLOWS	<u>2016</u>	<u>2015</u>
NET POSITION		
Net Investment in Capital Assets	\$597,170,549	\$511,405,283
Restricted for:		
Wynoochee Reserve - State of Washington	2,553,882	2,530,240
Net Pension Asset	6,365,002	7,367,504
Debt Service	3,823,476	-
Unrestricted	<u>240,506,269</u>	<u>310,134,229</u>
 TOTAL NET POSITION	 <u>850,419,178</u>	 <u>831,437,256</u>
 LONG-TERM DEBT		
2005 Electric System Refunding Bonds, Series B ...	-	99,690,000
2010B Electric System Refunding Bonds	147,070,000	147,070,000
2010C Electric System Refunding Bonds	24,185,000	24,185,000
2013A Electric System Rev & Refunding Bonds	151,460,000	164,190,000
2013B Electric System Rev & Refunding Bonds	<u>35,620,000</u>	<u>35,620,000</u>
Total Bonded Indebtedness	358,335,000	470,755,000
Less: Unamortized Bond Premiums	<u>19,814,928</u>	<u>21,736,565</u>
Net Bonded Indebtedness	378,149,928	492,491,565
Line of Credit	<u>65,250,000</u>	<u>250,000</u>
Total Long-Term Debt	<u>443,399,928</u>	<u>492,741,565</u>
 CURRENT LIABILITIES		
Salaries and Wages Payable	4,923,438	4,413,481
Taxes and Other Payables	13,326,445	12,280,299
Purchases and Transmission of Power Accrued	11,366,725	11,252,522
Interest Payable	9,512,905	12,539,405
Customers' Deposits	2,884,790	3,043,874
Current Portion of Long-Term Debt	12,730,000	37,180,000
Current Accrued Compensated Absences	<u>1,058,072</u>	<u>1,048,309</u>
Total Current Liabilities	<u>55,802,375</u>	<u>81,757,890</u>
 LONG TERM LIABILITIES		
Long Term Accrued Compensated Absences	9,522,650	9,434,785
Other Long Term Liabilities	<u>13,125,264</u>	<u>12,362,173</u>
Total Long Term Liabilities	<u>22,647,914</u>	<u>21,796,958</u>
 TOTAL LIABILITIES	 <u>521,850,217</u>	 <u>596,296,413</u>
 DEFERRED INFLOWS		
Deferred Inflow for Pensions	4,036,389	-
Rate Stabilization	<u>48,000,000</u>	<u>48,000,000</u>
Total Deferred Inflows	<u>52,036,389</u>	<u>48,000,000</u>
 TOTAL NET POSITION, LIABILITIES AND DEFERRED INFLOWS	 <u>\$1,424,305,784</u>	 <u>\$1,475,733,669</u>

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER
STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
June 30, 2016 AND June 30, 2015

	June 2016	June 2015
OPERATING REVENUES		
Sales of Electric Energy	\$28,105,885	\$26,770,759
Other Operating Revenues	1,434,546	1,418,884
Click! Network Operating Revenues	2,142,124	2,232,350
Total Operating Revenue	31,682,555	30,421,993
OPERATING EXPENSES		
Production Expense		
Hydraulic Power Production	2,199,660	3,033,084
Other Production Expense	437,164	343,567
Total Expense Power Produced	2,636,824	3,376,651
Purchased Power	10,822,865	11,228,865
Total Production Expense	13,459,689	14,605,516
Transmission Expense	2,562,447	2,083,829
Distribution Expense	2,739,838	2,103,890
Click! Network Commercial Operations Expense .	2,196,306	1,805,119
Customer Accounts Expense (CIS)	1,200,001	1,139,131
Conservation and Other Customer Assistance ...	999,479	892,984
Taxes	1,965,345	1,970,388
Depreciation	4,623,642	4,743,378
Administrative and General	1,708,801	3,846,971
Total Operating Expenses	31,455,548	33,191,206
OPERATING INCOME (LOSS)	227,007	(2,769,213)
NON-OPERATING REVENUES (EXPENSES)		
Interest Income	222,733	287,252
Contribution to Family Need	(40,000)	(40,000)
Other Net Non-Op Revenues and Deductions	270,441	(39,050)
Interest on Long-Term Debt	(1,621,218)	(2,103,790)
Amort. of Debt Related Costs	(25,294)	(62,735)
Interest Charged to Construction	274,109	269,460
Total Non-Operating Revenues (Expenses) ..	(919,229)	(1,688,863)
Net Income (Loss) Before Capital Contributions and Transfers	(692,222)	(4,458,076)
Capital Contributions		
Cash	470,213	562,807
Donated Fixed Assets	67,328	-
BABs and CREBs Interest Subsidies	195,096	185,209
Transfers		
City Gross Earnings Tax	(2,375,851)	(1,845,052)
Transfers from (to) Other Funds	-	-
CHANGE IN NET POSITION	(2,335,436)	(5,555,112)
TOTAL NET POSITION - January 1		
TOTAL NET POSITION - June 30		

YEAR TO DATE		2016 OVER (UNDER) 2015	PERCENT CHANGE
June 30, 2016	June 30, 2015		
\$202,640,107	\$194,705,828	\$7,934,279	4.1%
9,165,754	8,889,564	276,190	3.1%
13,304,357	13,639,492	(335,135)	-2.5%
<u>225,110,218</u>	<u>217,234,884</u>	<u>7,875,334</u>	<u>3.6%</u>
11,314,568	10,407,610	906,958	8.7%
2,629,302	2,129,534	499,768	23.5%
13,943,870	12,537,144	1,406,726	11.2%
63,389,172	65,750,645	(2,361,473)	-3.6%
77,333,042	78,287,789	(954,747)	-1.2%
15,824,920	11,965,446	3,859,474	32.3%
15,846,719	11,624,486	4,222,233	36.3%
12,840,730	12,449,332	391,398	3.1%
6,828,079	6,248,199	579,880	9.3%
5,897,892	5,520,275	377,617	6.8%
10,407,983	10,276,289	131,694	1.3%
27,784,110	29,326,635	(1,542,525)	-5.3%
11,458,543	23,025,556	(11,567,013)	-50.2%
<u>184,222,018</u>	<u>188,724,007</u>	<u>(4,501,989)</u>	<u>-2.4%</u>
<u>40,888,200</u>	<u>28,510,877</u>	<u>12,377,323</u>	<u>43.4%</u>
2,012,409	1,371,337	641,072	46.7%
(240,000)	(240,000)	-	0.0%
830,690	137,021	693,669	506.3%
(9,711,693)	(12,553,294)	2,841,601	-22.6%
(151,761)	(376,405)	224,644	-59.7%
2,076,986	1,410,573	666,413	47.2%
<u>(5,183,369)</u>	<u>(10,250,768)</u>	<u>5,067,399</u>	<u>-49.4%</u>
35,704,831	18,260,109	17,444,722	95.5%
2,694,122	2,267,288	426,834	18.8%
101,201	3,445	97,756	2837.6%
1,842,861	1,832,975	9,886	0.5%
(15,854,953)	(13,729,622)	(2,125,331)	15.5%
(2,181)	-	(2,181)	100.0%
24,485,881	8,634,195	15,851,686	183.6%
<u>825,933,297</u>	<u>822,803,061</u>	<u>3,130,236</u>	<u>0.4%</u>
<u>850,419,178</u>	<u>831,437,256</u>	<u>18,981,922</u>	

These statements should be read in conjunction with the Management Discussion and Analysis in the June 2016 Financial Report.

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

SUMMARY OF REVENUES AND BILLINGS
June 30, 2016 AND June 30, 2015

	For the month of June 2016	For the month of June 2015
OPERATING REVENUE		
Sales of Electric Energy		
Residential	\$10,283,491	\$10,176,672
Commercial	2,159,350	2,042,872
General	9,654,499	9,663,070
Contract Industrial	1,841,206	1,817,065
Public Street and Highway Lighting	181,043	32,486
Sales to Other Electric Utilities	22,303	22,264
Total Sales to Customers	24,141,892	23,754,429
Bulk Power Sales	3,963,993	3,016,330
Total Sales of Electric Energy	28,105,885	26,770,759
Other Operating Revenue		
Rentals and Leases from Elect. Property ...	209,502	205,244
Wheeling	803,578	800,973
Service Fees and Other	421,466	412,667
Telecommunications Revenue	2,142,124	2,232,350
Total Other Operating Revenues	3,576,670	3,651,234
 TOTAL OPERATING REVENUES	 \$31,682,555	 \$30,421,993
 BILLINGS (Number of Months Billed)		
Residential	162,698	154,779
Commercial	15,663	14,782
General	2,847	2,804
Contract Industrial	2	2
Public Streets and Highway Lighting	774	696
Sales to Other Utilities	1	1
 TOTAL BILLINGS	 181,985	 173,064

YEAR TO DATE		2016 OVER (UNDER) 2015	PERCENT CHANGE
June 30, 2016	June 30, 2015		
\$87,471,222	\$82,878,477	\$4,592,745	5.5%
14,595,229	13,815,177	780,052	5.6%
58,995,319	57,950,369	1,044,950	1.8%
10,447,550	10,470,310	(22,760)	-0.2%
745,335	669,617	75,718	11.3%
181,976	173,560	8,416	4.8%
172,436,631	165,957,510	6,479,121	3.9%
30,203,476	28,748,318	1,455,158	5.1%
202,640,107	194,705,828	7,934,279	4.1%
1,696,618	1,580,879	115,739	7.3%
4,973,499	4,883,266	90,233	1.8%
2,495,637	2,425,419	70,218	2.9%
13,304,357	13,639,492	(335,135)	-2.5%
22,470,111	22,529,056	(58,945)	-0.3%
\$225,110,218	\$217,234,884	\$7,875,334	3.6%
949,001	929,334	19,667	2.1%
94,470	92,642	1,828	2.0%
16,097	16,265	(168)	-1.0%
12	12	-	0.0%
5,500	5,360	140	2.6%
6	6	-	0.0%
1,065,086	1,043,619	21,467	2.1%

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

GROSS GENERATION REPORT - June 30, 2016 AND June 30, 2015

	For the month of Jun 2016	For the month of Jun 2015
KWH GENERATED, PURCHASED AND INTERCHANGED - Gross		
Generated - LaGrande	21,554,000	20,456,000
Generated - Alder	12,180,000	12,131,000
TOTAL NISQUALLY	<u>33,734,000</u>	<u>32,587,000</u>
Generated - Cushman No. 1	2,029,000	1,623,000
Generated - Cushman No. 2	1,815,000	1,424,000
TOTAL CUSHMAN	<u>3,844,000</u>	<u>3,047,000</u>
Generated - Mossyrock	88,438,000	53,117,000
Generated - Mayfield	50,941,000	29,110,000
TOTAL COWLITZ	<u>139,379,000</u>	<u>82,227,000</u>
Generated - Wynoochee	-	-
Generated - Hood Street	-	-
Tacoma's Share of Priest Rapids	2,469,000	1,853,000
Tacoma's Share of GCPHA	41,521,000	44,824,000
TOTAL KWH GENERATED - TACOMA SYSTEM	220,947,000	164,538,000
Purchased Power		
BPA Slice Contract	188,100,000	131,015,000
BPA Block Contract	104,412,000	109,820,000
Interchange Net	(166,097,000)	(52,724,000)
TOTAL KWH GENERATED, PURCHASED AND INTERCHANGED ..	<u>347,362,000</u>	<u>352,649,000</u>
Losses	4,250,832	2,917,311
Baldi Replacement	119,862	83,030
Ketron	14,744	15,772
NT PC Mutuals Schedules	(1,760,000)	(1,539,000)
PC Mutual Inadvertent	(188,936)	(281,166)
TACOMA SYSTEM FIRM LOAD	<u>349,798,502</u>	<u>353,844,947</u>
Maximum Kilowatts (System Firm Load)	637,164	673,635
Average Kilowatts (System Firm Load)	485,831	475,598
PIERCE COUNTY MUTUAL LOAD	93,572,000	95,615,000
KWH BILLED		
Residential Sales	115,804,602	116,444,243
Commercial Sales	24,344,781	23,156,972
General	161,270,144	159,020,449
Contract Industrial	44,031,540	43,537,800
Public Street and Highway Lighting	4,115,923	733,761
Sales to Other Electric Utilities	417,600	408,600
TOTAL FIRM	<u>349,984,590</u>	<u>343,301,825</u>
Bulk Power Sales	234,265,000	105,642,000
TOTAL KWH BILLED	<u>584,249,590</u>	<u>448,943,825</u>

YEAR TO DATE		2016 OVER (UNDER)	PERCENT CHANGE
Jun 30 2016	Jun 30 2015	2015	
217,630,000	179,983,000	37,647,000	20.9%
148,786,000	114,007,000	34,779,000	30.5%
<u>366,416,000</u>	<u>293,990,000</u>	<u>72,426,000</u>	24.6%
81,612,000	38,276,000	43,336,000	113.2%
137,865,000	52,906,000	84,959,000	160.6%
<u>219,477,000</u>	<u>91,182,000</u>	<u>128,295,000</u>	140.7%
727,118,000	466,540,000	260,578,000	55.9%
465,543,000	301,958,000	163,585,000	54.2%
<u>1,192,661,000</u>	<u>768,498,000</u>	<u>424,163,000</u>	55.2%
20,978,000	1,919,000	19,059,000	993.2%
1,339,600	1,303,500	36,100	2.8%
15,035,000	14,532,000	503,000	3.5%
129,235,000	125,403,000	3,832,000	3.1%
1,945,141,600	1,296,827,500	648,314,100	50.0%
1,253,352,000	1,188,991,000	64,361,000	5.4%
799,977,000	841,419,000	(41,442,000)	-4.9%
<u>(1,575,870,000)</u>	<u>(934,047,000)</u>	<u>(641,823,000)</u>	-68.7%
2,422,600,600	2,393,190,500	29,410,100	1.2%
25,581,293	17,991,182	7,590,111	42.2%
1,138,882	1,274,697	(135,815)	-10.7%
124,251	142,478	(18,227)	-12.8%
<u>(15,180,000)</u>	<u>(14,741,000)</u>	<u>(439,000)</u>	-3.0%
817,577	832,365	(14,788)	-1.8%
<u>2,435,082,603</u>	<u>2,398,690,222</u>	<u>36,392,381</u>	1.5%
729,846,000	711,433,000	18,413,000	2.6%
1,051,859,411	997,154,695	54,704,716	5.5%
168,613,892	160,112,381	8,501,511	5.3%
1,000,304,428	989,011,337	11,293,091	1.1%
218,072,850	248,228,953	(30,156,103)	-12.1%
16,912,505	15,630,478	1,282,027	8.2%
3,293,100	3,285,000	8,100	0.2%
<u>2,459,056,186</u>	<u>2,413,422,844</u>	<u>45,633,342</u>	1.9%
1,752,490,000	1,115,976,000	636,514,000	57.0%
<u>4,211,546,186</u>	<u>3,529,398,844</u>	<u>682,147,342</u>	19.3%

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

STATEMENTS OF CASH FLOWS

	YEAR TO DATE	
	June 30, 2016	June 30, 2015
CASH FLOWS FROM OPERATING ACTIVITIES		
Cash from Customers	\$230,091,020	\$229,907,716
Cash Paid to Suppliers	(92,039,635)	(106,046,658)
Cash Paid to Employees	(57,719,737)	(53,146,358)
Taxes Paid	(10,771,556)	(11,144,036)
Conservation Loans	25,985	609,477
Net Cash from Operating Activities	<u>69,586,077</u>	<u>60,180,141</u>
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Transfer Out for Gross Earnings Tax	(15,854,953)	(13,729,622)
Transfer to Fleet Services Fund	(2,181)	-
Transfer to Family Need Fund	(240,000)	(240,000)
Net Cash from Non-Capital Financing Activities ..	<u>(16,097,134)</u>	<u>(13,969,622)</u>
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES		
Capital Expenditures	(34,733,341)	(26,610,196)
Proceeds from Long-Term Debt	15,000,000	250,000
Principal Payments on Long-Term Debt	(14,735,000)	(32,115,000)
Interest Paid	(10,079,418)	(13,327,094)
BABs and CREBs Interest Subsidies	1,842,861	1,832,975
Contributions in Aid of Construction	2,694,122	2,267,288
Net Cash from Capital and Related Financing Activities	<u>(40,010,776)</u>	<u>(67,702,027)</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest Received	2,012,409	1,371,337
Other Net Non-Op Revenues and Deductions	830,690	137,022
Net Cash from Investing Activities	<u>2,843,099</u>	<u>1,508,359</u>
Net Increase Change in Cash and Equity in Pooled Investments	16,321,266	(19,983,149)
Cash and Equity in Pooled Investments at January 1 ..	267,285,678	404,069,346
Cash and Equity in Pooled Investments at June 30.....	<u><u>283,606,944</u></u>	<u><u>\$384,086,197</u></u>

These statements should be read in conjunction with the Notes to Financial Statements contained in the 2015 Annual Report.

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

STATEMENTS OF CASH FLOWS

	June 30, 2016	June 30, 2015
Reconciliation of Net Operating Income to Net Cash Provided by Operating Activities:		
Net Operating Income	\$40,888,200	\$28,510,877
Adjustments to reconcile net operating income to net cash provided by operating activities:		
Depreciation	27,784,110	29,326,635
Amortization of Regulatory Assets	3,246,170	2,783,124
Cash provided from changes in operating assets and liabilities:		
Accounts Receivable and Unbilled Revenue	4,980,802	12,672,833
Conservation Loans Receivable	25,985	609,477
Interfund Receivables	1,484,313	2,509,436
Inventory, Materials and Supplies, and Other	414,602	140,307
Taxes and Other Payables	(7,030,324)	(8,947,924)
Purchased Power Payable	(646,753)	(307,662)
Salaries and Wages Payable	3,494,091	(136,408)
Customers' Deposits	(224,018)	146,606
Regulatory Assets - Conservation	(3,506,660)	(4,156,750)
Interfund Payables	(1,324,441)	(2,970,410)
Total Adjustments	28,697,877	31,669,264
Net Cash from Operating Activities	\$69,586,077	\$60,180,141
 Reconciliation of Cash and Equity in Pooled Investments to Balance Sheet:		
Cash and Equity in Pooled Investments in Special Funds	\$58,661,955	\$72,137,769
Cash and Equity in Pooled Investments in Operating Funds.....	224,944,989	311,948,428
Cash and Equity in Pooled Investments at June 30	\$283,606,944	\$384,086,197

CITY OF TACOMA, WASHINGTON
DEPARTMENT OF PUBLIC UTILITIES
CLICK! NETWORK
COMMERCIAL OPERATIONS

OPERATIONAL SUMMARY - JUNE 30, 2016

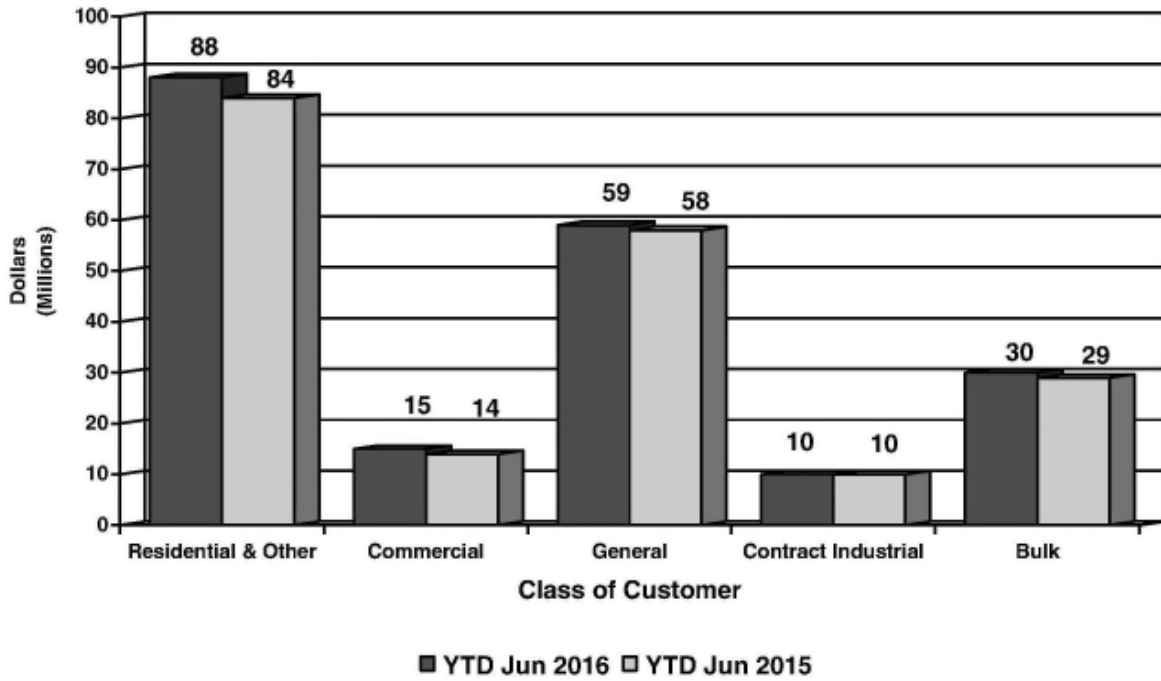
	<u>JUNE 2016</u>	<u>JUNE 2015</u>
TELECOMMUNICATIONS REVENUE		
CATV	\$1,435,571	\$1,575,125
Broadband	95,593	96,439
ISP	584,942	542,352
Interdepartmental	26,018	18,434
Total Operating Revenue	<u>2,142,124</u>	<u>2,232,350</u>
TELECOMMUNICATIONS EXPENSE-COMMERCIAL		
Administration & Sales Expense		
Salaries & Wages Expense	268,135	260,611
General Expense	50,794	46,934
Contract Services	1,231,044	798,157
IS & Intergovernmental Services	102,782	107,951
Fleet Services	137	257
Capitalized A & G Expense	(3,081)	(4,369)
Total Admin. & Sales Expense	<u>1,649,811</u>	<u>1,209,541</u>
Operations & Maintenance Expense ...		
Salaries & Wages Expense	428,642	475,534
General Expense	54,494	31,314
Contract Services	31,943	52,871
IS & Intergovernmental Services	3,012	3,795
Fleet Services	40,035	41,599
New Connect Capital	(11,631)	(9,535)
Total Oper. & Maint. Expense	<u>546,495</u>	<u>595,578</u>
Total Telecommunications Expense .	2,196,306	1,805,119
Net Revenues (Expenses) Before Taxes and Depreciation and Amortization	(54,182)	427,231
Taxes	296,245	308,012
Depreciation and Amortization	222,120	291,457
	<u>518,365</u>	<u>599,469</u>
NET OPERATING REVENUES (EXPENSES)	<u>(572,547)</u>	<u>(172,238)</u>

YEAR TO DATE			
JUNE 30 2016	JUNE 30 2015	2016/2015 VARIANCE	PERCENT CHANGE
\$9,065,375	\$9,745,593	(\$680,218)	-7.0%
588,749	566,545	22,204	3.9%
3,496,160	3,211,280	284,880	8.9%
154,073	116,074	37,999	32.7%
<u>13,304,357</u>	<u>13,639,492</u>	<u>(335,135)</u>	-2.5%
1,635,757	1,651,267	(15,510)	-0.9%
335,725	223,202	112,523	50.4%
6,730,236	6,510,374	219,862	3.4%
701,797	671,218	30,579	4.6%
1,778	2,325	(547)	-23.5%
(11,224)	(46,621)	35,397	-75.9%
<u>9,394,069</u>	<u>9,011,765</u>	<u>382,304</u>	4.2%
2,749,135	2,849,245	(100,110)	-3.5%
195,233	186,998	8,235	4.4%
334,463	214,068	120,395	56.2%
17,624	21,041	(3,417)	-16.2%
207,958	239,599	(31,641)	-13.2%
(57,752)	(73,384)	15,632	-21.3%
<u>3,446,661</u>	<u>3,437,567</u>	<u>9,094</u>	0.3%
12,840,730	12,449,332	391,398	3.1%
463,627	1,190,160	(726,533)	-61.0%
1,826,028	1,863,231	(37,203)	-2.0%
1,355,218	1,999,103	(643,885)	-32.2%
<u>3,181,246</u>	<u>3,862,334</u>	<u>(681,088)</u>	-17.6%
<u>(2,717,619)</u>	<u>(2,672,174)</u>	<u>(45,445)</u>	1.7%

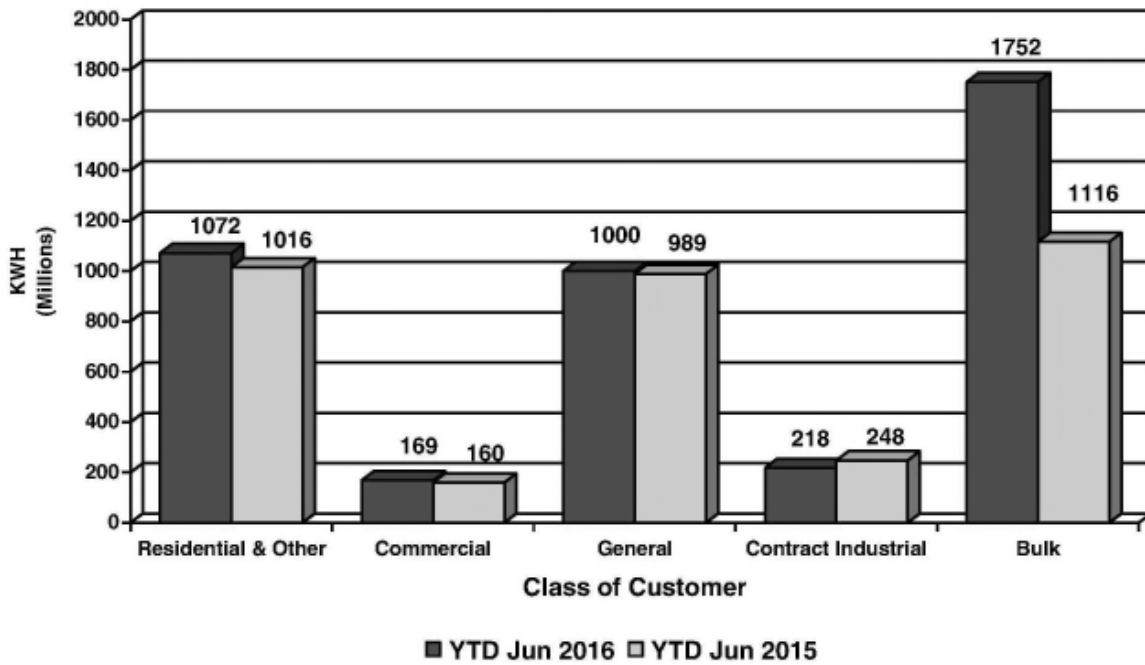
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Supplemental Data

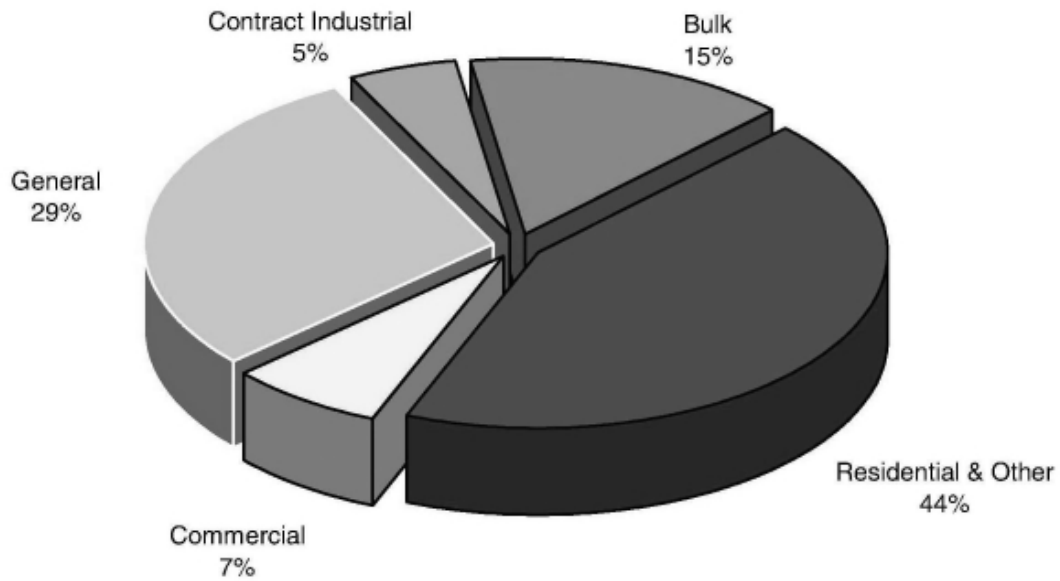
SALES OF ELECTRIC ENERGY
Year to Date - June 2016 & 2015



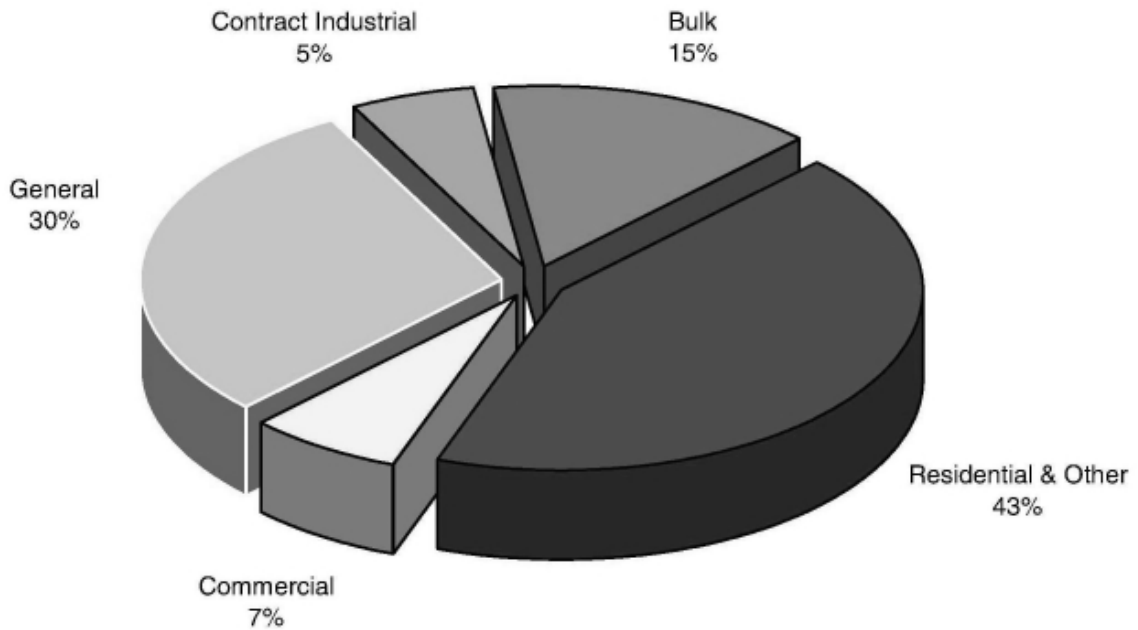
TOTAL POWER BILLED
Year to Date - June 2016 & 2015



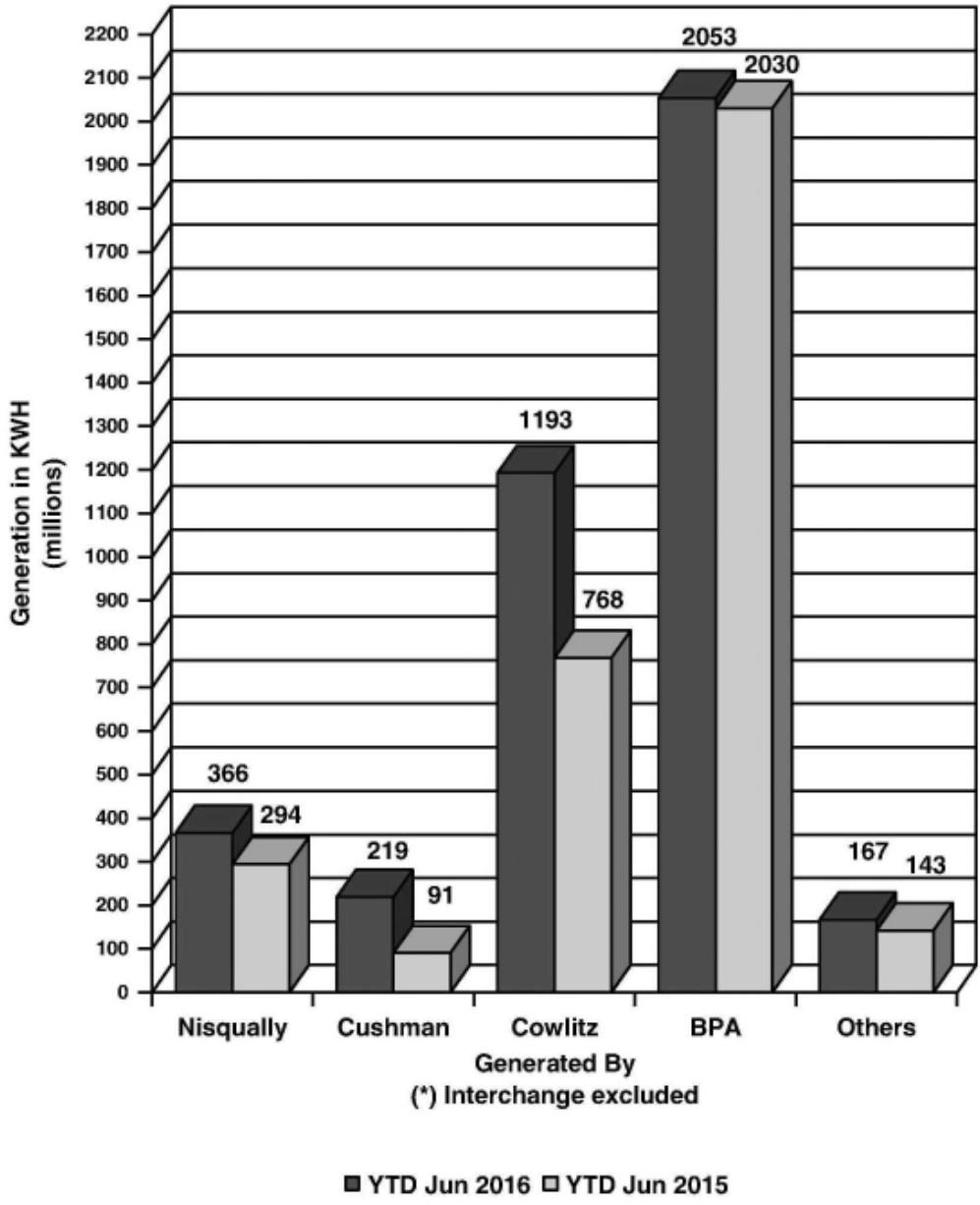
SALES OF ELECTRIC ENERGY
Year to Date - Jun 2016 (\$202,640,107)



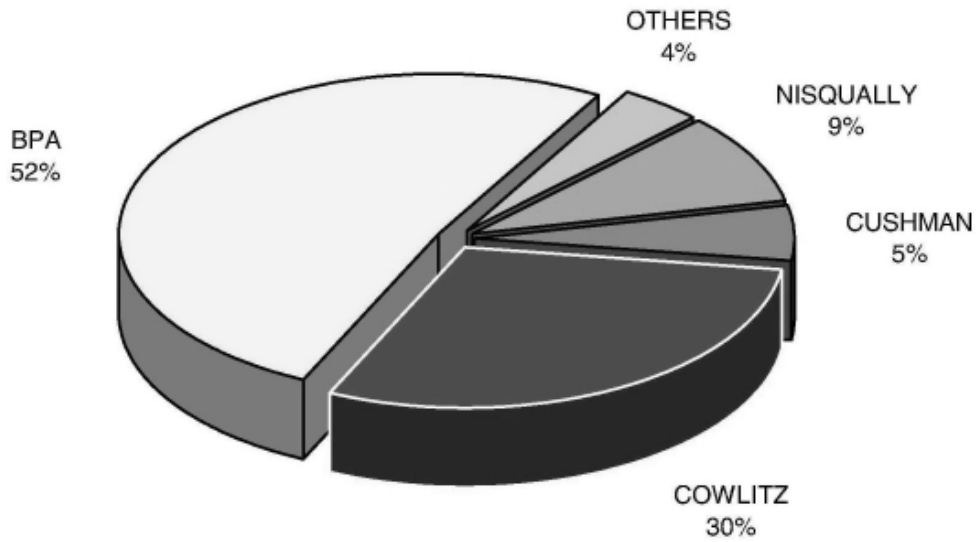
SALES OF ELECTRIC ENERGY
Year to Date - Jun 2015 (\$194,705,828)



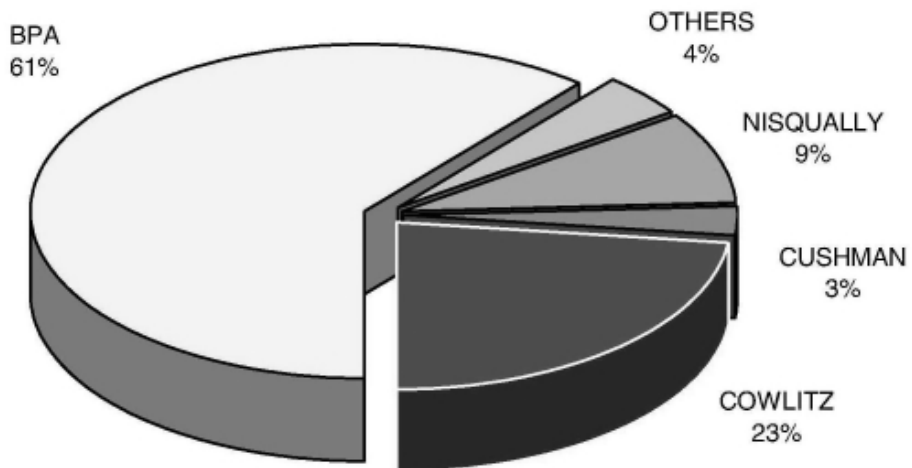
POWER SOURCES (*)
Year to Date Jun 2016 & 2015



POWER SOURCES (*)
Year to Date - Jun 2016

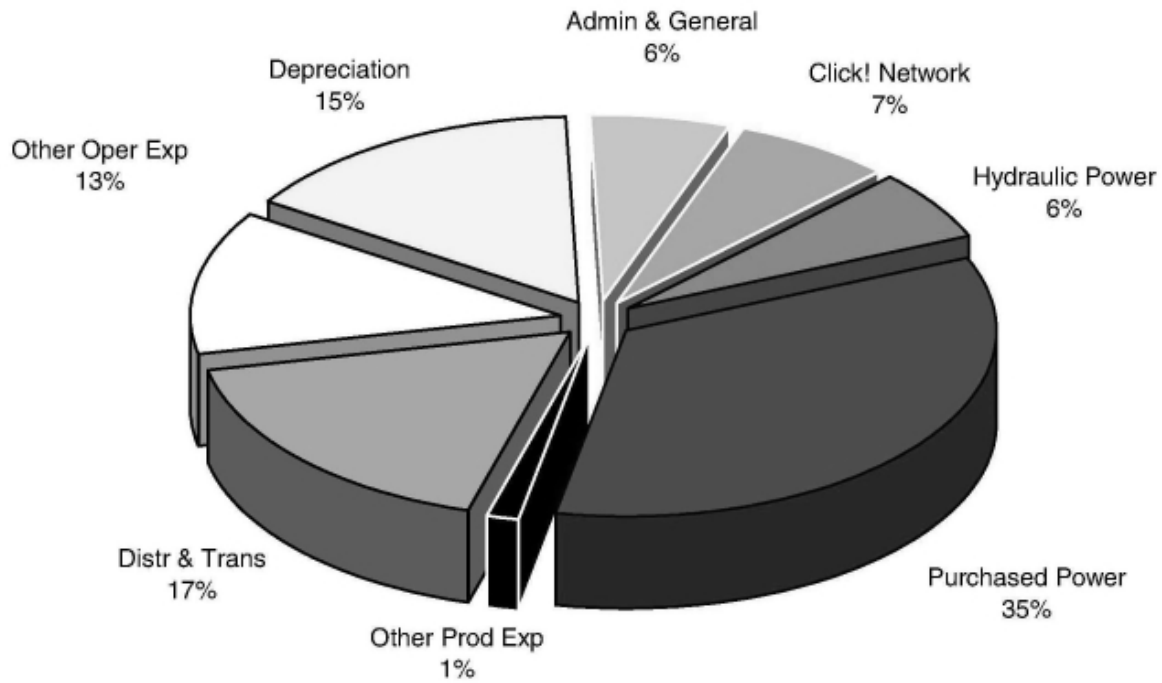


POWER SOURCES (*)
Year to Date - Jun 2015

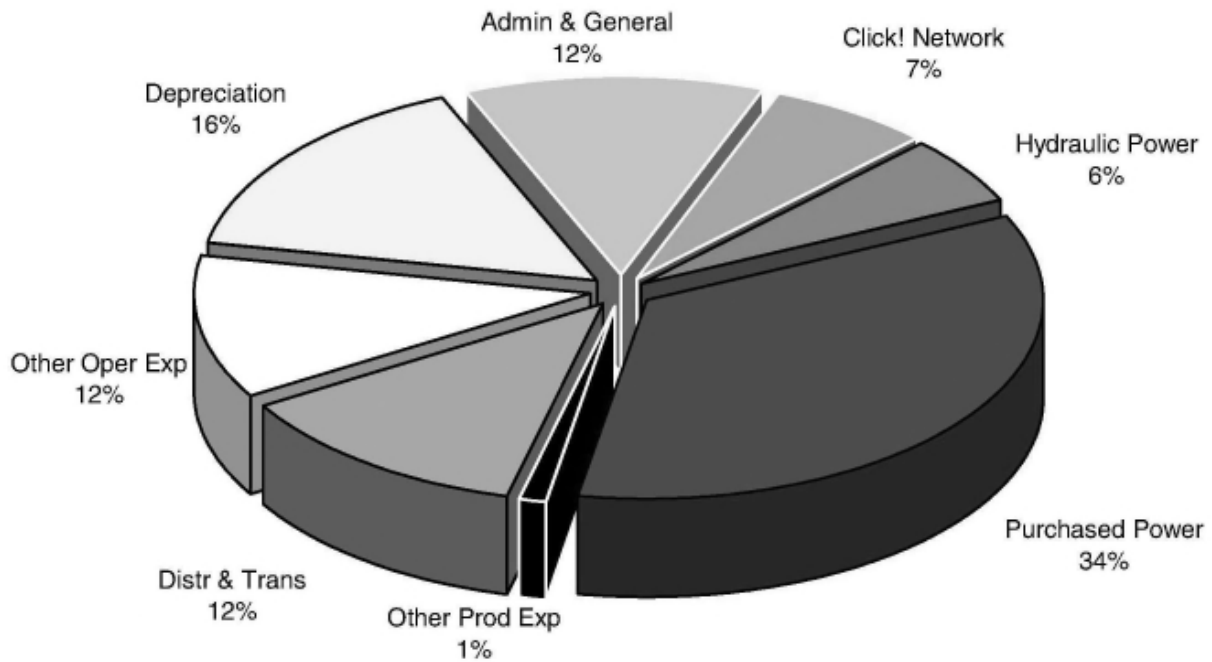


(*) Interchange excluded

TOTAL OPERATING EXPENSES *
Year to Date - Jun 2016 (\$184,222,018)



TOTAL OPERATING EXPENSES *
Year to Date - Jun 2015 (\$188,724,007)



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



The City of Tacoma does not discriminate on the basis of disability in any of its programs, activities, or services. To request this information in an alternative format or to request a reasonable accommodation, please contact the City Clerk's Office at (253) 591-5505. TTY or speech to speech users please dial 711 to connect to Washington Relay Services.

February 28 2018 11:12 AM

KEVIN STOCK
COUNTY CLERK

Honorable Susan K. Serkis **NO: 17-2-08907-4**

Hearing Date: March 2, 2018

Hearing Time: 9:00 a.m.

SUPERIOR COURT 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,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4

PLAINTIFFS' RESPONSE TO
DEFENDANT'S MOTION TO STRIKE

The City's motion to strike has two parts: (1) it asks the Court to disregard references to the City Attorney's July 16, 2015 memorandum to the city council and public utility board, and (2) it asks the Court to disregard references to the "All-In Plan" that was developed pursuant to a city council resolution and was adopted by a resolution of the public utility board, before it was abandoned in January 2018 after plaintiffs' pending motion for partial summary judgment was filed. There is no merit to either part of the motion to strike. The motion should be denied.

PLAINTIFFS' RESPONSE TO
DEFENDANT'S MOTION TO STRIKE - 1

Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

1 **A. There Is No Basis to Strike References to the City Attorney’s Opinion Memo.**

2 The City Attorney Memo, attached as Exhibit 1 to the Jurca Declaration, was addressed
3 to the city council and public utility board. In it the City Attorney explained the applicable
4 municipal law and concluded that (i) “state law and the City Charter prohibit the use of electric
5 utility ratepayer revenues to pay for costs solely associated with providing these
6 telecommunication services” and (ii) “[t]elecommunication system costs associated with
7 providing both electricity to utility customers and commercial telecommunication services to
8 the public must be allocated and then paid separately by the two enterprises.” *Id.* at 7. The City
9 argues that the Court should disregard the City Attorney Memo and strike references to it
10 because it expresses legal conclusions.
11

12
13 Of course the Memo expresses legal conclusions. It is the City Attorney’s job to
14 express legal conclusions to the city council, public utility board, and other city officials. *See*
15 Tacoma City Charter, §3.6 (Jurca Dec., Ex. 6): “The City Attorney shall be legal advisor to the
16 City Council, Manager, and all officers, departments, and boards of the City in matters relating
17 to City affairs.”
18

19 It is important to keep in mind the present posture of the case. The issue presented by
20 this part of the City’s motion to strike is whether the Court should consider the City Attorney
21 Memo in ruling on plaintiffs’ motion for partial summary judgment granting declaratory relief
22 as to whether electric utility revenues can lawfully be used to pay for telecom (cable TV and
23 internet) expenses that do not directly support or are not allocable the electric utility function
24 (supplying electricity to utility customers). The City has not disputed any of the facts upon
25

1 which plaintiffs' motion is based, so the issue before the Court on plaintiffs' motion is purely
2 legal. The question is whether the Court should consider the City Attorney Memo in ruling on
3 the legal issues presented by plaintiffs' motion; it is not whether the Memo should be admitted
4 into evidence at trial and presented to a jury.

5
6 Suppose Ms. Pauli and Mr. Fosbre, the co-authors of the memo, wrote a law review
7 article, or delivered a paper at a convention of municipal attorneys, discussing the same issues
8 addressed in their 7/16/2015 memo, and that plaintiffs' counsel supplied a copy to the Court as
9 additional authority for their arguments. There would be no basis for the Court to disregard the
10 article. Of course the Court would be free to review the article, assess the strength or weakness
11 of its legal analysis, and make its own determination as to how persuasive it is. There is no
12 reason why the City Attorney Memo should be deemed any less worthy of consideration.

13
14 The fact that its authors happen to be the "official" legal advisors for the City does not
15 diminish the value of the Memo's legal analysis. This is especially true since the Memo was
16 not written as a piece of advocacy in some lawsuit. It was written by the City's principal legal
17 advisors in their "official" legal capacity and was submitted to the city council and public utility
18 board long before the present lawsuit was commenced or was even on the horizon. For these
19 reasons the City Attorney's 7/16/2015 memo is entitled to considerable weight, just as
20 Washington courts have often held that Attorney General Opinions are entitled to considerable
21 weight. *See, e.g., Thurston County ex rel. Bd. of County Com'rs v. City of Olympia*, 151 Wn.2d
22 171, 177, 86 P.3d 151 (2004) ("Although not controlling, attorney general opinions are entitled
23 to great weight").
24
25

1 The Memo is not hearsay, since it is an admission by a party opponent:

2 A statement is not hearsay if . . . [t]he statement is offered against a party and is
3 (i) the party's own statement, in either an individual or representative capacity or
4 (ii) a statement of which the party has manifested an adoption or belief in its
5 truth, or (iii) a statement by a person authorized by the party to make a statement
6 concerning the subject, or (iv) a statement by the party's agent or servant acting
7 within the scope of authority to make the statement for the party, or (v) a
8 statement by a coconspirator of a party during the course and in furtherance of
9 the conspiracy.

10 ER 801(d)(2). The City Attorney was plainly acting within the scope of his or her authority in
11 advising city officials as to matters of municipal law. *See Tacoma City Charter*, §3.6.

12 The City's citation to *Lockwood v. AC & S, Inc.*, 109 Wn.2d 235, 744 P.2d 605 (1987),
13 in its motion to strike (Mot. at 4) is curious because that case undercuts the City's argument. In
14 that case, the Washington Supreme Court held that statements by a company's health officials
15 constituted admissions of a party opponent. 109 Wn.2d at 261-262. The company argued that
16 there was "no evidence that [it] expressly authorized the declarants to make the specific
17 statements [at issue] on its behalf." *Id.* The Court found that argument unpersuasive:

18 In light of the declarants' authority to act as health officials for [the company], it
19 is reasonable to infer that they were authorized to make statements about the
20 subject of asbestos health issues on [the company's] behalf. Therefore, we
21 conclude that the documents were admissions by a party opponent.

22 *Id.* at 262. Similarly, in the instant case, since the City Attorneys are authorized to act as legal
23 advisors for the City they are authorized to make statements about the legality of using electric
24 utility revenues to pay for non-utility expenses of the City's commercial telecom business.

25 The Court in *Lockwood* went on to reject the company's additional argument that even
if the statements by the company's health officials were admissions because they were made by

1 authorized speaking agents as to health issues, they were nevertheless inadmissible because
2 they were opinions and not statements of fact. Said the Court:

3
4 *In Liljebloom v. Department of Labor and Indus.*, 57 Wash.2d 136, 143, 356 P.2d
5 307 (1960), this court stated that an agent’s statement must be a statement of fact
6 and not an expression of opinion in order to be admissible against his principal.
7 However, later cases have questioned the soundness of this proposition,
8 suggesting that the focus should be on whether the statement was made within
9 the authorized scope of the speaker’s duties, not on the form of the statement.
10 *See Kennard v. Mountain View Dev. Co.*, 69 Wash.2d 492, 495, 419 P.2d 154
11 (1966); *Young v. Group Health Coop. of Puget Sound*, 85 Wash.2d 332, 337, 534
12 P.2d 1349 (1975).

13
14 We agree with these cases that, under ER 801(d)(2), the important consideration
15 is not if the statement was one of fact or opinion, but if the declarant had the
16 authority to make it on behalf of the party. ER 801(d)(2) itself does not
17 distinguish between admissions of fact and admissions in the form of opinions.
18 We see no reason to distinguish an agent’s statement in the form of an opinion
19 from other opinion evidence. Generally, opinion evidence is admissible if it is
20 helpful to the trier of fact. ER 701, 702. We conclude that, if a statement meets
21 the criteria for an admission by a party opponent in ER 801(d)(2), it is not
22 excludable because it is in the form of an opinion, as long as it is helpful to the
23 trier of fact. See 5A K. Tegland, § 344, at 149–50; § 349, at 160. To the extent
24 that the statements in the documents at issue here include opinions, we hold that
25 they were not excludable on that basis.

109 Wn.2d at 262-263 (emphasis added). Similarly here, the fact that the Memo states the City
Attorney’s opinions as to applicable municipal law does not detract from its status as an
admission by a party opponent and does not make the Memo excludable on that basis.¹

Next, the Court in *Lockwood* went on to address yet another argument similar to one

¹ For an interesting and thoughtful article on the admissibility of expert legal testimony, see Note, *Expert Legal Testimony*, 97 Harvard L. Rev. 797 (1984). After explaining why the criteria for admissibility of expert legal testimony depends on whether the testimony is to be presented to the judge (in, say, a bench trial or on a motion) or to a jury, the author concludes, almost echoing the Washington Supreme Court’s reasoning in *Lockwood*: “There should be no strict rule of law prohibiting expert legal testimony. Nor should there be a blanket rule of admissibility. Ultimately, judges must use their common sense and apply the criteria for admissibility on a case-by-case basis to determine when expert legal testimony will be helpful to the judge, the jury, or both.” *Id.* at 814.

1 made by the City in its motion to strike, namely, that the City Attorney Memo is “based on
2 information gathered by Pauli and Fosbre from other individuals, rather than their own practice
3 and experience.” Mot. at 5 n.3. We are not sure what “other individuals” the City is referring
4 to, unless they are the authors of the judicial decisions, statutes and City Charter provisions
5 cited by Pauli and Fosbre in their Memo. In any event, the Supreme Court in *Lockwood* had no
6 trouble disposing of the similar argument made the defendant in that case:
7

8 The documents at issue in this case do not suffer from this deficiency. Both
9 documents are in the nature of scholarly papers and contain extensive footnotes to
10 sources. Because there is no indication that they are based on rumor or
11 speculation, there was no reason to exclude them on grounds that they did not
12 represent firsthand knowledge of the speakers.

13 109 Wn.2d at 263.

14 In ruling on the City’s motion to strike, the Court should also note that the City Attorney
15 Memo does not contain the sort of “legal conclusions” that Washington courts decline to
16 consider on summary judgment. The City cites *Ebel v. Fairwood Park II Homewoners’ Ass’n*,
17 136 Wn. App. 787, 150 P.3d 1163 (2007). In that case, property owners sought a declaratory
18 judgment that their homeowners’ association lacked authority and was not properly formed.
19 *Id.* at 789. In support of their claims, the property owners submitted an affidavit from the son
20 of a developer who constructed the subdivision. *Id.* at 790. The son’s affidavit described facts
21 pertaining to the development of the subdivision. *Id.* The son’s affidavit also contained
22 paragraphs discussing the authority of homeowners’ associations and the rights of homeowners;
23 the court of appeals upheld the trial court’s refusal to consider those portions of the affidavit
24 because they were a layman’s inadmissible legal conclusions. *Id.* at 791.
25

1 The court in *Ebel* relied on *Keates v. City of Vancouver*, 73 Wn. App. 257, 265, 869
2 P.2d 88 (1994). In that case, a plaintiff sued the City of Vancouver for the tort of outrage. *Id.*
3 at 259-260. On appeal, the plaintiff challenged the court’s decision to grant defendant’s motion
4 for summary judgment. *Id.* at 260. The court of appeals affirmed, stating that plaintiff’s
5 affidavit did not create a triable issue where the facts in his affidavit did not support a claim of
6 outrage and his statement that the defendant’s conduct was “callously outrageous” was simply a
7 legal conclusion. *Id.* at 265.

9 In both *Ebel* and *Keates*, the “legal conclusions” at issue were really just conclusory
10 legal statements offered by lay people. The affidavits in *Ebel* and *Keates* were not like the City
11 Attorney Memo in this case. The City Attorney Memo was written by the City’s “official”
12 legal counsel with special expertise and experience in the subject area. As noted above, the
13 City Attorney Memo is akin to Attorney General Opinions which Washington courts have
14 repeatedly held are entitled to considerable weight.

16 Finally, the Court should keep in mind that the City Attorney Memo is not like an
17 affidavit written for the purpose of submission in support of or in opposition to a summary
18 judgment motion, or like an expert’s opinion testimony offered at a trial. It was written outside
19 of the context of litigation, as part of the historical sequence of events giving rise to the
20 litigation. The City Attorney Memo is in effect a verbal act and is part of the factual
21 background of the case, similar to the adoption of a city council ordinance or a public utility
22 board resolution. Its status in this case as a verbal act is similar to the status of an attorney’s
23 opinion that is alleged to be negligent in a legal malpractice action. An allegedly negligent
24
25

1 legal opinion in a malpractice action is not “disregarded” or stricken from the record on the
2 ground that it expresses a legal conclusion; it is a verbal act giving rise to the claim before the
3 court. The only difference here is that the City Attorney’s “verbal act” (the 7/16/2015 opinion
4 memo to the city council and public utility board) is not alleged in this case to be negligent;
5 plaintiffs allege that the City Attorney’s legal advice was correct and persuasive and should
6 have been heeded by the city council and public utility board. And we submit that it should be
7 considered by the Court in ruling on the legal issues presented by plaintiffs’ motion for partial
8 summary judgment.
9

10 **B. There Is No Basis to Strike References to the All-In Plan.**
11

12 It is not entirely clear which references to the All-In Plan the City is asking the Court to
13 strike; we are told only that the references that “lack evidentiary support” should be stricken
14 (Mot. to Strike at 5, heading “B”). We are puzzled by that request, because there are no
15 references to the All-In Plan in plaintiffs’ motion that are not fully supported by citations to
16 deposition testimony of City officials or to documents produced by the City and authenticated
17 by sworn deposition testimony. *See* Plfs. Motion at 11-12.
18

19 As best we can tell, the City seems to be making two kinds of objections to the
20 references to the All-In Plan. One is that a final version of the Plan was never formally adopted
21 or approved by the city council, so plaintiffs have not shown that “the version of the plan they
22 discuss was going to come to fruition.” Mot. to Strike at 6, line 15. The other is that plaintiffs
23 have not shown that “the future financial effects of that plan are knowable and known.” Mot. to
24
25

1 Strike at 6, line 16. But plaintiffs have not said otherwise. Plaintiffs have shown, by
2 undisputed evidence set forth in the exhibits to the Jurca Declaration, that:

- 3 • in December 2015 the city council and public utility board adopted resolutions directing
4 Tacoma Power to develop a business, financial and marketing plan to provide enhanced
5 and upgraded telecom service, including retail gigabit internet service (previously Click
6 was a provider of only “wholesale” internet service), that came to be called the “All-In
7 Plan”;
- 8 • that the plan was developed over the next several months and in September 2016 the
9 public utility board adopted a resolution approving the All-In Plan and directing
10 Tacoma Power to implement it upon approval by the city council;
- 11 • that the board resolution adopting the Plan provided that Tacoma Power was to transfer
12 a minimum of \$6 million per year and up to an additional \$10 million per year from
13 electric utility revenues to pay for Click’s capital improvements and other expenses of
14 implementing the Plan; and
- 15 • that according to a refined and more detailed version of the Plan prepared by Click and
16 its consultant in March 2017 the cumulative subsidies from electric revenues to cover
17 Click’s capital investments and operating losses from 2016 forward under the Plan were
18 projected to amount to about \$19.5 million by 2017, from \$38.6 million to \$39.5
19 million by 2020, and from \$58.7 to \$65.6 million by 2025.

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24 *See* Plfs Mot. at 11-12. In late January 2018, about one month after plaintiffs filed their motion
25 for partial summary judgment, the city council and public utility board adopted resolutions

1 described as follows in the City’s brief submitted in opposition to plaintiffs’ motion:

2 However, on January 24 and 30, 2018, the TPU Board and City Council
3 rescinded their previous resolutions directing development and implementation
4 of the All-In Plan.

5 Opp. Br. at 11, lines 8-9 (emphasis added).

6 Every statement of fact in plaintiffs’ motion is supported by admissible evidence, and
7 the City has not disputed any of the facts set forth in the motion. Plaintiffs’ description of the
8 All-In Plan was completely accurate. The fact that in late January 2018 the City changed its
9 mind and decided not to proceed with the Plan, so that the Plan presumably will not “come to
10 fruition,” does not delete from the historical record the fact that the city council and utility
11 board adopted resolutions in December 2015 directing that such a Plan be developed, or the fact
12 that in September 2016 the utility board adopted a resolution approving the Plan and calling for
13 the millions of dollars described above to be transferred from electric utility revenues to pay for
14 it, or the fact that in March 2017 Click and its consultant developed a more detailed version of
15 the Plan that projected cumulative subsidies for Click from electric revenues amounting to
16 many tens of millions of dollars over the next several years. The facts set forth in plaintiffs’
17 motion about the projected subsidies under the All-In Plan were not unfounded speculation by
18 plaintiffs or anybody else; those projections were made by Click itself and its expert consultant,
19 based on careful analysis of projected expenses. Frankly, we really have no idea what the City
20 is talking about in its motion to strike by objecting that plaintiffs have failed to show that the
21 future financial effects of the proposed All-In Plan “are knowable and known.” Budgets and
22 projections of future revenues and expenses are a fact of life in the business and financial world.
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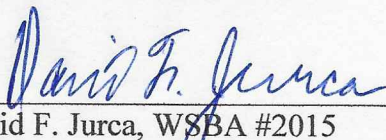
1 The City simply has not shown any reason at all why the facts set forth in plaintiffs' motion
2 about the City's own projections of the financial effects of the proposed All-In Plan should be
3 stricken from the record for purposes of plaintiffs' pending motion for partial summary
4 judgment.

5
6 **C. Conclusion**

7 Historical facts cannot be deleted. Bells cannot be unrung. The City Attorney's
8 7/16/2015 opinion memo to the city council and the public utility board explaining that electric
9 utility subsidies for Click telecom expenses are unlawful, and the City's decision to disregard
10 that advice and to call for Tacoma Power to develop an All-In Plan that was projected to require
11 even greater illegal subsidies (until the City reversed course in January 2018, after plaintiffs'
12 motion was filed), are facts that cannot be stricken from the historical record. They are part of
13 the factual fabric of this case. The City's motion to strike should be denied in all respects.
14

15
16 *Respectfully submitted* this 28th day of February, 2018.

17 HELSELL FETTERMAN LLP

18
19 By 
20 David F. Jurca, WSBA #2015
21 Andrew J. Kinstler, WSBA #12703
22 Emma J. Kazaryan, WSBA #49885
23 Attorneys for Plaintiffs
24
25

March 01 2018 11:07 AM

KEVIN STOCK
COUNTY CLERK
NO: 17-2-08907-4

Honorable Susan K. Serko
Hearing Date: March 2, 2018
Hearing Time: 9:00 a.m.

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SUPERIOR COURT 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,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4

CORRECTION TO PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT GRANTING
DECLARATORY RELIEF

Plaintiffs' counsel have noticed an erroneous exhibit reference at page 9, line 9, of Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, as filed on December 28, 2017. The citation "See Ex. 12 at 3798" should have said "See Ex. 16 at 3798." Attached hereto is a corrected copy of that page. We request that the corrected page be deemed substituted for the page as originally filed.

We also noticed that we failed to include in the David F. Jurca Declaration offered in support of our motion certain deposition pages that were cited in the motion. Those pages are attached hereto.

CORRECTION TO PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT GRANTING DECLARATORY RELIEF - 1

Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

1 We apologize for the erroneous reference and for any inconvenience to the Court or
2 counsel resulting from our errors.

3 *Respectfully submitted* this 1st day of March, 2018.
4

5 HELSELL FETTERMAN LLP

6
7 By 

8 David F. Jurca, WSBA No. 2015

9 Andrew J. Kinstler, WSBA No. 12703

10 Emma Kazaryan, WSBA No. 49885

11 Attorneys for Plaintiffs
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1 applications were described as “cable TV, Internet and data transport services sold to wholesale
2 and retail customers.” Ex. 14 at 17088.

3 Over the ensuing years technological and other changes, including a gradual transition
4 from wired connections between substations and for automated meters to wireless connections,
5 led to a need to review the allocation of expenses between power applications and commercial
6 applications. Gaines Dep. at 20-21; Ex. 15 at 23-24 (18775-18776), 27, 49; Ex. 2 at 9099.
7 After a thorough review of its allocation methods, in August 2015 Tacoma Power adopted
8 updated allocations, which were made retroactive to January 1, 2015. See Ex. 16 at 3798;
9 Gyaltzen Dep. at 95; Gaines Dep. at 26. These allocations were designed to account separately
10 for Click’s expenses attributable to supporting the electric utility and those attributable to
11 supporting the commercial telecommunications business.
12

13 According to financial reports prepared by the city’s Finance Department, the net
14 operating losses of Click’s commercial telecommunications business were \$1,406,192 for
15 calendar year 2014 (based on the old allocation system), \$5,267,364 for 2015 (based on the
16 updated allocations), and \$5,742,857 for 2016. Ex. 16 at 4284-85, 4286-87, 4288-89. Those
17 losses were covered by using money from the electric utility. Ex. 15 at 44, 46-49; Ex. 2 at
18 9100; Gaines Dep at 15-16; Fosbre Dep. at 12; Gyaltzen Dep. at 27; Robinson Dep. at 38; Berry
19 Dep. at 27. In 2015 it was estimated that electric rates would be reduced by 2 to 3% if the Click
20 subsidy were removed. Ex. 17 at 18179; Ex. 9 at 5; Gyaltzen Dep. at 84-85; Gaines Dep. at 28.
21

22 Section 4.15 of the Tacoma City Charter requires that at least every ten years the city
23 council must cause a competent consulting firm to perform a “general management review” of
24
25

1 do some further analysis and consideration and -- and
2 conclude that instead of 96-4, it -- it would be more
3 appropriate for the split to be 94-6?

4 MR. FILIPINI: Object to form.

5 Go ahead.

6 A. The 2013 report that established the 94-6 --
7 96-4 allocation wasn't implemented. It was a study
8 that was done. It was not implemented.

9 Q. Right.

10 A. And then two years had passed, so fast forward
11 to 2015 when the new study was done.

12 Q. Right.

13 A. All the financial information was updated in
14 terms of looking at the current numbers.

15 Q. Okay.

16 A. When we looked at the current financial status
17 at that point in time, based on whether -- what the
18 figures were, the allocation came up at -- came out to
19 be 94-6.

20 Q. Yeah. And that change was then implemented, I
21 guess, in -- was it in August of 2015 retroactive to
22 the beginning of 2015? Is that correct?

23 A. I believe that's my understanding.

24 Q. Okay. And I think you used the expression a
25 moment ago in describing that allocation split as being



CORRECTION & SIGNATURE PAGE

RE: COATES, et al., vs. CITY OF TACOMA
 PIERCE COUNTY; 17-2-08907-4
 TENZIN GYALTSEN; TAKEN SEPTEMBER 27, 2017
 REPORTED BY: Mindi L. Pettit, CCR No. 2519

I, TENZIN GYALTSEN, have read the within transcript taken September 27, 2017, and the same is true and accurate except for any changes and/or corrections, if any, as follows:

PAGE/LINE	CORRECTION	REASON
7/19	Strike "I'm employed, and"	Clarify
9/10	Strike "a -- a" and insert "another"	Clarify
9/11	insert ",", after integration; strike "that" and replace with "they"	Clarify
9/14	Strike "So" and start sentence with "It"	Clarify
10/6	Insert "National Division" after the word "the"	Clarify
10/10	Insert "with" after the word "helping"	Clarify
10/14	Strike "--" and insert "director of operations"	Clarify
10/25	Insert "Charter" before the word "ended"	Clarify
11/4	Strike "with the" and replace with "within their"	
	Insert "called" before "Rocky Mountain"	Clarify
11/6	Strike "owning" and replace with "buying"; strike "and" and insert "among"	Clarify
11/11	Strike "kind of", insert "began"	Clarify
11/18	Strike "is a -- is a --a --sort of"	Clarify
11/21	Strike "that", insert "the", strike "in", insert "from"	Clarify
12/7	Strike "is", replace with "as"	Clarify
12/10	Strike "the", replace with "their"	Clarify
12/11	Strike "kind of"; strike "--" and insert "groups and"; strike "more --"	Clarify
12/15	Strike "moved the -- they"	Clarify
12/16	Strike "regional", insert "group"; strike "created" and insert "went from"	Clarify
12/19	Insert "elsewhere" where you find "--"	Clarify
13/13	Insert "I" after "So"	Clarify
13/9	Insert "I" after "so"	Clarify
13/16	Strike "And", insert "Yes"	Clarify
13/19	Insert "break even" where "--" is found	Clarify
13/21	Strike <u>second</u> "I" and replace with "it"	Clarify
14/2	Insert an 's to make "City's", strike "also had a"	Clarify
14/10	Replace "--" with "Company"	Clarify
14/13	Insert "income" where the "--" are located	Clarify
14/14	Strike "-- the -- the"	clarify

PAGE/LINE	CORRECTION	REASON	147-1
15/5	Strike "And", replace with "I"	clarify	
15/8	Strike "cable television", insert "telecommunication"	clarify	
17/14	Insert "the" after "what"	clarify	
18/7	Strike "those", insert "that"	clarify	
18/9	Strike "those", insert "that"; strike "- that"	clarify	
21/9	Insert "a" before "different"	clarify	
21/10	Strike "s" on the word "functions", strike "than", insert "and"; insert "a" before "different"	clarify	
21/11	Strike "s" on the word "functions"	clarify	
21/12	Insert "was" before "being"	clarify	
22/22	Insert "conclude" for "--"	clarify	
22/14	strike "and", insert "as to"	clarify	
22/15	Insert "cost centers" for "--"	clarify	
22/16	Insert "agreeable or not" for "--"	clarify	
22/17	Insert "to be agreed with" for "--"	clarify	
23/21	Insert "plans in" and strike "-- that --"	clarify	
24/1	Strike "scale", insert "scheme"	clarify	
24/7	Strike "--" insert "time"	clarify	
27/16	Add "," after together; strike "-- our budgets together, our"	clarify	
27/17	Strike "kind of"	clarify	
27/21	Insert "are" before "a"; strike "on", insert "in"	correct	
28/6	Insert "the" after "between"	clarify	
28/10	Strike "as", insert "since"	clarify	
28/12	Strike "those --"	clarify	
28/13	Strike "is" at the end of the line, insert "results in"	clarify	
28/14	Strike "so", insert "so that"	clarify	
29/24	Strike "-- chair", insert "time"	clarify	
30/3	Strike "of", insert "on"	clarify	
31/10	Insert "occurred" after "have"	clarify	
31/11	Insert "this issue" for "--"; insert "would be" after "generally"; strike "prior" and insert "others"	clarify	
32/14	Insert "was about" after "that"	clarify	
33/5	Strike "is" and replace with "was"	clarify	
33/8	Insert "And" before "Finance"	clarify	
33/23	Strike "that -- that the --", Insert "that are"	clarify	
34/17	Insert "he was" after "whether"	clarify	
35/1	Strike "to their --" insert "and"	clarify	
35/2	Strike "that where some of these costs -- the way"	clarify	
35/3	Strike "come of"; strike "where they're", insert "to"	clarify	
35/4	Strike "of what", insert "how"	clarify	
35/6	Insert "I provided" after "input"	clarify	
35/8	Strike "is", insert "was"	clarify	
35/11	Strike "whatever"	clarify	
35/12	Insert "draft" before "document"	clarify	
35/17	Strike "involve", insert "evolve"	correct	
36/2	Insert "Cannot" where "--"	clarify	

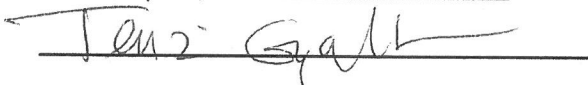
PAGE/LINE	CORRECTION	REASON	147-2
38/1	Strike "to", insert "resulting in"; insert "which was" before "prior"	clarify	
38/21	Insert "input" where "--"		
39/25	Strike "if I"	clarify	
43/21	Strike "a", insert "our"	clarify	
44/24/	Insert "to Click!" after "nature"	Clarify	
45/9	Strike "my", insert "our"	clarify	
45/16	Strike "And formerly it was a", insert "The other"; insert "was" before "called"	clarify	
45/19	Strike "And", insert "But"; insert "have" before "combined"	clarify	
46/22	Strike "Probably", insert "They have"	clarify	
47/4	Strike "or -- seven"	clarify	
47/9	Strike "--", insert "commercial broadband companies"	clarify	
47/22	Strike "probably expenditures related to --or"	clarify	
47/24	Insert "for" after "it's"; capitalize "Power"	clarify	
48/22	Strike "-- there is also an INET"	clarify	
48/23	Strike "that the City has, and we provide"	clarify	
48/25	Insert "what's" before "mostly"; strike "related to that"	clarify	
49/1	Strike "service", insert "in the amount."	Clarify	
49/18	Strike "depreciation" at the <u>end</u> of the line, replace with "depreciated"	clarify	
52/9	Strike "had", insert "has"	clarify	
52/16	Strike "of", replace with "or"; strike "be", replace with "have been"	clarify	
52/18	Strike "to"	clarify	
52/20	Strike "that reflects"	clarify	
52/21	Strike "-- Click would have been"	clarify	
53/17	Strike "give", replace with "conduct"	clarify	
53/18	Strike "what"; strike "is" and replace with "part of our business"	clarify	
53/20	Strike "what number --"	clarify	
53/21	Strike "part of -- that's"	clarify	
54/14	Strike "Charlene", replace with "Charleen"	correction	
54/15	Strike "Charlene", replace with "Charleen"	correction	
56/7	Strike "if -- we're" insert "in"	clarify	
56/15	Strike "and I think about at the same time", insert "about" Insert "which" before "had"	clarify	
56/19	Strike "why are we -- why", insert "inquiring"	clarify	
57/1/	Insert "understood" for "--"	clarify	
57/3	Strike "actually", replace with "generally"	correction	
57/4	Strike "acquire", replace with "get"; strike "the", replace With "that"	clarify	
57/5	Insert "generally" after the word "asset"	clarify	
57/11	Make "get" plural; strike "that -- whatever"	clarify	
57/12	Strike "the life --"; strike "the", insert "that"; strike "is"	clarify	
57/16	Insert "that should occur" after "--"	clarify	

PAGE/LINE	CORRECTION	REASON	147-3
57/25	Strike "what's"	clarify	
58/22	Strike "recovering", insert "recovery of"; insert "then" Before "would"	clarify	
58/23	Strike "to -- if you -- if you"	clarify	
58/24	Insert "rather" before "and"; strike "-- and"; strike "that", Replace with "this amount"	clarify	
58/25	Strike "kind of", insert "basically"; strike "sign it", insert "gauge"	clarify	
59/1	Strike "so that you can actually see"; insert "fully" after "to"	clarify	
29/2	Strike "rates", insert "amounts"	clarify	
59/4	Strike "I think"	clarify	
59/7	Strike "is", replace with "was"	clarify	
59/8	Strike "putting", insert "assessing"; strike "there", insert "to Click!"	clarify	
59/9/	Strike "is not covering --", insert "cannot"; strike "covering", Insert "cover"; insert "operating" before "costs"	clarify	
59/13	Strike "are", insert "were"	clarify	
59/15	Insert "it" before "says"	clarify	
59/24	Strike "be", insert "have been"	clarify	
63/6	Strike "--" insert "solution"	clarify	
64/8	Strike "the variety --"	clarify	
64/23	Insert "in" before "January"	clarify	
65/1	Strike "-- my tenure there --"	clarify	
65/2	Strike "tenure here -- or" and "so that -- at"	clarify	
65/3	Strike "decision, the --" and insert "point"	clarify	
65/4	Strike "don't", replace with "not"	clarify	
65/22	Strike "they're making -- and", insert "with"	clarify	
66/4	Strike "So, you know", insert "and"	clarify	
66/12	Insert "or did" after "policymakers"	clarify	
66/17	Strike "to kind of say, he, listen, can you", insert "to"	clarify	
66/19	Strike "can", insert "could"	clarify	
67/5	Strike "based on"	clarify	
67/6	Strike "what was the --"	clarify	
67/7	Strike "--and the"	clarify	
67/8	Strike "receive is"; replace with "received was"	clarify	
67/12	Strike "look", insert "looked"	clarify	
67/13	Strike "kind of"; strike "those --"	clarify	
67/14	Strike "that I -- that are -- that"	clarify	
67/15	Strike "execution"; strike "not a", insert "don't make"	clarify	

PAGE/LINE	CORRECTION	REASON	147-4
67/17	Strike "others have that", insert "executive policy maker"; Make "decision" plural	clarify	
67/18	Strike "direction comes out", insert "decisions are made"	clarify	
68/1	Strike "for the"	clarify	
68/6	Strike "was", insert "is"	clarify	
68/7	Strike "was", insert "is"; insert "head of" before TPU	clarify	
68/8	Strike "director"	clarify	
68/11	Insert "the" at the end of the line	clarify	
68/12	Strike "whatever", insert "policy makers"	clarify	
68/14	Strike "and moved", insert "for moving"	clarify	
70/1	Insert "presentation" after the word "another"; strike "so" Insert "or"	clarify	
78/20	Strike "when we were -- when we were"	clarify	
78/21	Strike "provide"	clarify	
79/14	Strike "a", insert "the"	clarify	
80/6	Strike "a", insert "the"	clarify	
80/11	Strike "prior in", insert "at an"; strike "s" in "time"	clarify	
80/13	Strike "we're not -- we don't --"	clarify	
80/14	Strike "because", insert "as"	clarify	
80/15	Capitalize "power"	clarify	
80/20	Insert "when" after "2013"	clarify	
80/24	Insert "the proposal" for "--"	clarify	
80/25	Strike "doing", insert "working on"	clarify	
81/4	Strike "putting", insert "pursuing"	clarify	
84/2	Strike "-- pay --"	clarify	
84/15	Insert "it" before the word "should"	clarify	
88/16	Strike "what", insert "which"	clarify	
91/25	Strike "Kind of help", insert "It helped"	clarify	
93/11	Strike "for"	clarify	
93/12	Strike "the"	clarify	
93/14	Strike "they're", replace with "we were"	clarify	
94/21	Strike "the study was done --"	clarify	
95/8	Insert ", but" after "done"	clarify	
95/18	Strike "came up at --"	Clarify	
96/9	Strike "the" at the <u>end</u> of the line, insert "it in"	clarify	
96/10	Strike "of" replace with "or"	clarify	
96/25	Insert "say" before the phrase "a hundred"	clarify	
97/1	Strike "and you have --", insert "let's"	clarify	
97/7	Insert "let's" before the phrase "say it's all"; strike "of"	clarify	
97/3	Strike "them, a"	clarify	
97/8	Strike "of the -- at the end"	clarify	
97/10	Strike "where", insert "what"; insert "at" after "arrive"	clarify	
97/12	Insert "centers" before the phrase "are allocated"	clarify	
102/6	Strike "That -- as a -- page 13"; strike "put", insert "input"	clarify	

PAGE/LINE	CORRECTION	REASON	147-5
107/19	Strike "a" and insert "the"	clarify	
110/21	Strike "this -- this -- the"; remove the apostrophe in "number's"		
	Insert "were" before "reiterated"	correction	
111/1	Insert "had" after the word "that"	clarify	
111/6	Strike "are", replace with "were"	clarify	
111/11	Strike "so it was -- so there was", insert "the"	clarify	
111/12	Insert "were" after the word discussions	clarify	
111/13	Strike the word "the", replace with "his"	correction	
111/14	Insert "and" before the word "exchanges"	clarify	
111/25	Insert "personal" before the word "information"; strike "that's what"	clarify	
112/1	Strike "as bought as --"; insert "It" before the word "hired"	clarify	
112/4	Strike "is"; replace with "was"	clarify	
112/7	Strike "it's --"	clarify	
112/22	Strike "A", insert "The"; strike "a", insert "the"; Strike "It's a -- no,"	clarify	
113/16	Strike "with -- we", insert "I"	clarify	
113/19	Strike "were", insert "would be people"	clarify	
113/23	Strike "how certain --"	clarify	
114/2	Strike "different"	clarify	
114/5	Insert "it" after the word "understand"; change "these" to "the"	clarify	
114/6	Remove ", " after cetera; insert "and"; strike "are", insert "were"	correction	
115/16	Strike "whether"; insert "from" after the word "it"; strike "was"	clarify	
115/18	Strike "that how--just from--basically from the"	clarify	
115/19	Strike "perspective from"	clarify	
115/23	Strike "as a"	clarify	
115/24	Strike "the"; Strike "part of"	clarify	
115/25	Strike "that would be"	clarify	
116/1	Strike "section", insert "division"	clarify	
120/6	Strike "arise", insert "have occurred"	clarify	
120/12	Capitalize "Power's"	clarify	
121/8	Capitalize "Power"	clarify	
123/5	Strike "at the end --", insert "was adopted"	clarify	
124/8	Strike "around", insert "at the meeting"	clarify	
124/10	Strike "--I think the"; insert "which" at the <u>end</u> of the line	clarify	
124/12	Strike "and"; revise "resulting" to read "resulted"	clarify	
125/25	Strike "one"; insert "was" after 2015	clarify	
126/2	Insert "to the" before the phrase "joint body"	clarify	
126/3	Strike "to adopt --"	clarify	
126/11	Strike "what culminated in this was"; insert "ultimately the"	clarify	
126/12	Insert "was" after the word "policymakers"	clarify	
126/13	Insert "had" before the phrase "put together"	clarify	
128/13	Strike "the", insert "those"	clarify	
129/6	Strike "did", insert "do"	clarify	
129/21	Insert "looks like" after "--"	clarify	

PAGE/LINE	CORRECTION	REASON	147-6
133/6	Strike "in this report"	clarify	
135/9	Strike "of", insert "for"	clarify	
136/1	Strike "are"	clarify	
136/2	Insert "are" after "thoughts"	clarify	
137/1	Strike "a" and replace with "the"; Strike "I can"	clarify	
137/2	Strike complete line	clarify	
137/3	Strike complete line	clarify	
138/21	Strike "some", insert "something,"	correction	
138/22	Insert "to it." for "--"	clarify	
138/24	Insert "recall whether I was" after "--"; insert "involved or"		
	After the word "directly"	clarify	
139/3	Insert "that's" after "So"; Strike "these are", insert "for"	clarify	
140/21	Insert "do, and" after the phrase "If they"	clarify	
141 Page	Revise power to be capitalized "Power"	clarify	
143/16	Insert "as" before "retail"; strike "level", insert "basis"	clarify	
143/18	Insert "would" before the word "have"	clarify	
144/3	Insert "#" before 10879	clarify	

Signed at Tacoma, Washington,
on this date: 11/2/17

TENZIN GYALTSEN

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1 to reflect shared costs of approximately 94 percent to
2 Click! and six percent to Tacoma Power. Year-to-date
3 results incorporate the effects of this change with
4 the January 1, 2015 effective date."

5 I just wanted to sort of bring to mind that
6 that change was sort of made in August of 2015 and
7 then it was applied retroactively to the beginning of
8 the year 2015?

9 A. Yes, that's right, I recall that.

10 Q. Okay. Then if you turn to the report for
11 December of 2015, which is on page Bates number 4288--

12 A. Yes.

13 Q. -- it shows the year-to-date net operating
14 loss for Click! for 2015 at something in excess of
15 \$5 million and the net operating loss for 2014 at
16 about 1.4 -- a negative \$1.4 million.

17 Just so that I can understand this
18 correctly, that \$5 million figure for 2015 reflects
19 the new allocation and the \$1.4 million figure for
20 2014 reflects the old allocation, correct?

21 A. Yes, that's correct.

22 Q. Did you ever ask anyone to see what the
23 result would be if the new allocation was applied to
24 2014 as well?

25 A. I don't recall doing that.



1 helpful. I think it was around 2010 or 11 that we
2 began to do some analytical work looking at
3 alternative future business plans for Click!. It was
4 about that time that we engaged the consultant CCG.
5 So we had been working on alternative business plans
6 for quite some time, a number of iterations with the
7 Council and Board and so forth.

8 By the time we got to 2015, we had analyzed
9 eight different potential business plans for Click!.
10 Only one of them was forecast to recover Click!'s
11 costs and it was this leasing arrangement. It just so
12 happened coincidentally that we received a proposal
13 from Wave at about the same time we came up with this
14 analytical conclusion to lease the network. We
15 analyzed that. We reviewed it with Wave and brought
16 that forward as a proposal in this time frame. I
17 think it was April 1st, actually, of 2015.

18 Q. What was the reaction of the Public Utility
19 Board?

20 A. Well, of course we had pre-briefed all of
21 the board members individually about what the proposal
22 would be. We'd also pre-briefed the Mayor what the
23 proposal would be. We had intended to pre-brief the
24 council members also, but the Mayor advised against
25 that, so we did not.



1 the staff to do additional analysis and look at
2 alternatives and things.

3 Q. At some point there came to be something
4 known as the All-In proposal?

5 A. Yes.

6 Q. What was that?

7 A. As we got on in the summer of 2015, we were
8 making public presentations about the Wave proposal.
9 It continued to receive adverse feedback from really a
10 small subset of the public. But because of that, the
11 elected folks and the appointed folks on the board
12 directed us to look at other alternatives, including
13 particularly a proposal that they referred to as
14 All-In, where rather than just retailing cable
15 television services as we had been doing, we would
16 also begin retailing Internet service in a bundled
17 fashion in direct competition with Comcast and also in
18 competition with the small Internet service provider
19 companies that historically had been riding our
20 network.

21 Q. I gather there would have been some capital
22 investment required to proceed with the All-In
23 proposal?

24 A. Yes, because part of the objective of the
25 policymakers was to increase the speed of our network



1 Wouldn't such a loan be contrary to the
2 City Charter?

3 MR. FILIPINI: Object to form and calls for
4 a legal conclusion.

5 A. Well, because the -- reading this, it says a
6 subaccount within Tacoma Power. Because it's in the
7 same fund itself, I don't think it would be a
8 violation of the City Charter, because it's not
9 transferring funds of another department or division
10 within TPU. But that's a question that the court
11 would want to answer as part of this analysis about
12 whether the --

13 Q. (By Mr. Jurca) You would agree with me that
14 there is at least a significant legal issue about
15 treating it as such a loan would be lawful?

16 MR. FILIPINI: Object to form and calls for
17 a legal conclusion.

18 A. Yes, yes.

19 Q. (By Mr. Jurca) Section 4 on page six of the
20 resolution says, "Prior to implementing the Business
21 Plan contemplated in this resolution, TPU and the
22 City's Legal Department shall, seek a legal opinion or
23 declaratory judgment in Pierce County Superior Court,
24 to confirm that Tacoma Power may operate the City of
25 Tacoma's telecommunications system in accordance with



1 the business plan."

2 I take it that no such legal opinion or
3 declaratory judgment has yet been sought by TPU or the
4 City's legal department?

5 A. Correct.

6 Q. Perhaps this lawsuit may lead to such a
7 declaratory judgment?

8 A. Correct. That is our hope --

9 Q. I understand.

10 A. -- that we resolve this issue.

11 (Deposition Exhibit No. 63 was marked
12 for identification.)

13 Q. (By Mr. Jurca) Is Exhibit 63 a copy of City
14 Council minutes dated December 15, 2015, or I should
15 say, minutes of a City Council meeting that was held
16 on December 15, 2015?

17 A. Yes, it looks like a copy of the minutes.

18 Q. On page ten the minutes indicate that there
19 was a motion by Council Member Thoms to amend
20 Resolution No. 39347 by adding some language prior to
21 the last "whereas," the language being, "WHEREAS
22 financial projections for this model have demonstrated
23 that full recovery of Click!'s Network's cost is not
24 expected to occur for several years, if ever, and may
25 result in deficit spending over the next five years



March 01 2018 11:29 AM

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

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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

DEFENDANT CITY OF TACOMA'S
REPLY IN SUPPORT OF MOTION
TO STRIKE PORTIONS OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

In order for the Tacoma City Attorney's Memorandum of July 16, 2015 (the "2015 Memorandum") to be considered on summary judgment, Plaintiffs must overcome two insurmountable bars. First, that conclusory statements may not be considered on summary judgment. Second, that inadmissible hearsay may not be considered on summary judgment. Additionally, Plaintiffs' only potentially relevant statement regarding the All-In Plan is a mixture of misrepresentation and speculation.

A. Legal Conclusions Contained in the 2015 Memorandum May Not Be Considered on Summary Judgment.

Plaintiffs attempt to draw a line between the legal opinions of "legal experts" on one hand, and the legal opinions of "lay people" on the other. This argument finds no

1 support in the cases cited by Plaintiffs, which instead reiterate the unqualified axiom that
2 “[l]egal conclusions are disregarded for the purposes of a summary judgment motion.”
3 *Keates v. City of Vancouver*, 73 Wn. App. 257, 265, 869 P.2d 88 (1994); *Ebel v.*
4 *Fairwood Park II Homeowners' Ass'n*, 136 Wn. App. 787, 791, 150 P.3d 1163 (2007)
5 (“Courts will not consider legal conclusions in a motion for summary judgment.”).
6 Plaintiffs’ proposed exception to this rule for legal opinions offered by “legal experts” is
7 untenable, and the law review article supporting the same relies on a number of faulty
8 assumptions, including that courts are unable to distinguish between fact, law, and mixed
9 questions of fact and law, and should therefore give up any effort to do so. Note, *Expert*
10 *Legal Testimony*, 97 Harvard L. Rev. 797, 798-99 (1984).

11
12 In addition to creating endless confusion about the role of experts and lawyers, this
13 exception for “legal experts” would nullify the page limits for legal briefing, as any legal
14 argument could simply be incorporated as a declaration or report of a “legal expert,”
15 almost exactly as Plaintiffs are trying to do here. Plaintiffs’ law review article is correct,
16 however, when it cites a host of legal authorities from American Jurisprudence to
17 Wigmore’s treatise on evidence for the proposition that “it remains black-letter law that
18 expert legal testimony is not permissible.” *Id.* at 797. The Court should not disturb this
19 well-settled area of law to create an unworkable exception.
20
21

22 Plaintiffs also argue that the 2015 Memorandum can be cited as a legal authority
23 like an Attorney General opinion, and is entitled to the same weight given to those
24 opinions. This comparison has no merit, and Plaintiffs provide no case law supporting this
25 proposed rule. Official Attorney General opinions are formal, authoritative positions on

1 the law that can effectively become the law of the State. *See Five Corners Family*
2 *Farmers v. State*, 173 Wn.2d 296, 308–09, 268 P.3d 892 (2011). The 2015 Memorandum,
3 on the other hand, was a preliminary risk assessment not intended as the authoritative
4 position of the City.¹ Declaration of William Fosbre in Support of Defendant’s Motion to
5 Strike Portions of Plaintiffs’ Motion for Summary Judgment, ¶ 4. It bears more
6 resemblance to an informal letter opinion by the Attorney General’s office, which is
7 accorded “little, if any, weight.” *See Spokane Research & Def. Fund v. Spokane Cty.*, 139
8 Wn. App. 450, 459, 160 P.3d 1096 (2007), *as amended on reconsideration* (Oct. 23,
9 2007). Additionally, this does not solve Plaintiffs’ more fundamental problem, which is
10 that instead of citing the 2015 Memorandum as some kind of legal authority, they are
11 attempting to incorporate it wholesale. Plaintiffs’ “legal experts” theory is untenable, and
12 Plaintiffs’ attempt to recast their use of the 2015 Memorandum as persuasive authority *a*
13 *la* an Attorney General opinion falls flat. The legal conclusions of the 2015 Memorandum
14 should therefore be excluded.

17 **B. All Legal Conclusions and Factual Information in the 2015 Memorandum**
18 **Constitute Inadmissible Hearsay and Should Be Struck.**

19 Plaintiffs rely heavily on the case *Lockwood v. AC & S, Inc.*, 109 Wn.2d 235, 744
20 P.2d 605 (1987), for their arguments that legal conclusions can be admitted as admissions
21 of a party opponent. Plaintiffs cite and underline, but somehow ignore, the key proposition
22 excluding legal conclusions from the party-opponent exception: “Generally, opinion
23

24 _____
25 ¹ This is evidenced by the fact that, *inter alia*, the 2015 Memorandum attributes the
outcome in *Okeson v. City of Seattle* to the Accountancy Act, when the Court expressly
declined to rule on that basis. *See* 150 Wn.2d 540, 557.

1 evidence is admissible if it is helpful to the trier of fact.” *Id.* at 262 (citing ER 701, 702).
2 That is why “legal conclusions” are admissible when they reveal some fact (e.g. “there has
3 been a murder”) but are not when they concern “solely an abstract issue of law.” *See State*
4 *v. Cloud*, 7 Wn. App. 211, 498 P.2d 907 (1972); 5B KARL B. TEGLUND, WASHINGTON
5 PRACTICE: EVIDENCE LAW AND PRACTICE § 801.38, n. 9 (6th ed. 2016) (citing BROWN,
6 MCCORMICK ON EVIDENCE § 256 (7th ed. 2013)). Plaintiffs point to nothing in the 2015
7 Memorandum that could assist a trier of fact, and as such, the 2015 Memorandum is
8 inadmissible and cannot be considered on summary judgment. *See Cano-Garcia v. King*
9 *Cty.*, 168 Wn. App. 223, 249, 277 P.3d 34 (2012).²

11 Plaintiffs also assert that the 2015 Memorandum is an independently relevant fact,
12 like a legal memorandum in a legal malpractice case. This comparison is superficial at
13 best. In the malpractice example, a legal memorandum would be direct, relevant evidence
14 of whether malpractice occurred. Here, Plaintiffs cannot relate the existence or contents of
15 the 2015 Memorandum to any “fact that is of consequence” for their legal theories under
16 the Accountancy Act or Tacoma City Charter. *See* ER 401. The 2015 Memorandum is
17 therefore not relevant, and not admissible. *See* ER 401, 402.

19 **C. The Plaintiffs’ Only Potentially Relevant Statement About the All-In Plan is**
20 **Speculative, Unsupported by Evidence, and Inadmissible.**

21 Plaintiffs’ only potentially relevant claim about the All-In plan is that “the public
22 utility board (by the slimmest possible vote margin) and the city council began

23 _____
24 ² Any argument that could be drawn from Plaintiffs’ Response to Defendant’s Motion to
25 Strike regarding factual information in the 2015 Memorandum is adequately refuted by
the original Motion to Strike. Therefore the discussion of the City Attorney’s speaking
authority regarding *factual* issues and Plaintiffs’ double hearsay problems will not be
repeated here.

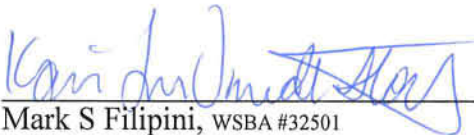
1 implementing the so-called ‘All-In Plan,’ which would make the situation worse by
2 greatly increasing the amounts of illegal subsidies for the foreseeable future.” Docket No.
3 50506427 at 16-17. Plaintiffs provide no evidence that the City Council ever began
4 implementing the All-In Plan. Furthermore, the fact that the City never implemented the
5 All-In Plan, or approved any specific version of the plan, makes any statement about the
6 consequences of the constantly-shifting plan speculative. As such, this statement about the
7 All-In Plan should be struck.

9 **CONCLUSION**

10 For the foregoing reasons, the City respectfully requests that the Court strike the
11 portions of Plaintiffs’ Motion for Partial Summary Judgment that rely on inappropriate
12 and inadmissible legal conclusions or speculation.

13
14
15 DATED this 1st day of March, 2018.

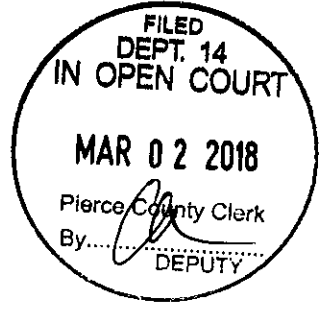
16 K&L GATES LLP

17
18 By 
19 Mark S Filipini, WSBA #32501
20 Kari L. Vander Stoep, WSBA #35923
21 Attorneys for Defendant City of Tacoma

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3/7/2018



IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

EDWARD E COATES
Plaintiff(s)

Cause Number: 17-2-08907-4
Memorandum of Journal Entry

vs

CITY OF TACOMA
Defendant(s)

Judge/Commissioner: SUSAN K. SERKO
Court Reporter: Lanre Adebayo
Judicial Assistant: Candice Augustin

COATES, EDWARD E	Emma Kazaryan	Attorney for Plaintiff/Petitioner
COATES, EDWARD E	DAVID FLORIAN JURCA	Attorney for Plaintiff/Petitioner
COATES, EDWARD E	ANDREW JAMES KINSTLER	Attorney for Plaintiff/Petitioner
CROWLEY, MICHAEL	Emma Kazaryan	Attorney for Plaintiff/Petitioner
CROWLEY, MICHAEL	DAVID FLORIAN JURCA	Attorney for Plaintiff/Petitioner
CROWLEY, MICHAEL	ANDREW JAMES KINSTLER	Attorney for Plaintiff/Petitioner
BUBENIK, MARK	Emma Kazaryan	Attorney for Plaintiff/Petitioner
BUBENIK, MARK	DAVID FLORIAN JURCA	Attorney for Plaintiff/Petitioner
BUBENIK, MARK	ANDREW JAMES KINSTLER	Attorney for Plaintiff/Petitioner
BUBENIK, MARGARET	Emma Kazaryan	Attorney for Plaintiff/Petitioner
BUBENIK, MARGARET	DAVID FLORIAN JURCA	Attorney for Plaintiff/Petitioner
BUBENIK, MARGARET	ANDREW JAMES KINSTLER	Attorney for Plaintiff/Petitioner
OLDFIELD, THOMAS H	Emma Kazaryan	Attorney for Plaintiff/Petitioner
OLDFIELD, THOMAS H	DAVID FLORIAN JURCA	Attorney for Plaintiff/Petitioner
OLDFIELD, THOMAS H	ANDREW JAMES KINSTLER	Attorney for Plaintiff/Petitioner
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INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES	DAVID FLORIAN JURCA	Attorney for Plaintiff/Petitioner
INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES	ANDREW JAMES KINSTLER	Attorney for Plaintiff/Petitioner
CITY OF TACOMA	ELIZABETH THOMAS	Attorney for Defendant
CITY OF TACOMA	Kari Lee Vander Stoep	Attorney for Defendant
CITY OF TACOMA	Mark Stephen Filipini	Attorney for Defendant

Proceeding Set: Motion - Part Summary Judgment
 Proceeding Outcome: Summary Judgment Held
 Resolution:

Proceeding Date: Mar 2, 2018 11:26 AM

Clerk's Code: SMJHRG

Proceeding Outcome code: **SMJHRG**

Resolution Outcome code:

Amended Resolucton code:

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3/7/2019

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

EDWARD E COATES
VS
CITY OF TACOMA

Cause Number: 17-2-08907-4
Memorandum of Journal Entry

Judge/Commissioner: SUSAN K. SERKO

MINUTES OF PROCEEDING

Start Date/Time: Mar 2, 2018 11:01 AM

Judicial Assistant: Candice Augustin

Court Reporter: Lanre Adebayo

March 2, 2018 11:01 AM - This matter comes on for a Motion for Partial Summary Judgment and a Motion to Strike. Present are: Andrew Kinstler and David Jurca for the Plaintiff and Kari Vander Stoep and Tommy Miller for the Defendant. Motion to Strike is denied. **11:02 AM** - Argument by Mr. Jurca. **11:15 AM** - Argument by Ms. Vander Stoep. **11:23 AM** - Rebuttal argument by Mr. Jurca. **11:24 AM** - Motion for Partial Summary Judgment is granted. Orders entered.

End Date/Time: Mar 2, 2018 11:27 AM

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3/7/2018

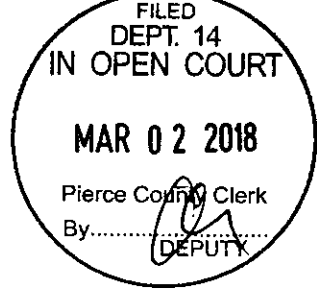
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3/7/2018



Honorable Susan K. Serko



SUPERIOR COURT 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,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION TO STRIKE

This matter came on for hearing before the Court on March 2, 2018 upon Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on December 28, 2017, and upon Defendant City of Tacoma's Motion to Strike Portions of Plaintiffs' Motion for Summary Judgment, filed on February 22, 2018. The Court has reviewed all papers submitted in support of or in opposition to said Motions, including the following:

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION TO STRIKE - 1

Helsell Fetterman LLP
 1001 Fourth Avenue, Suite 4200
 Seattle, WA 98154-1154
 206.292.1144 WWW.HELSELL.COM

1 1. Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief,
2 filed on December 28, 2017;

3 2. Declaration of Mark Bubenik in Support of Plaintiffs' Motion for Partial
4 Summary Judgment Granting Declaratory Relief, filed on December 28, 2017;

5 3. Declaration of Tyler Pepple in Support of Plaintiffs' Motion for Partial
6 Summary Judgment Granting Declaratory Relief, filed on December 28, 2017;

7 4. Declaration of David F. Jurca in Support of Plaintiffs' Motion for Partial
8 Summary Judgment Granting Declaratory Relief, filed on December 28, 2017;

9 5. Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment
10 Granting Declaratory Relief, filed on February 7, 2018;

11 6. Declaration of Andy Cherullo in Support of Defendant's Opposition to
12 Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on
13 February 7, 2018;

14 7. Declaration of Christina Leinneweber in Support of Defendant's Opposition to
15 Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on
16 February 7, 2018;

17 8. Declaration of Gary Saleba in Support of Defendant's Opposition to Plaintiffs'
18 Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 7, 2018;

19 9. Declaration of Kari Vander Stoep in Support of Defendant's Opposition to
20 Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on
21 February 7, 2018;

1 10. Declaration of Chris Robinson in Support of Defendant's Opposition to
2 Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on
3 February 7, 2018;

4 11. Declaration of Michael Bailey in Support of Defendant's Opposition to
5 Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on
6 February 7, 2018;

7 12. Declaration of Steven Klein in Support of Defendant's Opposition to Plaintiffs'
8 Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 7, 2018;

9 13. Declaration of Tenzin Gyaltzen in Support of Defendant's Opposition to
10 Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on
11 February 7, 2018;

12 14. Defendant City of Tacoma's Motion to Strike Portions of Plaintiffs' Motion for
13 Summary Judgment, filed on February 22, 2018;

14 15. Declaration of William Fosbre in Support of Defendant's Motion to Strike
15 Portions of Plaintiffs' Motion for Summary Judgment, filed on February 22, 2018;

16 16. Plaintiffs' Reply in Support of Motion for Partial Summary Judgment Granting
17 Declaratory Relief, filed on February 26, 2018;

18 17. Supplemental Declaration of David F. Jurca in Support of Plaintiffs' Motion for
19 Partial Summary Judgment Granting Declaratory Relief, filed on February 26, 2018;

20 18. Plaintiffs' Response to Defendant's Motion to Strike, filed on February 28,
21 2018;

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3/7/2018

1 19. Correction to Plaintiffs' Motion for Partial Summary Judgment, filed on March
2 1, 2018; and

3 20. City of Tacoma's Reply in Support of Motion to Strike Portions of Plaintiffs'
4 Motion for Summary Judgment, filed on March 1, 2018.

5 This Court has also heard and duly considered the oral argument of counsel presented at
6 the aforesaid hearing.

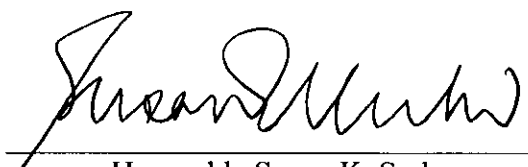
7 Now, therefore, it is hereby ORDERED as follows:

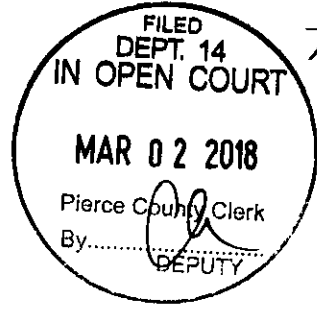
8 1. Defendant's aforesaid Motion to Strike Portions of Plaintiffs' Motion for
9 Summary Judgment is denied;

10 2. Plaintiffs' aforesaid Motion for Partial Summary Judgment Granting Declaratory
11 Relief is granted; and

12 3. Tacoma Power electric utility revenues and funds may not lawfully be used to
13 pay for Click! Network expenses or capital improvements that are attributable or properly
14 allocable to commercial telecommunications service rather than electric utility service.
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17
18 Dated this 2 day of March, 2018.

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21 _____
22 Honorable Susan K. Serko
23 Superior Court Judge



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Presented by:

HELSELL FETTERMAN LLP

By *David F. Jurca*
David F. Jurca, WSBA No. 2015
Andrew J. Kinstler, WSBA No. 12703
Emma Kazaryan, WSBA No. 49885
Attorneys for Plaintiffs

Approved as to Form:

K&L GATES LLP

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

CITY OF TACOMA

By *William Fosbre*
William Fosbre, WSBA #27825
City Attorney

March 22 2018 1:34 PM

KEVIN STOCK
COUNTY CLERK
HONORABLE SUSAN K. SERKO
NO: 17-2-08907-4
Hearing Date: March 30, 2018
Hearing Time: 9:00 am

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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

MOTION FOR ENTRY OF CR 54(B)
FINDINGS AND FINAL
JUDGMENT(S) AND A STAY OF
LITIGATION OR NEW TRIAL DATE

**Noted on Judge Serko's
Civil Calendar:
March 30, 2018 at 9 AM**

RELIEF REQUESTED

The Defendant, City of Tacoma ("City"), requests the Court to enter, pursuant to Civil Rule 54(b), findings that there is no just reason for delay in entry of the March 2, 2018 Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motion to Strike (the "Order") as a final judgment subject to immediate appeal. The City further requests that the Court confirm it will not require enforcement of

MOTION FOR ENTRY OF CR 54(B) FINDINGS
AND FINAL JUDGMENT(S) AND A STAY OF
LITIGATION OR NEW TRIAL DATE - 1

501154584 v1

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FACSIMILE: (206) 623-7022

1 its final judgment on the Order during the pendency of the City's appeal. Finally, the City
2 also respectfully requests that the Court either stay the current action pending appeal or
3 move the trial date (and attendant pre-trial deadlines) out far enough to allow the Court of
4 Appeals a reasonable amount of time to hear and decide the City's appeal.

5 STATEMENT OF ISSUES

- 6 1. Should the Court enter, pursuant to Civil Rule 54(b), findings that there is
7 no just reason for delay in entry of the Order as a final judgment?
8 2. Should the Court enter a corresponding stay of the enforcement of its final
9 judgment pending appeal pursuant to Civil Rule 62?
10 3. Should the Court (i) stay further proceedings in this Court, or (ii) delay the
11 current trial date, pending the outcome of an appeal?

12 EVIDENCE RELIED UPON

13 The Defendant relies upon the facts set forth in the March 22, 2018 Declaration of
14 Kari L. Vander Stoep in Support of Civil Rule 54(b) Findings and Order and in Support of
15 a Stay, as well as the allegations in Plaintiff's Complaint for Declaratory, Injunctive, and
16 Mandamus Relief (the "Complaint").

17 STATEMENT OF FACTS

18 The Defendant relies upon the facts set forth in the above-described Vander Stoep
19 Declaration, as well as the allegations in the Complaint.

20 ARGUMENT

21 **A. The Court Should Enter Judgment on Its March 2, 2018 Order Pursuant To**
22 **Civil Rule 54(b).**

23 Civil Rule 54(b) authorizes the Court to make the requested findings and to enter
24 the requested judgments. It reads, in pertinent part:

25 MOTION FOR ENTRY OF CR 54(B) FINDINGS
AND FINAL JUDGMENT(S) AND A STAY OF
LITIGATION OR NEW TRIAL DATE - 2

501154584 v1

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1 When more than one claim for relief is presented in an
2 action, whether as a claim, counterclaim, cross claim, or
3 third party claim, or when multiple parties are involved, the
4 court may direct the entry of a final judgment as to one or
5 more but fewer than all of the claims or parties only upon an
6 express determination in the judgment, supported by written
7 findings, that there is no just reason for delay and upon an
8 express direction for the entry of judgment. The findings
9 may be made at the time of entry of judgment or thereafter
10 on the court's own motion or on motion of any party.

11 In the case at hand, there is ample evidence in support of the entry of such findings
12 and judgments.

13 Civil Rule 54(b) applies to cases in which more than one claim for relief is
14 presented. In this context, the Washington Court of Appeals has concluded that "when the
15 facts give rise to more than one legal right or cause of action, or there is more than one
16 possible form of recovery and they are not mutually exclusive, the claimant has presented
17 multiple claims for relief." *Nelbro Packing Co. v. Baypack Fisheries, L.L.C.*, 101
18 Wn.App. 517, 524, 6 P.3d 22, 26 (2000). In other words, even when claims arise "out of
19 arguably related transactions or occurrences" they are considered to be multiple claims if
20 some claims can be "enforced separately from the remaining claims." *Id.*

21 As the title of the Complaint suggests, Plaintiffs are seeking several types of relief
22 not included in the Order. This includes two kinds of injunctive relief: (1) an injunction
23 prohibiting Tacoma Public Utilities ("TPU") from using electric utility revenues or other
24 electric utility funds to subsidize or pay for Click expenses or capital improvements that
25 are attributable or properly allocable to commercial telecommunication services rather
26 than electric utility service, and (2) an injunction prohibiting TPU from including
27 expenses or capital investments that are attributable or properly allocable to Click
28 commercial telecommunication services, rather than electric utility service, in the
29 calculation of electric rates. Complaint at 10. Additionally, Plaintiffs are asking for

MOTION FOR ENTRY OF CR 54(B) FINDINGS
AND FINAL JUDGMENT(S) AND A STAY OF
LITIGATION OR NEW TRIAL DATE - 3

501154584 v1

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1 monetary relief reimbursing Tacoma Power for any past expenditures of Tacoma Power
2 funds for Click expenses or capital improvements properly allocable to commercial
3 telecommunications service rather than electric utility service. Complaint at 10-11.
4 Plaintiffs are also asking for 12% prejudgment and postjudgment interest on the
5 aforementioned reimbursement. Complaint at 11. Finally, Plaintiffs are asking for attorney
6 fees under RCW 80.04.440, which only permits attorney's fees for willful violations of
7 the law, making this an additional claim that will require separate legal and factual
8 findings by the Court. *Id.* Since these claims are separate, including the fact that some are
9 prospective and some are retrospective, and they are not mutually exclusive, they
10 constitute multiple claims under Civil Rule 54(b).

11 **B. The Court Should Confirm That Enforcement of the Order and Judgment is**
12 **Stayed Pursuant to Civil Rule 62(h).**

13 Although declaratory judgments are not generally enforceable, and the Plaintiffs
14 did not move for any of the injunctive relief sought in their Complaint, the City requests
15 that the Court confirm that enforcement of the Order and any Civil Rule 54(b) judgment
16 that it enters pursuant to this Motion will be stayed under Civil Rule 62(h). *See Steffel v.*
17 *Thompson*, 415 U.S. 452, 471, 94 S. Ct. 1209, 1221, 39 L. Ed. 2d 505 (1974)
18 (“noncompliance with [a declaratory judgment] ... is not contempt.”) Civil Rule 62(h)
19 states:

20 When a court has ordered a final judgment under the conditions stated in rule
21 54(b), the court may stay enforcement of that judgment until the entering of a
22 subsequent judgment or judgments and may prescribe such conditions as are
23 necessary to secure the benefit thereof to the party in whose favor the judgment is
24 entered.

25 A stay is warranted in this case to avoid irreversible harm that would result from
immediate enforcement of a prohibition on the use of electric utility funds to pay for Click
expenditures. If the City were forced to promptly shut down Click, there would be an

MOTION FOR ENTRY OF CR 54(B) FINDINGS
AND FINAL JUDGMENT(S) AND A STAY OF
LITIGATION OR NEW TRIAL DATE - 4

501154584 v1

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1 immediate negative impact on Click's customer base, which includes elderly, low-income,
2 governmental and student users who would suddenly be without service. Vander Stoep
3 Decl., ¶ 4. In addition, Click would lose all of its customers, employees and goodwill, all
4 of which have significant value and play an important role in the request for information,
5 proposals, or qualifications the City is currently undertaking to find a third party partner
6 for future Click operations. *Id.* Even if the Order were later reversed after the conclusion
7 of all proceedings in this Court, much of Click's value would be irrevocably lost. *Id.*

8 In the present case, no additional conditions should be imposed. If Plaintiffs
9 prevail on appeal, any additional harm caused by the continued operation of Click could
10 be reduced to money damages and be paid at the conclusion of the case.

11 **C. The Court Should Stay Additional Proceedings in this Court or Move The**
12 **Trial Date.**

13 The Court should also stay the proceedings before it or move the trial date during
14 the pendency of the City's appeal to avoid piecemeal and possibly unnecessary discovery
15 and litigation. The resolution of these issues on appeal could end the case or substantially
16 narrow or change the relevant issues for trial. A reversal on one or more of the issues in
17 the Order could thus save the Court and the parties having to use extensive resources to
18 resolve the remaining issues in the case. For example, if the appellate court determines
19 that res judicata or collateral estoppel applies, the Plaintiffs have no case and the matter
20 will be dismissed. Likewise, if the appellate court determines that RCW 43.09.210 and
21 Tacoma City Charter § 4.5 do not apply to or limit the relationship between Tacoma
22 Power and Click, that would likely lead to the dismissal of the case or at least a significant
23 narrowing of the relevant remaining issues or claims.
24
25

MOTION FOR ENTRY OF CR 54(B) FINDINGS
AND FINAL JUDGMENT(S) AND A STAY OF
LITIGATION OR NEW TRIAL DATE - 5

501154584 v1

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CONCLUSION

For all of the reasons explained above, the City respectfully requests that the Court enter the requested findings, orders and judgment.

Attached hereto as **Exhibit A** is a proposed order in regard to the findings and judgment for the Order Granting Plaintiffs' Motion for Summary Judgment.

DATED this 27th day of March, 2018.

K&L GATES LLP


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

EXHIBIT A

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Honorable Susan K. Serko
Hearing Date: March 30, 2018
Hearing Time: 9:00 am

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

[PROPOSED]
CR 54(B) FINDINGS AND ENTRY
OF JUDGMENT ON THE CLAIMS
REGARDING THE APPLICATION
OF RES JUDICATA, COLLATERAL
ESTOPPEL, RCW 43.09.210, AND
TACOMA CITY CHARTER

CLERK'S ACTION REQUIRED

THIS COURT having entered an order on March 2, 2018 entitled "Order Granting
Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motion to
Strike" (hereinafter, the "Order") and the Defendant, the City of Tacoma (the "City"),
having moved at a hearing on March 30, 2018 for the Court to make findings and a

CR 54(B) FINDINGS AND ENTRY OF
JUDGMENT ON THE CLAIMS REGARDING THE
APPLICATION OF RES JUDICATA,
COLLATERAL ESTOPPEL, RCW 43.09.210, AND
TACOMA CITY CHARTER - 1

501130898 v3

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1 judgment in compliance with Civil Rule 54(b) so as to permit the immediate appeal of the
2 Order; now therefore,

3 CIVIL RULE 54(B) FINDINGS

4 In compliance with Civil Rule 54(b), the Court hereby rules that there is no just
5 reason for delay in entry of the Order as a final and appealable Judgment on the following
6 claims and rulings: (1) the City's affirmative defenses of res judicata and collateral
7 estoppel and the Court's ruling that they should be rejected as a matter of law; (2) the
8 Plaintiff's claim that the relationship between Click! Network ("Click") and Tacoma
9 Power is governed and limited by RCW 43.09.210; (3) the Plaintiff's claim that the
10 relationship between Click and Tacoma Power is governed and limited by Tacoma City
11 Charter § 4.5; and (4) the Court's ruling that "Tacoma Power electric utility revenues and
12 funds may not lawfully be used to pay for Click! Network expenses or capital
13 improvements that are attributable or properly allocable to commercial
14 telecommunications service rather than electric utility service."

15 The Court hereby makes the following findings in support of the ruling that there
16 is no just reason for delay in entry of the Order as a final and appealable Judgment on said
17 claims and rulings. These findings are based upon the Declaration of Kari L. Vander
18 Stoep In Support of Civil Rule 54(b) Findings and Order, as well as the prior filings and
19 proceedings in this matter, and are as follows:

20 1. With the entry of the Order regarding the City's affirmative defenses and
21 the applicability of RCW 43.09.210 and Tacoma City Charter § 4.5, crucial legal issues
22 have been decided in the case. A reversal on one or more of these issues would be
23 dispositive and would save the Court and the parties from having to use extensive
24 resources to resolve the remaining issues in the case. That is, if the appellate court

25 CR 54(B) FINDINGS AND ENTRY OF
JUDGMENT ON THE CLAIMS REGARDING THE
APPLICATION OF RES JUDICATA,
COLLATERAL ESTOPPEL, RCW 43.09.210, AND
TACOMA CITY CHARTER - 2

501130898 v3

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1 determines that res judicata or collateral estoppel applies, the Plaintiffs have no case and
2 the matter will be dismissed. Likewise, if the appellate court determines that RCW
3 43.09.210 and Tacoma City Charter § 4.5 do not apply to the relationship between
4 Tacoma Power and Click, that would likely lead to the dismissal of the case or at least a
5 significant change in the relevant remaining issues or claims.

6 2. The legality of the City's funding of Click is a matter of great public
7 interest and concern to all of the taxpayers and electric ratepayers of the City. If it is
8 determined on appeal that Click's funding is not legal, then the City will need to deal with
9 how and whether to fund and operate Click going forward. The City will also have to
10 determine how to pay for any past expenditures that are determined to be unlawful, which
11 Plaintiffs estimate at over \$21 million.

12 3. With the potential imposition of interest, the City is faced with having to
13 pay many thousands of dollars more in interest if it has to wait until all of the remaining
14 claims and issues in the case are decided before being permitted to appeal the crucial
15 claims regarding res judicata, collateral estoppel, and the applicability of RCW 43.09.210
16 and Tacoma City Charter § 4.5.

17 4. There are likely to be disputed issues in determining the proper allocation
18 of expenses and revenues between Click and Tacoma Power over several years.
19 Resolution of these issues will involve considerable discovery time and trial/hearing time.

20 5. Finally, it is unlikely that the need for an appeal would be mooted by future
21 developments in the Superior Court. The Order sets up a trial or further motion practice to
22 determine a damages figure from zero up to or beyond the \$21 million Plaintiffs reference
23 in their Complaint. If the damages are relatively small, Plaintiffs will have an incentive to
24 appeal, and if the damages are large, the City will have an incentive to appeal. In either

25 CR 54(B) FINDINGS AND ENTRY OF
JUDGMENT ON THE CLAIMS REGARDING THE
APPLICATION OF RES JUDICATA,
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TACOMA CITY CHARTER - 3

501130898 v3

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1 case it is likely that the dispositive issues in the Order will be appealed regardless of
2 future developments in the Superior Court.

3 6. Any one of the five preceding reasons is a compelling ground for this Court
4 to enter the Civil Rule 54(b) findings. In combination, they constitute overwhelming
5 grounds for it to do so.

6 7. Because the resolution of these issues has important implications for the
7 remainder of the case, there is good cause to stay enforcement of this Judgment and to
8 delay further proceedings in this Court pending the outcome of the appeal.

9 8. Given the magnitude of the issues in dispute and the ultimate outcome's
10 effect on the City, Tacoma Power, and Click customers, the Court should also stay
11 enforcement of the judgment on its Order until the City's appeal has run its course. If the
12 City were forced to promptly shut down Click, there would be an immediate negative
13 impact on Click's customer base, which includes elderly, low-income, governmental, and
14 student users who would suddenly be without service. In addition, Click would lose all of
15 its customers, employees, and goodwill, all of which have significant value and play an
16 important role in the request for information, proposals, or qualifications process the City
17 is currently undertaking to find a third party partner for future operation of Click. Even if
18 the Order were later reversed after the conclusion of all proceedings in this Court, much of
19 Click's value will be irrevocably lost.

20 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
21 DECREED that there is no just reason for delay in regard to the entry of the March 2,
22 2018 Order as a final and appealable Judgment regarding the claims, determinations, and
23 rulings set forth above in the Findings section of this order. The effect of this order is that
24 the Order and those claims are immediately appealable upon the entry of this order.

25 CR 54(B) FINDINGS AND ENTRY OF
JUDGMENT ON THE CLAIMS REGARDING THE
APPLICATION OF RES JUDICATA,
COLLATERAL ESTOPPEL, RCW 43.09.210, AND
TACOMA CITY CHARTER - 4

501130898 v3

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In addition,

- The enforcement of the instant Judgment is stayed pending the outcome of the City's appeal of this Judgment; and
- Any continued litigation in this court is stayed pending the outcome of an the City' appeal of this Judgment.

OR


- A new trial date will be entered for this case of no earlier than January 1, 2019.

SO ORDERED this ___day of March, 2018.

Honorable Susan K. Serko
PIERCE COUNTY SUPERIOR COURT JUDGE

Presented by:

K&L GATES LLP

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

CR 54(B) FINDINGS AND ENTRY OF JUDGMENT ON THE CLAIMS REGARDING THE APPLICATION OF RES JUDICATA, COLLATERAL ESTOPPEL, RCW 43.09.210, AND TACOMA CITY CHARTER - 5

501130898 v3

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March 22 2018 1:34 PM

KEVIN STOCK
COUNTY CLERK
NO. 17-2-08907-4

Honorable Susan K. Seeley
Hearing Date: March 30, 2018
Hearing Time: 9:00 am

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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

DECLARATION OF KARI L.
VANDER STOEP IN SUPPORT OF
CIVIL RULE 54(B) FINDINGS AND
ORDER AND IN SUPPORT OF A
STAY

I, Kari L. Vander Stoep, make the following declaration:

1. I am one of the attorneys of record representing the Defendant, City of Tacoma (the "City"), in this case. I make this declaration to provide factual evidence in support of the Court entering, in compliance with Civil Rule 54(b), an express determination, supported by written findings, that there is no just reason to delay an appeal of the Court's March 2, 2018 Order Granting Plaintiffs' Motion for Partial

DECLARATION OF KARI L. VANDER STOEP IN
SUPPORT OF CIVIL RULE 54(B) FINDINGS AND
ORDER AND IN SUPPORT OF A STAY - I

501151053 v3

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1 Summary Judgment and Denying Defendant's Motion to Strike (the "Order"). Pursuant to
2 the companion Motion for Entry of CR 54(b) Findings and Final Judgment and Stay of
3 Litigation or New Trial Date, the City is respectfully requesting that the Court enter
4 judgment on the claims resolved in its Order, so that an immediate appeal can be taken by
5 the Defendant.

6 2. At the conclusion of oral argument on March 2, 2018, the Court asked the
7 parties if either was then requesting that the order be certified, which I understood to mean
8 an entry of judgment pursuant to Civil Rule 54(b). While the City needed additional time
9 to digest the Court's ruling and decide on an appropriate course of action, it has now
10 determined that the best interests of the City, its constituents, and Tacoma Power
11 ratepayers are served by taking the Court up on its offer. For the reasons expressed below,
12 we also believe that an immediate appeal and corresponding stay of the trial court
13 proceedings is in the best interests of the Plaintiffs and the Court as well.

14 3. There are a number of reasons why there is no just reason for delaying an
15 appeal of the Order. First, by finding that res judicata and collateral estoppel do not apply,
16 and that the relationship between Click! Network ("Click") and Tacoma Power is
17 governed or limited by RCW 43.09.210 and/or Tacoma City Charter § 4.5, the Order
18 decides crucial legal issues in the case. A reversal on one or more of these issues would be
19 dispositive and would save the Court and the parties from having to use extensive
20 resources to resolve the remaining issues in the case. That is, if the appellate court
21 determines that res judicata or collateral estoppel applies, the Plaintiffs have no case and
22 the matter will be dismissed. Likewise, if the appellate court determines that RCW
23 43.09.210 and Tacoma City Charter § 4.5 do not apply to the relationship between
24 Tacoma Power and Click, that would likely lead to the dismissal of the case or at least a
25 significant change in the relevant remaining issues or claims.

DECLARATION OF KARI L. VANDER STOEP IN
SUPPORT OF CIVIL RULE 54(B) FINDINGS AND
ORDER AND IN SUPPORT OF A STAY - 2

501151053 v3

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1 A second reason for determining that there is no just reason for delay is that the
2 question of the legality of the City's funding of Click is a matter of great public interest
3 and concern to all of the taxpayers and electric ratepayers of the City. If it is determined
4 on appeal that Click's funding is not legal, then the City will need to deal with how and
5 whether to fund and operate Click going forward. The City will also have to determine
6 how to pay for any past expenditures that are determined to be unlawful, which Plaintiffs
7 estimate at over \$21 million.

8 A third reason is that, with the potential imposition of interest, the City is faced
9 with having to pay many thousands of dollars more in interest if it has to wait until all of
10 the remaining claims and issues in the case are decided before being permitted to appeal
11 the crucial claims regarding res judicata, collateral estoppel, and the applicability of RCW
12 43.09.210 and Tacoma City Charter § 4.5.

13 The fourth reason is that there are likely to be disputed issues in determining the
14 proper allocation of expenses and revenues between Click and Tacoma Power over
15 several years. Resolution of these issues will involve considerable discovery time and
16 trial/hearing time.

17 Finally, it is unlikely that the need for an appeal would be mooted by future
18 developments in the Superior Court. The Order sets up a trial or further motion practice to
19 determine a damages figure from zero up to or beyond the \$21 million Plaintiffs reference
20 in their Complaint. If the damages are relatively small, Plaintiffs will have an incentive to
21 appeal, and if the damages are large, the City will have an incentive to appeal. In either
22 case it is likely that the dispositive issues in the Order will be appealed regardless of
23 future developments in the Superior Court.

24 Any one of these reasons is a compelling ground for the Court to enter the Civil
25 Rule 54(b) findings. Together they constitute overwhelming grounds for it to do so.

DECLARATION OF KARI L. VANDER STOEP IN
SUPPORT OF CIVIL RULE 54(B) FINDINGS AND
ORDER AND IN SUPPORT OF A STAY - 3

501151053 v3

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1 4. Given the magnitude of the issues in dispute and the ultimate outcome's
2 effect on the City, Tacoma Power, and Click customers, the Court should also stay
3 enforcement of the judgment on its Order until the City's appeal has run its course. If the
4 City were forced to promptly shut down Click, there would be an immediate negative
5 impact on Click's customer base, which includes elderly, low-income, governmental, and
6 student users who would suddenly be without service. In addition, Click would lose all of
7 its customers, employees, and goodwill, all of which have significant value and play an
8 important role in the request for information, proposals, or qualifications the City is
9 currently undertaking to find a third party partner for future operation of Click. Even if the
10 Order were later reversed after the conclusion of all proceedings in this Court, much of
11 Click's value will be irrevocably lost.

12 5. Similarly, because the resolution of these issues on appeal could end the
13 case or substantially change the relevant issues for trial, any continued litigation of these
14 issues in this Court should be stayed pending the outcome of the appeal in order to avoid
15 unnecessary time and expenses spent by the parties or the Court. Alternatively, at the very
16 least, the Court should continue the trial date (and all accompanying pre-trial deadlines
17 contained in the Order Setting Case Schedule) until a reasonable time in the future. Based
18 on the relevant deadlines in the Rules of Appellate Procedure and our estimation of the
19 Court of Appeals' current time to oral argument and written decision, the City believes a
20 reasonable new trial date would be no sooner than early 2019.

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DECLARATION OF KARI L. VANDER STOEP IN
SUPPORT OF CIVIL RULE 54(B) FINDINGS AND
ORDER AND IN SUPPORT OF A STAY - 4

501151053 v3

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

3 Executed at Seattle, Washington, on March 22, 2018.

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6 KARI L. VANDER STOEP
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DECLARATION OF KARI L. VANDER STOEP IN
SUPPORT OF CIVIL RULE 54(B) FINDINGS AND
ORDER AND IN SUPPORT OF A STAY - 5

501151053 v3

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March 28 2018 11:10 AM

KEVIN STOCK
COUNTY CLERK

Honorable Susan K. Serkis **NO: 17-2-08907-4**

Hearing Date: March 30, 2018

Hearing Time: 9:00 a.m.

SUPERIOR COURT 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,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4

PLAINTIFFS' RESPONSE TO
DEFENDANT'S MOTION FOR ENTRY
OF CR 54(b) FINDINGS AND FINAL
JUDGMENT(S) AND A STAY OF
LITIGATION OR NEW TRIAL DATE

The City's motion asks for three things: (1) entry of findings certifying the Court's March 2 order as an appealable judgment under CR 54(b), (2) a "stay of enforcement" of the March 2 ruling pending appeal, and (3) a stay of additional proceedings in this court pending appeal or, alternatively, a new trial date later than January 1, 2019. The City's motion should be denied in all respects, because: (1) the March 2 ruling does not meet the criteria for certification under CR 54(b), (2) it makes no sense to request a "stay of enforcement" of the March 2 declaratory ruling and the City has shown no basis for such a stay, and (3) the City has

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION
FOR ENTRY OF CR 54(b) FINDINGS AND FINAL JUDGMENT(S)
AND A STAY OF LITIGATION OR NEW TRIAL DATE - 1

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1 shown no basis for a stay of further proceedings in this court or for a continuance of the trial
2 date, currently set for June 21.¹

3 **A. The March 2 Ruling Does Not Meet the Criteria for Certification under CR 54(b).**

4
5 In addressing how CR 54(b) does or does not apply to this case in particular, it may be
6 helpful to keep in mind a few general principles. First, CR 54(b) does not alter or detract from
7 the long-standing judicial policy against piecemeal appeals. Rather, as the Washington
8 Supreme Court explained in *Schiffman v. Hanson Excavating Co.*, 82 Wn.2d 681, 686 (1973)
9 (citing the Advisory Committee Note to the federal version of the rule), the rule “re-establishes
10 the ancient policy against piecemeal appeals . . . , with the addition of a discretionary power to
11 afford a remedy in the infrequent harsh case.” See *Fox v. Sunmaster Products, Inc.*, 115 Wn.2d
12 498, 503-504 (1990) (reiterating the “strong policies” regarding “the undesirability of
13 piecemeal review”); *Nelbro Packing Co. v. Baypack Fisheries, L.L.C.*, 101 Wn. App. 517, 526
14 (2000) (“judicial economy generally is best served by delaying the appeal until all the issues
15 can be considered by the appellate court in a unified package”); *Loeffelholz v. CLEAN*, 119 Wn.
16 App. 665, 693 (2004) (“a court generally must resolve all claims for and against all parties
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21 ¹At 4:32 pm on Monday, March 26, plaintiffs’ counsel received an email from the City’s counsel attaching a letter
22 to the Court and a revised proposed order adding an entirely new and different “alternative” request for relief,
23 namely, certification under RAP 2.3(b)(4) for discretionary review of an interlocutory ruling (as distinguished from
24 certification under CR 54(b) for entry of a final, appealable judgment on one of multiple separate claims). The
25 criteria for certification of an interlocutory ruling for discretionary review under RAP 2.3(b)(4) are different from
the criteria for entry of a separate final judgment under CR 54(b), and require a different legal analysis. Plaintiffs
object to the City’s inappropriate and unfair attempt to raise new and different issues by letter and in a proposed
order, without following the rules for filing a motion seeking such relief, and depriving plaintiffs of the prescribed
time to respond as provided by CR 6(d) and PCLR 7(a)(3)(A). Plaintiffs intend to respond to the City’s new
request for “alternative” relief by submitting a separate supplemental memorandum addressed to that new request.

1 before it enters a final and enforceable judgment on any part of the case. The goals are to avoid
2 confusion and piecemeal appeals”). Thus, entering a separate appealable judgment under CR
3 54(b) is an exception to the strong general policy against allowing piecemeal appeals, and the
4 rule should be invoked sparingly and only “in the infrequent harsh case.” *Schiffman, supra*.

5
6 In order to invoke CR 54(b), there must be multiple claims and at least one of them must
7 have been fully adjudicated. It is important to remember that separate legal theories of recovery
8 do not constitute separate claims within the meaning of the rule. For example, in *Doerflinger v.*
9 *New York Life Ins. Co.*, 88 Wn.2d 878 (1977), the Washington Supreme Court held that a single
10 claim for relief, on one set of facts, is not converted into multiple claims, for purposes of CR
11 54(b), by the assertion of various legal theories in support of recovery. The plaintiffs in that
12 case brought an action for damages against an insurance company for failure to pay an
13 insurance claim. The complaint alleged breach of contract, breach of fiduciary duty to act in
14 good faith, outrage, negligent infliction of emotional distress, and intentional infliction of
15 emotional distress. The trial court dismissed all theories of relief except breach of contract and
16 outrage, and directed entry of judgment under CR 54(b) on the dismissal order. The plaintiffs
17 appealed from the dismissal order, but the Supreme Court dismissed the appeal because “the
18 separate legal theories presented by appellants are not multiple claims and thus are not subject
19 to the entry of final judgment upon dismissal by the trial court.” 88 Wn.2d at 882. Similarly,
20 *see Snyder v. State of Washington*, 19 Wn. App. 631, 635 (1978) (“Those three separate legal
21 theories based upon one set of facts, constitute one ‘claim for relief’ under CR 54(b)”); *Hurley*
22 *v. Port Blakely Tree Farms L.P.*, 182 Wn. App. 753, 769-770 (2014) (“A single claim for relief,
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1 on one set of facts, is not converted into multiple claims by the assertion of various legal
2 theories,” citations omitted).

3 Furthermore, a request for multiple remedies does not transform a single claim for relief,
4 based on one set of facts, into multiple claims within the meaning of CR 54(b). *See* 10 Wright,
5 Miller & Kane, *Fed. Prac. & Proc. Civ.* §2657 (3d ed.) (“when plaintiff is suing to vindicate
6 one legal right and alleges several elements of damage or seeks multiple remedies, only one
7 claim is presented and subdivision (b) [of Rule 54] does not apply”); *see also* numerous cases
8 collected and cited in n. 25 of that section.² For example, a request for punitive damages does
9 not constitute a separate claim, *Arizona State Carpenters Pension Trust Fund v. Miller*, 938
10 F.2d 1038 (9th Cir. 1991) and *Northwest Airlines, Inc. v. Astraeva Aviation Services, Inc.*, 930 F.
11 Supp. 1317 (D. Minn. 1996), *aff’d on other grounds*, 111 F.3d 1386 (8th Cir. 1997); an order
12 eliminating two of several elements of damages flowing from a single claim does not qualify
13 for certification under Rule 54(b), *Sussex Drug Products v. Kanasco, Ltd.*, 920 F.2d 1150, 1154
14 (3d Cir. 1990); for a final judgment to be entered on any one claim in a multi-claim suit, all
15 damages stemming from that claim must have been fixed, *International Controls Corp. v.*
16 *Vesco*, 535 F.2d 742, 748 (2d Cir. 1976); and where a jury’s verdict constitutes only a partial
17 adjudication of a single claim for legal and equitable relief, with the issue of equitable relief and
18 statutory attorney fees to be heard by the court following the jury trial, the jury verdict cannot
19 be the basis for an appealable separate judgment until the remaining issues are decided, *Harris*
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25 ² As the court noted in *Nelbro v. Baypack*, *supra*, 101 Wn. App. at 522, CR 54(b) was copied from the federal rule, so the federal cases are persuasive.

1 v. *Goldblatt Bros., Inc.*, 659 F.2d 784 (7th Cir. 1981).

2 Similarly, an order that merely dismisses or rejects an affirmative defense, such as the
3 statute of limitations or estoppel (or, as in the present case, *res judicata*), is not appealable under
4 Rule 54(b) even if certified under that rule by the trial court. *See, e.g., Smith v. Benedict*, 279
5 F.2d 211, 212-213 (7th Cir. 1960) (purported “judgment” for plaintiff dismissing statute of
6 limitations defense after separate trial on that defense “does not fall within Rule 54(b)” because
7 it does not fully adjudicate a claim and therefore cannot be an appealable final judgment); *Flynn*
8 & *Emrich Co. v. Greenwood*, 242 F.2d 737, 741 (4th Cir. 1957) (purported “judgment” under
9 Rule 54(b) that dismissed so-called estoppel “counterclaim” was not appealable because it
10 merely rejected an affirmative defense and did not fully adjudicate a claim: “Under Rule 54(b)
11 appeal can be taken from a judgment on one of a number of claims if the judge gives the proper
12 certificate; but the judgment must finally dispose of a claim and not merely adjudicate a defense
13 to a claim”).

14 With those general principles in mind, let us turn to the particular circumstances of this
15 case. The March 2 ruling in this case was an interlocutory order that decided one important
16 aspect of plaintiffs’ claim against the City regarding the electric utility’s subsidies for Click’s
17 commercial telecom business. The Court ruled that the subsidies were unlawful. However, the
18 March 2 ruling did not fully adjudicate that claim, because it did not address the remedy for the
19 City’s unlawful conduct. Even when wrongdoing or liability is established, a claim is not fully
20 adjudicated until the court determines whether a remedy is available and, if so, what it is. Both
21 the United States Supreme Court and the Washington Supreme Court have held squarely that an
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1 order granting a motion for partial summary judgment as to liability, without addressing
2 remedies, is not eligible for certification as an appealable judgment under Rule 54(b).

3 In *Liberty Mutual Ins. Co. v. Wetzel*, 424 U.S. 737 (1976), a number of employees filed
4 an action claiming that a company's employee insurance benefits and maternity leave
5 regulations discriminated against women in violation of Title VII of the Civil Rights Act of
6 1964, as amended by the Equal Employment Opportunity Act of 1972. After extensive
7 discovery, the employees moved for partial summary judgment as to liability, without
8 addressing their claims for injunctive relief, for compensatory and exemplary damages, and for
9 attorney fees. The district court granted the motion for partial summary judgment as to liability
10 and directed entry of judgment under Rule 54(b), and the company appealed. The court of
11 appeals affirmed the district court's decision. After granting certiorari, the U.S. Supreme Court
12 vacated the court of appeals decision and dismissed the appeal, holding unanimously that Rule
13 54(b) was inapplicable because the rule applies only where there are multiple claims and one or
14 more but less than all have been fully adjudicated, but in the case at hand there was but a single
15 claim, despite the prayer for several different kinds of relief, and the claim had not been fully
16 adjudicated because remedies had not been determined. 424 U.S. at 742-743.

17 In *Stearns v. NCR Corp.*, 195 F.R.D. 652 (D. Minn. 2000), an employee class action
18 asserting ERISA claims for declaratory and injunctive relief as well monetary restitution, the
19 court granted the plaintiffs' motion for partial summary judgment as to liability on certain
20 breach of contract claims but did not address the plaintiffs' requests for injunctive relief or
21 monetary restitution. The court denied the defendants' request to certify the liability ruling
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1 under Rule 54(b), explaining as follows:

2 Defendants alternatively request that the Court enter final judgment pursuant to
3 Rule 54(b) of the Federal Rules of Civil Procedure. Rule 54(b) permits the entry
4 of final judgment in connection with one claim or one party when there are
5 multiple claims or parties in a case upon a judicial determination that there is no
6 just reason for delay. In making this argument, defendants suggest the Court
7 should treat the liability and remedial issues attendant to plaintiffs' breach of
8 contract claim as if they were two distinct claims, entering final judgment on the
9 liability issue while retaining jurisdiction over plaintiffs' claims for relief. This
10 argument is entirely foreclosed by the Supreme Court's decision in *Liberty*
11 [*Mutual v. Wetzel, supra*]. There, the Court overturned the lower court's decision
12 to treat liability and damages as distinct claims for purposes of final judgment,
13 reasoning that "Rule 54(b) does not apply to a single claim action ... It is limited
14 expressly to multiple claims actions in which one or more but less than all of the
15 multiple claims have been finally decided and are found otherwise to be ready for
16 appeal." *Id.* at 742-43, 96 S. Ct. 1202 (internal quotation omitted) (alteration in
17 the original). Defendants' request for entry of final judgment pursuant to Rule
18 54(b) is denied accordingly.

19 195 F.R.D. at 654 (emphasis and bracketed matter added).

20 The same result has been reached in Washington under CR 54(b). In *Bowing v. Board*
21 *of Trustees of Green River Community College*, 85 Wn.2d 300 (1975), a tenured faculty
22 member sued the Board of Trustees alleging wrongful termination. The trial court granted
23 partial summary judgment for the plaintiff as to liability, leaving open the question of damages
24 and attorney fees for later determination. An issue as to the timeliness of the Board's appeal
25 turned on whether the liability ruling was appealable under CR 54(b). In a unanimous opinion,
the Court explained as follows:

It will be seen that a partial judgment is final only when there is a final judgment
upon one or more claims. The plaintiff's claim in this case was not fully
adjudicated until the amount of damages had been determined, including the
attorney fees, which the court awarded as an element of damages. The plaintiff
insists, however, that the defendant could have taken an appeal from the partial
judgment and left the amount of damages and fees to be determined in a separate

1 proceeding. Such a procedure would produce the very mischief which the rule was
2 designed to prevent—the piecemeal trial and appeal of cases. The partial summary
3 judgment was not a final judgment as to any claim or any party and therefore was
4 not appealable under CR 54(b).

85 Wn.2d at 302-303 (emphasis added).

5 That is exactly the same situation we have in the present case. In this case, the plaintiffs
6 have not asserted more than one claim against the City within the meaning of Rule 54(b). They
7 have asserted a single claim, alleging that electric utility revenues and funds have been used to
8 subsidize Click’s “commercial telecommunications” business. Plaintiffs seek multiple
9 remedies for that single claim: declaratory relief declaring the subsidies unlawful, injunctive
10 and mandamus relief prohibiting further subsidies and requiring reimbursement for past
11 subsidies, and an award of attorney fees and costs. The Court has made an important
12 interlocutory ruling as to liability (wrongfulness of the City’s conduct), but the claim has not
13 been fully adjudicated yet because remedies have not been determined. Accordingly, the March
14 2 order is not eligible for certification under CR 54(b) and cannot be appealed at this time.
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17 Nor has the City made an adequate showing of the other major requirement of the rule,
18 that there is “no just reason for delay” in entering a final judgment. Because piecemeal appeals
19 are strongly disfavored by the courts, “CR 54(b) should be used only ‘in the infrequent harsh
20 case’ as an instrument for the improved administration of justice. . . . There must be ‘some
21 danger of hardship or injustice through delay which would be alleviated by immediate appeal.’”
22 *Snyder v. State, supra*, 19 Wn. App. at 636 (internal citations omitted). Here, the trial date is
23 less than three months away. As demonstrated in the record supporting plaintiffs’ prior motion
24 for partial summary judgment as to liability, the remaining issues are likely to be decided on
25

1 summary judgment, based on the City’s own financial records showing the amounts of the
2 unlawful subsidies since 2014. The City needs no discovery (and thus far has sought none),
3 because it is already in possession of all the relevant facts and documents and has easy access to
4 the necessary witnesses. Plaintiffs are planning to move for summary judgment on the
5 remaining issues (which are primarily monetary) within the next few weeks, and we believe it is
6 unlikely there will be any need for a trial. Even if there are any issues to be tried, the existing
7 June 21 trial date is just around the corner.

9 The City’s motion is supported only by a declaration of counsel which makes purely
10 conclusory arguments without any factual basis. For example, there is no factual basis for
11 counsel’s supposition (*see* VanderStoep Dec., ¶4) that without an immediate appeal from the
12 Court’s March 2 liability ruling, Click will have to be shut down immediately and will lose all
13 of its customers, employees and goodwill but that those “negative impacts” would be avoided if
14 an appeal were taken now rather than waiting for an appeal from a true final judgment
15 following a trial (if one is even necessary) in June. The City’s argument that an immediate
16 appeal is urgently needed rings hollow, in light of the fact that the City waited nearly a full
17 month after the March 2 ruling to bring on its motion for certification under CR 54(b).
18

19 Nor are the City’s other arguments persuasive. Yes, the March 2 ruling decided a
20 crucial issue of great public interest that should be of concern to all taxpayers and electric
21 ratepayers of the City; but that means it is in everyone’s best interest to get all of the issues
22 resolved sooner rather than later, and the best way to do that is to proceed promptly to a final
23 judgment on all the issues instead of incurring the substantial delays that would result from a
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1 series of piecemeal appeals. And yes, the City is facing the prospect of substantial prejudgment
2 interest on the amounts to be reimbursed to the electric utility for the unlawful subsidies; but the
3 best way to minimize the amount of interest payable is, again, to proceed promptly to a final
4 judgment on all the issues instead of incurring the delays resulting from piecemeal appeals. No,
5 there are not likely to be disputed fact issues in determining the proper allocation of revenues
6 and expenses between Click and the electric utility over the years, because the City has already
7 made those allocations in its financial reports and plaintiffs have no intention of second-
8 guessing those allocations at this point. And while it is true that a reversal on appeal of the
9 Court's ruling on liability (or wrongfulness of the City's conduct) would obviate the need for
10 further trial court proceedings, that is always true in every case: without liability there are no
11 damages, but as shown above a ruling on liability alone without determining damages or other
12 remedy is not a full adjudication of a claim and is not appealable under CR 54(b). If it were
13 otherwise, separate appeals from liability rulings would become the general rule rather an
14 infrequent exception to the general rule against piecemeal appeals.

17 **B. There Is No Basis for a “Stay of Enforcement” of the March 2 Declaratory Ruling.**

18 The City apparently acknowledges that it makes little or no sense to seek a “stay of
19 enforcement” of a declaratory ruling, since “declaratory judgments are not generally
20 enforceable,” Def. Motion at 4, line 12. We assume the City does not mean that declaratory
21 rulings are not valid or not useful, but rather that there is nothing to “enforce” in the way that an
22 injunction or a judgment for damages can be enforced. A declaratory ruling merely describes
23 the state of the law as applied to a particular set of facts, as distinguished from commanding
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1 someone to pay money or to do or refrain from doing something. Thus, we have no idea what
2 the City is talking about in requesting a “stay of enforcement” of the March 2 declaratory
3 ruling. The subsidies in question are either lawful or unlawful; the Court has declared them to
4 be unlawful. It is meaningless to seek a “stay of enforcement” of the declaratory ruling, since
5 the ruling does not command anyone to do or refrain from doing anything.
6

7 **C. There Is No Basis for a Stay of Further Proceedings or for Moving the Trial Date.**

8 The City seeks a stay of further proceedings in this court “during the pendency of the
9 City’s appeal.” Def. Motion at 5, lines 12-14. Since the March 2 ruling does not meet the
10 criteria for certification under CR 54(b) and thus is not appealable at this time, there is no basis
11 for a stay of proceedings pending appeal.³ A party seeking a stay of proceedings “must make
12 out a clear case of hardship or inequity in being required to go forward.” *King v. Olympic*
13 *Pipeline Co.*, 104 Wn. App. 338, 350 (2000). The City has made no such showing.
14

15 Nor has the City shown any good or sufficient reason for moving the existing June 21
16 trial date at all, much less to a date “no sooner than early 2019.” *See VanderStoep Dec.*, ¶5.
17 Under PCLR 40(g)(2)(B), a motion to change the trial date by more than 30 days “will not be
18 granted unless the motion is supported by a showing of good cause.” The City has not made
19 any showing of good cause for a substantial continuance of the trial date. It has not explained
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23 ³ It is interesting to note that the City’s request for a stay pending appeal actually reinforces the conclusion that the
24 ruling in question is not ripe for appeal. If the March 2 ruling were “separate” enough from the remaining issues to
25 constitute an adjudication of a separate and distinct claim, there would be no good reason why the remaining
claims could not proceed in the trial court while the appeal on the “separate” claim went forward. The very reason
why the City seeks a stay of additional proceedings in the trial court pending the supposed appeal is that the issues
that would be on appeal and the issues remaining in the trial court would not be separate but instead would be
unavoidably intertwined.

1 whether or why it needs any discovery or what discovery it needs or why it cannot be obtained
2 under the existing pretrial schedule. The City already has knowledge of the relevant facts,
3 possession of the relevant documents, and easy access to the necessary witnesses, and it has not
4 sought any discovery at all to date.

5
6 There is no need for a stay of proceedings or for any postponement of the trial date.

7 **D. Conclusion**

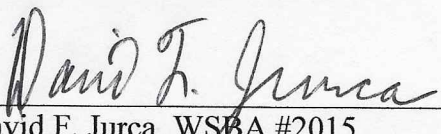
8 The Court's March 2 ruling granting plaintiffs' motion for partial summary judgment
9 declaring the subsidies in question unlawful does not meet the criteria for certification under
10 CR 54(b), because (i) that ruling does not fully adjudicate any claim since it does not address
11 the issue of remedies and (ii) there has been no showing that injustice can be avoided only by
12 allowing an immediate appeal at this time instead of waiting another two or three months so
13 that a final, appealable judgment can be entered on all issues.

14
15 Nor has the City shown any good or sufficient reason for a "stay of enforcement" of the
16 March 2 declaratory ruling, or for a stay of further proceedings in this court, or for moving the
17 existing June 21, 2018 trial date to early 2019.

18
19 Accordingly, the City's motion should be denied in all respects.

20 *Respectfully submitted* this 28th day of March, 2018.

21 HELSELL FETTERMAN LLP

22
23 By 
24 David F. Jurca, WSBA #2015
25 Andrew J. Kinstler, WSBA #12703
Emma J. Kazaryan, WSBA #49885
Attorneys for Plaintiffs

March 29 2018 11:27 AM

KEVIN STOCK
COUNTY CLERK

Honorable Susan K. Serkis **NO: 17-2-08907-4**

Hearing Date: March 30, 2018

Hearing Time: 9:00 a.m.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4

PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM REGARDING
DEFENDANT'S NEW REQUEST FOR
"ALTERNATIVE" RELIEF

At 4:32 pm on Monday, March 26, plaintiffs' counsel received an email from the City's counsel attaching a letter to the Court and a revised proposed order seeking "alternative" relief that is new and different from the relief sought in the original motion, namely, certification under RAP 2.3(b)(4) for discretionary review of an interlocutory ruling (as distinguished from certification under CR 54(b) for entry of a final, appealable judgment on one of multiple separate claims). The criteria for certification of an interlocutory ruling for discretionary review under RAP 2.3(b)(4) are different from the criteria for entry of a separate final judgment under CR 54(b), and a request for such certification requires a different legal analysis. It is inappropriate and unfair for the City to attempt to raise those new and different issues by letter and in a revised proposed order, without following the rules for filing a motion seeking such relief, thereby depriving plaintiffs of the legally prescribed time to respond as provided by CR

1 6(d) and PCLR 7(a)(3)(A). Plaintiffs therefore object to the City’s untimely new request for
2 such “alternative” relief, but respectfully submit this supplemental memorandum to address the
3 issues raised by the City’s new request.

4 **A. Legal Criteria for Certification under RAP 2.3(b)(4).**

5
6 RAP 2.3(b)(4) provides, as one of the grounds for requesting discretionary review of an
7 interlocutory trial court ruling, that

8 The superior court has certified, or that all parties to the litigation have stipulated,
9 that the order involves a controlling question of law as to which there is substantial
10 ground for a difference of opinion and that immediate review of the order may
materially advance the ultimate termination of the litigation.

11 (Emphasis added). RAP 2.3(b)(4) is modeled on the nearly identical language of 28 U.S.C
12 §1292(b), so federal cases under that statute are persuasive. *See Wash. Prac.*, Rules Practice
13 RAP 2.3 (8th ed.); *Nelbro Packing Co. v. Baypack Fisheries, L.L.C.*, 101 Wn. App. 517, 522
14 (2000) (federal cases under Rule 54(b) are persuasive as to CR 54(b) because state rule was
15 modeled on federal rule). Consistent with its plain language, all three elements of 28 U.S.C
16 §1292(b) must be met before a trial court can certify an interlocutory order. *Orson, Inc. v.*
17 *Miramax Film Corp.*, 867 F. Supp. 319, 321 (E.D. Pa. 1994).

18
19 The United States Supreme Court has held that 28 U.S.C §1292(b) provides district
20 courts with “circumscribed authority to certify for immediate appeal interlocutory orders
21 deemed pivotal and debatable.” *Swint v. Chambers Cty. Comm’n*, 514 U.S. 35, 46 (1995)
22 (emphasis added). Other courts have held that the authority “should be used sparingly” and that
23 the requirements justifying certification are “strictly construed” because “only exceptional
24 circumstances [will] justify a departure from the basic policy of postponing appellate review
25

1 until after the entry of a final judgment.” *Myles v. Laffitte*, 881 F.2d 125, 127 (4th Cir. 1989);
2 *Flor v. BOT Fin. Corp. (In re Flor)*, 79 F.3d 281, 284 (2d Cir. 1996); *see also Westwood*
3 *Pharm., Inc. v. Nat’l Fuel Gas Distrib. Corp.*, 964 F.2d 85, 89 (2d Cir. 1992) (district courts
4 must use “great care” in making a §1292(b) certification).

5
6 A question of law is “controlling” if its incorrect disposition would require reversal of
7 the final judgment or if reversal of the trial court’s order would terminate the action. *Katz v.*
8 *Carte Blanche Corp.*, 496 F.2d 747, 755 (3d Cir. 1974). Even if there is a controlling question
9 of law at issue, a party seeking certification of the question for interlocutory appellate review
10 must show a “substantial ground for difference of opinion” and that “immediate review of the
11 order may materially advance the termination of the litigation.”

12
13 Courts have held that “[f]or there to be a ‘substantial ground for difference of opinion’
14 under the law, 28 U.S.C. §1292(b), there must be ‘substantial doubt’ that the district court’s
15 order was correct.” *Century Pac., Inc. v. Hilton Hotels Corp.*, 574 F. Supp. 2d 369, 372
16 (S.D.N.Y. 2008), quoting *SPL Shipping Ltd.*, 2007 WL 1119753, at *2 (quoting *N.F.L. Ins. v.*
17 *B&B Holdings*, No. 91 Civ. 8580(PKL), 1993 WL 255101, at *2 (S.D.N.Y. July 1, 1993)).

18
19 Courts have declined to certify an interlocutory order where the moving party has failed to
20 show disagreement among courts amounting to “substantial ground for difference of opinion”:

21 A substantial ground for difference of opinion arises only if the disagreement on
22 controlling law exists between courts, not merely parties. Furthermore, “just any
23 simple disagreement between courts will not merit certification.” A substantial
24 ground for disagreement may arise if there is a “novel and difficult issue of first
25 impression,” or if there is a circuit split and the controlling circuit has not
commented on the conflicting issue. However, the mere fact that an issue is one
of first impression or that there is a lack of unanimity is not enough to meet this

1 prong. Moreover, differences in opinion among district courts outside the
2 governing circuit do not require a finding of substantial grounds.

3 *United States ex rel. A1 Procurement, LLC v. Thermcor, Inc.*, 173 F. Supp. 3d 320, 323 (E.D.
4 Va. 2016) (emphasis added) (citations omitted).

5 Notably, courts “retain unfettered discretion to deny certification of an order for
6 interlocutory appeal even where the three legislative criteria of section 1292(b) appear to be
7 met.” *Nat'l Asbestos Workers Med. Fund v. Philip Morris, Inc.*, 71 F. Supp. 2d 139, 162
8 (E.D.N.Y. 1999).

9
10 **B. The City Has Not Shown a Substantial Ground for Difference of Opinion as to a
11 Controlling Question of Law.**

12 The only “controlling question of law” identified by the City is its res judicata defense.¹
13 But the City has not shown that there is a substantial ground for difference of opinion as to that
14 question. Res judicata is not a novel concept. The legal criteria for determining whether the
15 doctrine does or does not apply are familiar and well established, and the City has shown no
16 disagreement or confusion among the courts about how those criteria are applied. *See*
17 *Plaintiffs’ Reply in Support of Motion for Partial Summary Judgment Granting Declaratory*
18 *Relief* (filed 2/26/2018) at 3-7; *Restatement (Second) of Judgments*, §33 (1982); *Hisle v. Todd*
19 *Pac. Shipyards Corp.*, 151 Wn.2d 853, 865-866 (2004). Indeed, not only is there no substantial
20 ground for a difference of opinion, but based on the City Attorney’s legal opinion in 2015 the
21
22

23 _____
24 ¹ The City’s revised proposed order alludes to purported “rulings” that the relationship between Click and Tacoma
25 Power “is governed and limited by RCW 43.09.210” and “is governed and limited by Tacoma City Charter §4.5.”
(prop. Order at 2, lines 8-12). Not only were there no such “rulings” by the Court, but the City has offered no
reason or argument why such “rulings” would have been questionable if they had been made, *i.e.*, why that statute
and that charter provision would not be applicable to Click or Tacoma Power. Of course they are applicable!

1 parties actually agree that the electric utility subsidies for Click are unlawful!

2 **C. The City Has Not Shown that an Immediate Appeal Would Materially Advance the**
3 **Ultimate Termination of the Litigation.**

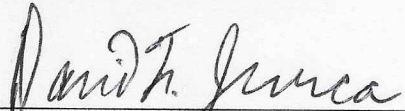
4 The June 21 trial date is just around the corner, and plaintiffs will be moving for
5 summary judgment on the remaining issues well before that date. Under the circumstances, it is
6 abundantly clear that pausing the proceedings in this court to allow interlocutory appellate
7 review would substantially delay rather than expedite the termination of this litigation. *See,*
8 *e.g., Baranski v. Serhant*, 602 F. Supp. 33, 36 (N.D. Ill. 1985) (“Delay is a particularly strong
9 ground for denying appeal if certification is sought from a ruling made shortly before trial,” and
10 reiterating that §1292(b) certification is to be used “sparingly” and “only in exceptional cases”)
11 (certification denied in January where trial was set for July).

12 **D. Conclusion**

13
14 The City has not shown that the March 2 ruling involves a controlling question of law as
15 to which “there is a substantial ground for a difference of opinion” or that immediate appellate
16 review would “materially advance the ultimate termination of the litigation.” Accordingly, the
17 City’s new “alternative” request for certification under RAP 2.3(b)(4) should be denied.
18

19 *Respectfully submitted* this 29th day of March, 2018.

20 HELSELL FETTERMAN LLP

21 By 

22 David F. Jurca, WSBA #2015
23 Andrew J. Kinstler, WSBA #12703
24 Emma J. Kazaryan, WSBA #49885
25 Attorneys for Plaintiffs

March 29 2018 11:34 AM

KEVIN STOCK
COUNTY CLERK
HONORABLE SUSAN K. SERKO
NO. 17-2-08907-4
Hearing Date: March 30, 2018
Hearing Time: 9:00 am

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

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

Plaintiffs,

v.

16 CITY OF TACOMA,

17 Defendant.
18
19
20
21
22
23
24
25

No.: 17-2-08907-4

REPLY BRIEF SUPPORTING ENTRY
OF CR 54(B) FINDINGS AND FINAL
JUDGMENT AND A STAY OF
LITIGATION OR NEW TRIAL DATE

**Noted on Judge Serko's
Civil Calendar:
March 30, 2018 at 9 AM**

REPLY BRIEF SUPPORTING ENTRY OF CR 54(B)
FINDINGS AND FINAL JUDGMENT AND A
STAY OF LITIGATION OR NEW TRIAL DATE

1 **1. Civil Rule 54(b) Certification of the Order is Appropriate**

2 The Court has broad discretion to enter CR 54(b) certification, and should do so in
3 this case. *O'Neill v. Chwen-Jye Ju*, 189 Wn. App. 1049 (2015) (“We review a superior
4 court's entry of final judgment under CR 54(b) for abuse of discretion.”).

5 **A. Plaintiffs Have Asserted Multiple Claims for Relief, One of Which has
6 Been Fully Adjudicated**

7 In challenging certification, Plaintiffs argue that they have asserted only “one
8 claim against the City,” for which the court has not “addressed” any remedy. Resp. at 5, 8.
9 However, “when the facts give rise to more than one legal right or cause of action, or there
10 is more than one possible form of recovery and they are not mutually exclusive, the
11 claimant has presented multiple claims for relief.” *Nelbro Packing Co. v. Baypack*
12 *Fisheries, L.L.C.*, 101 Wn. App. 517, 524 (2000). Plaintiffs have asserted multiple claims
13 for relief, and the Court has fully adjudicated their claim for declaratory relief.¹

14 Washington law is clear that when claims are based on different factual predicates,
15 with multiple non-exclusive forms of recovery sought, then there are multiple claims for
16 relief under CR 54(b). *Id*; *Crosthwaite v. Crosthwaite*, 56 Wn.2d 838, 843 (1960)
17 (discussing predecessor to CR 54(b)). Here, Plaintiffs’ remaining claims will require
18 unique factual determinations including, *inter alia*, the proper allocation of revenues and
19 costs between the “electric utility” and Click!, and the contribution of non-electric rate
20 revenues (*e.g.*, from the sale of excess hydropower) to the co-mingled Power Fund from
21
22
23

24 _____
25 ¹ Plaintiffs concede that “declaratory relief” was one of the remedies they sought. Resp. at 8. The Order grants that relief in full, and Plaintiffs cannot point to any open legal or factual issues on that claim.

1 which Click! expenses are paid.² Moreover, none of the remedies Plaintiffs seek here -
2 declaratory, injunctive, and mandamus - are mutually exclusive, evidenced by Plaintiffs'
3 stated plan to move for further relief after having already obtained a declaratory judgment.

4 The Washington authority cited by Plaintiffs does not support their constrained
5 view of CR 54(b).³ *Schiffman v. Hanson Excavating Co.*, 82 Wn.2d 681, 686 (1973), *Fox*
6 *v. Sunmaster Prod., Inc.*, 115 Wn.2d 498, 504 (1990), and *Nelbro Packing Co.* concerned
7 the presence and contents of a CR 54(b) certification. *Loeffelholz v. Citizens for Leaders*
8 *with Ethics & Accountability Now (C.L.E.A.N.)*, 119 Wn. App. 665, 694 (2004), held that
9 the trial court had broad discretion on whether to certify an order under 54(b), and did not
10 abuse its discretion by refusing to do so. *Doerflinger v. New York Life Ins. Co.*, 88 Wn.2d
11 878, 882 (1977), and *Snyder v. State*, 19 Wn. App. 631, 635 (1978), involved claims
12 based on "identical allegations" as contrasted with the distinct factual predicates here.
13 *Hurley v. Port Blakely Tree Farms L.P.* did not actually involve CR 54(b). 182 Wn. App.
14 753, 770 (2014). *Bowing v. Bd. of Trustees of Green River Cmty. Coll., Dist. No. X* also
15 did not involve a CR 54(b) certification, but instead allowed an appeal because an
16 intermediate order had not been appealable under CR 54(b). 85 Wn.2d 300, 302-03
17 (1975). There is also no indication that the case involved a declaratory judgment. *Id.*

21 _____
22 ² Plaintiffs cannot argue away the distinct factual predicates between their claims for damages and
23 declaratory relief simply by announcing that they again intend to primarily rely on historical Tacoma Power
24 documents or statements. Resp. at 10. Not only does the City intend to vigorously contest this approach, but
25 Plaintiffs conceded in their summary judgment motion that their declaratory relief claim did not present nor
require resolution of allocation or other damages issues. Motion for Summary Judgment at 14.

³ Federal cases cited by Plaintiffs are also distinguishable. Plaintiffs' rely on *Liberty Mut. Ins. Co. v. Wetzel*,
even though the U.S. Supreme Court held there that the lower court's order was not ripe for certification
because "[i]t finally disposed of none of respondents' prayers for relief." 424 U.S. 737, 742 (1976). But in
this case, the Order is actually a final disposition of one of Plaintiffs' prayers for relief. Complaint at 10.

REPLY BRIEF SUPPORTING ENTRY OF CR 54(B)
FINDINGS AND FINAL JUDGMENT AND A
STAY OF LITIGATION OR NEW TRIAL DATE - 2

1 Finally, despite Plaintiffs' argument to the contrary, Washington courts can and do
2 accept CR 54(b) appeals based solely on the disposition of affirmative defenses. *See, e.g.,*
3 *Bedlington v. De Bruin*, 151 Wn. App. 1016 (2009) (resolving the merits of an affirmative
4 defense certified under CR 54(b)). The rejection of the City's res judicata and collateral
5 estoppel defenses provide additional appropriate grounds for CR 54(b) certification.
6

7 **B. There is No Just Reason to Delay Entry of CR 54(b) Certification**

8 The City's motion and accompanying declaration provide more than sufficient
9 evidence that there is no just reason to delay pursuant to the five factors established by the
10 Washington Supreme Court: (1) the remaining claims are separate but share crucial legal
11 issues with the Order which justifies an immediate appeal; (2) there are no questions in the
12 Order which remain to be decided in this Court; (3) it is unlikely that the issues in the
13 Order will be mooted by further proceedings in this Court; (4) an immediate appeal could
14 terminate or at least greatly simplify the issues at trial; (5) the practical benefits of
15 allowing a relatively inexpensive appeal now before any potential injunctive or mandamus
16 relief greatly outweigh any harms (which Plaintiffs fail to allege in any event). *See*
17 *Schiffman*, 82 Wn.2d at 687 (1973).
18

19 **2. The Court Should Stay Further Proceedings or Move the Trial Date**

20 Plaintiffs argue that the City "must make out a clear case of hardship or inequity in
21 being required to go forward." Resp. at 11 (quoting *King v. Olympic Pipeline Co.*, 104
22 Wn. App. 338, 350 (2000)). This is an incomplete quote about the much different situation
23 where two cases are proceeding at once:
24

25
REPLY BRIEF SUPPORTING ENTRY OF CR 54(B)
FINDINGS AND FINAL JUDGMENT AND A
STAY OF LITIGATION OR NEW TRIAL DATE - 3

K&L GATES LLP
925 FOURTH AVENUE SUITE 2900
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TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 True, the suppliant for a stay must make out a clear case of hardship or inequity in
2 being required to go forward, if there is even a fair possibility that the stay for
3 which he prays will work damage to some one else. Only in rare circumstances
4 will a litigant in one cause be compelled to stand aside while a litigant in another
5 settles the rule of law that will define the rights of both.

6 104 Wn. App. at 350 (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)). Not only
7 have Plaintiffs failed to demonstrate any damage from a stay, they are ignoring that “[t]he
8 court has inherent power to stay its proceedings where the interest of justice so requires,”
9 as it does in this case. *Id.* Similarly, the City is not requesting a move of the trial date in a
10 vacuum, but rather as an alternative to a stay while the merits are on appeal. However, the
11 reasons to move the trial date cited in the City’s Motion - cost savings and judicial
12 economy - also meet the “good cause” standard in PCLR 40.

13 **3. Rule of Appellate Procedure 2.3(b)(4) Certification is Appropriate**

14 Rule of Appellate Procedure 2.3(b)(4) permits discretionary review by the
15 appellate court when the superior court has certified that: (1) an order involves a
16 controlling question of law; (2) as to which there is substantial ground for a difference of
17 opinion; and (3) that immediate review of the order may materially advance the ultimate
18 termination of the litigation. Each of these factors is fully supported by the Motion for
19 Certification and corresponding declaration, as well as prior pleadings and argument.

20 Plaintiffs cannot dispute that the Order involves controlling questions of law,
21 immediate review of which may materially advance the ultimate termination of the case,
22 satisfying the first and third elements. A reversal on the issues of collateral estoppel or res
23 judicata would end the case, and a reversal on the RCW 43.09.210 and Tacoma City
24

25
REPLY BRIEF SUPPORTING ENTRY OF CR 54(B)
FINDINGS AND FINAL JUDGMENT AND A
STAY OF LITIGATION OR NEW TRIAL DATE - 4

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1 Charter §4.5 issues would at least significantly narrow and simplify the issues remaining
2 to be litigated. These issues go to the heart of RAP 2.3(b)(4), which includes legal
3 questions “which, if answered differently on appeal, would terminate the case.” *United*
4 *States v. Woodbury*, 263 F.2d 784, 787 (9th Cir. 1959) (discussing the federal equivalent
5 of RAP 2.3(b)(4)). Moreover, the extensive summary judgment arguments by both sides
6 demonstrate substantial ground for a difference of opinion on the issues the City is
7 seeking to appeal. Indeed, we believe the Court’s question on certifying the Order
8 signaled as much to both sides. The City’s revised proposed order simply clarifies that the
9 proceedings to date and the proposed CR54(b) findings also support a conclusion that
10 certification under RAP 2.3(b)(4) is warranted, thus giving the appellate court another
11 ground on which to grant review and potentially conclude the case with less time and
12 expense to the parties and the Court.
13
14

15 **CONCLUSION**

16 For all of the reasons explained above, the City respectfully requests that the Court
17 enter the requested findings, orders and judgment.

18 DATED this 29th day of March, 2018.

19 K&L GATES LLP

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

REPLY BRIEF SUPPORTING ENTRY OF CR 54(B)
FINDINGS AND FINAL JUDGMENT AND A
STAY OF LITIGATION OR NEW TRIAL DATE - 5

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4/4/2018



IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

EDWARD E COATES
Plaintiff(s)

Cause Number: 17-2-08907-4
Memorandum of Journal Entry

vs

CITY OF TACOMA
Defendant(s)

Judge/Commissioner: **SUSAN K. SERKO**
Court Reporter: Lanre Adebayo
Judicial Assistant: Candice Augustin

COATES, EDWARD E	Emma Kazaryan	Attorney for Plaintiff/Petitioner
COATES, EDWARD E	DAVID FLORIAN JURCA	Attorney for Plaintiff/Petitioner
COATES, EDWARD E	ANDREW JAMES KINSTLER	Attorney for Plaintiff/Petitioner
CROWLEY, MICHAEL	Emma Kazaryan	Attorney for Plaintiff/Petitioner
CROWLEY, MICHAEL	DAVID FLORIAN JURCA	Attorney for Plaintiff/Petitioner
CROWLEY, MICHAEL	ANDREW JAMES KINSTLER	Attorney for Plaintiff/Petitioner
BUBENIK, MARK	Emma Kazaryan	Attorney for Plaintiff/Petitioner
BUBENIK, MARK	DAVID FLORIAN JURCA	Attorney for Plaintiff/Petitioner
BUBENIK, MARK	ANDREW JAMES KINSTLER	Attorney for Plaintiff/Petitioner
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BUBENIK, MARGARET	DAVID FLORIAN JURCA	Attorney for Plaintiff/Petitioner
BUBENIK, MARGARET	ANDREW JAMES KINSTLER	Attorney for Plaintiff/Petitioner
OLDFIELD, THOMAS H	Emma Kazaryan	Attorney for Plaintiff/Petitioner
OLDFIELD, THOMAS H	DAVID FLORIAN JURCA	Attorney for Plaintiff/Petitioner
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INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES	DAVID FLORIAN JURCA	Attorney for Plaintiff/Petitioner
INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES	ANDREW JAMES KINSTLER	Attorney for Plaintiff/Petitioner
CITY OF TACOMA	ELIZABETH THOMAS	Attorney for Defendant
CITY OF TACOMA	Kari Lee Vander Stoep	Attorney for Defendant
CITY OF TACOMA	Mark Stephen Filipini	Attorney for Defendant

Proceeding Set: Motion - Stay
Proceeding Outcome: Motion Held
Resolution:

Proceeding Date: Mar 30, 2018 10:36 AM

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4/4/2018

Clerk's Code: MTHRG
Proceeding Outcome code: **MTHRG**
Resolution Outcome code:
Amended Resolucton code:

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

EDWARD E COATES
vs
CITY OF TACOMA

Cause Number: 17-2-08907-4
Memorandum of Journal Entry

Judge/Commissioner: SUSAN K. SERKO

MINUTES OF PROCEEDING

Start Date/Time: Mar 30, 2018 10:23 AM

Judicial Assistant: Candice Augustin

Court Reporter: Lanre Adebayo

March 30, 2018 10:22 AM - This matter comes on for a Motion for Stay/Certification. Present are: David Jurca for the Plaintiff and Mark Filipini and Mr. Miller for the Defendant. Court's comments to counsel. **10:26 AM** - Argument by Mr. Filipini. **10:31 AM** - Argument by Mr. Jurca. **10:35 AM** - Court's comments. Motion for certification is granted. **10:35 AM** - Motion to Stay is denied. Order entered.

End Date/Time: Mar 30, 2018 10:37 AM

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4/4/2018

April 06 2018 11:08 AM

KEVIN STOCK
COUNTY CLERK
NO: 17-2-08907-4

NOTICE FOR DISCRETIONARY REVIEW

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

NOTICE OF DISCRETIONARY REVIEW
TO THE COURT OF APPEALS

City of Tacoma, defendant, seeks review by the designated appellate court of a portion of the Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motion to Strike entered on March 2, 2018 and certified for appeal under RAP 2.3(b)(4) on March 30, 2018. Specifically, City of Tacoma seeks review of the Order Granting Plaintiffs' Motion for Partial Summary Judgment, as certified for appeal by the trial court on March 30, 2018. City of Tacoma does not seek review of denial of Defendant's Motion to Strike.

Copies of the decision and certifying order are attached to this notice.

April 6, 2018

Signature


Attorneys for Defendant

Attorneys for Defendant:

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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2018, I electronically filed the foregoing
Notice of Discretionary Review to the Court of Appeals with the Clerk of the Court
which will send notification of such filing to the following:

David F. Jurca
djurca@helsell.com
Andrew J. Kinstler
akinstler@helsell.com
Emma Kazaryan
ekazaryan@helsell.com
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Attorneys for Plaintiffs

And a true and correct copy of same sent via email and U.S. Mail, First Class Postage
prepaid to:

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1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154

DATED this 6th day of April, 2018.

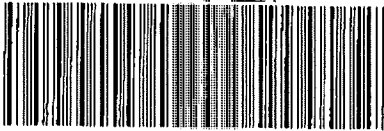
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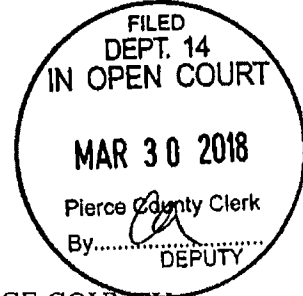
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3/16/2018



17-2-08907-4 51049486 OR 04-03-18

Honorable Susan K. Serko



SUPERIOR COURT 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,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4 *JMS*

ON
ORDER ~~DENYING~~ DEFENDANT'S MOTION FOR ENTRY OF JUDGMENT UNDER CR 54(b) AND FOR STAY OF PROCEEDINGS OR NEW TRIAL DATE

This matter came on for hearing before the undersigned Judge of the above-entitled Court on March 30, 2018, upon Defendant's "Motion for Entry of CR 54(b) Findings and Final Judgment(s) and a Stay of Litigation or New Trial Date," filed on March 22, 2018. The Court has reviewed all papers submitted in support of or in response to said Motion, and has heard and duly considered the oral arguments of counsel presented at the aforesaid hearing.

Now, therefore, it is hereby

ON
ORDER ~~DENYING~~ DEFENDANT'S MOTION FOR ENTRY OF JUDGMENT UNDER CR 54(b) AND FOR STAY OF PROCEEDINGS OR NEW TRIAL DATE - 1

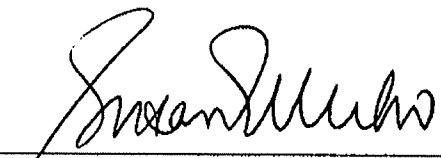
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

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ORDERED that the aforesaid Motion is ~~denied~~ ^{granted in part and denied in part as follows:}

Dated this 30 day of March, 2018.



Honorable Susan K. Serko
Superior Court Judge

Presented by:

HELSELL FETTERMAN LLP

By David F. Jurca
David F. Jurca, WSBA No. 2015
Andrew J. Kinstler, WSBA No. 12703
Emma Kazaryan, WSBA No. 49885
Attorneys for Plaintiffs

Approved as to Form:

K&L GATES LLP

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

CITY OF TACOMA

By William Fosbre
William Fosbre, WSBA #27825
City Attorney

① The Motion For certification under CR 54(b) is denied;

② The Court certifies that its March 2, 2018 order involves controlling questions of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may ~~not~~ materially advance the ultimate termination of the litigation;

③ The motion for a stay of proceedings or for a new trial date is denied; and

④ The motion for a stay of enforcement is denied.



ON
ORDER DENYING DEFENDANT'S MOTION FOR ENTRY OF JUDGMENT UNDER CR 54(b) AND FOR STAY OF PROCEEDINGS OR NEW TRIAL DATE - 2

Helsell Fetterman LLP
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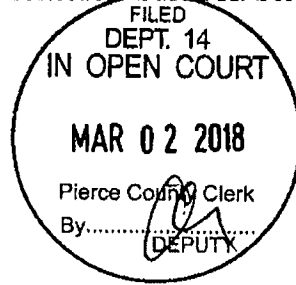
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Honorable Susan K. Serko



SUPERIOR COURT 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,

v.

CITY OF TACOMA,

Defendant.

NO. 17-2-08907-4

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION TO STRIKE

This matter came on for hearing before the Court on March 2, 2018 upon Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on December 28, 2017, and upon Defendant City of Tacoma's Motion to Strike Portions of Plaintiffs' Motion for Summary Judgment, filed on February 22, 2018. The Court has reviewed all papers submitted in support of or in opposition to said Motions, including the following:

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION TO STRIKE - I

Helsell Fetterman LLP
 1001 Fourth Avenue, Suite 4200
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1. Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on December 28, 2017;
2. Declaration of Mark Bubenik in Support of Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on December 28, 2017;
3. Declaration of Tyler Pepple in Support of Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on December 28, 2017;
4. Declaration of David F. Jurca in Support of Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on December 28, 2017;
5. Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 7, 2018;
6. Declaration of Andy Cherullo in Support of Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 7, 2018;
7. Declaration of Christina Leineweber in Support of Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 7, 2018;
8. Declaration of Gary Saleba in Support of Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 7, 2018;
9. Declaration of Kari Vander Stoep in Support of Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 7, 2018;

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10. Declaration of Chris Robinson in Support of Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 7, 2018;

11. Declaration of Michael Bailey in Support of Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 7, 2018;

12. Declaration of Steven Klein in Support of Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 7, 2018;

13. Declaration of Tenzin Gyaltzen in Support of Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 7, 2018;

14. Defendant City of Tacoma's Motion to Strike Portions of Plaintiffs' Motion for Summary Judgment, filed on February 22, 2018;

15. Declaration of William Fosbre in Support of Defendant's Motion to Strike Portions of Plaintiffs' Motion for Summary Judgment, filed on February 22, 2018;

16. Plaintiffs' Reply in Support of Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 26, 2018;

17. Supplemental Declaration of David F. Jurca in Support of Plaintiffs' Motion for Partial Summary Judgment Granting Declaratory Relief, filed on February 26, 2018;

18. Plaintiffs' Response to Defendant's Motion to Strike, filed on February 28, 2018;

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19. Correction to Plaintiffs' Motion for Partial Summary Judgment, filed on March 1, 2018; and

20. City of Tacoma's Reply in Support of Motion to Strike Portions of Plaintiffs' Motion for Summary Judgment, filed on March 1, 2018.

This Court has also heard and duly considered the oral argument of counsel presented at the aforesaid hearing.

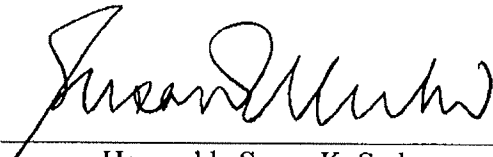
Now, therefore, it is hereby ORDERED as follows:

1. Defendant's aforesaid Motion to Strike Portions of Plaintiffs' Motion for Summary Judgment is denied;

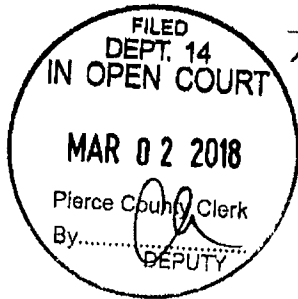
2. Plaintiffs' aforesaid Motion for Partial Summary Judgment Granting Declaratory Relief is granted; and

3. Tacoma Power electric utility revenues and funds may not lawfully be used to pay for Click! Network expenses or capital improvements that are attributable or properly allocable to commercial telecommunications service rather than electric utility service.

Dated this 2 day of March, 2018.



Honorable Susan K. Serko
Superior Court Judge



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Presented by:

HELSELL FETTERMAN LLP

By David P. Jurca

David P. Jurca, WSBA No. 2015
Andrew J. Kinstler, WSBA No. 12703
Emma Kazaryan, WSBA No. 49885
Attorneys for Plaintiffs

Approved as to Form:

K&L GATES LLP

By Kari L. Vander Stoep

Mark S. Filipini, WSBA # 32501
Kari L. Vander Stoep, WSBA #35923
Attorneys for Defendant City of Tacoma

CITY OF TACOMA

By William Fosbre

William Fosbre, WSBA #27825
City Attorney

August 06 2018 3:54 PM

KEVIN STOCK
COUNTY CLERK
NO: 17-2-08907-4

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**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/Respondents,

v.

CITY OF TACOMA,

Defendant/Appellant.

Pierce County No.: 17-2-08907-4

[COA No: 51695-1-II]

DESIGNATION OF CLERK'S
PAPERS

(Clerk's Action Required)

Defendant/Appellant CITY OF TACOMA hereby designates the following
pleadings to be transmitted to the Court of Appeals, Division II:

Sub No.	Filing Date	Description/Name
4	6/22/17	Summons
5	6/22/17	Complaint
8	7/19/17	Answer
16	12/28/17	Plaintiffs' Motion for Partial Summary Judgment (Declaratory Relief)

DESIGNATION OF CLERK'S PAPERS - 1

MASTERS LAW GROUP, P.L.L.C
241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033

Sub No.	Filing Date	Description/Name
17	12/28/17	Declaration of Tyler Pepple iso Motion for Partial Summary Judgment (Declaratory Relief)
18	12/28/17	Declaration of David F. Jurca iso Motion for Partial Summary Judgment (Declaratory Relief)
19	12/28/17	Declaration of Mark Bubenik iso Motion for Partial Summary Judgment (Declaratory Relief)
29	2/7/18	Opposition to Plaintiffs' Motion for Partial Summary Judgment (Declaratory Relief) [525 pages]
37	2/22/18	Defendant's Motion to Strike Portions of Plaintiffs' Motion for Partial Summary Judgment (Declaratory Relief)
38	2/22/18	Declaration of William Fosbre iso Defendant's Motion to Strike Portions of Plaintiffs' Motion for Partial Summary Judgment (Declaratory Relief)
40	2/26/18	Plaintiffs' Reply iso Motion for Partial Summary Judgment (Declaratory Relief)
41	2/26/18	Supplemental Declaration of David F. Jurca iso Plaintiffs' Reply iso Motion for Partial Summary Judgment (Declaratory Relief)
43	2/28/18	Plaintiffs' Response to Motion to Strike Portions of Plaintiffs' Motion for Partial Summary Judgment (Declaratory Relief)
45	3/1/18	Correction to Plaintiffs' Motion for Partial Summary Judgment
47	3/1/18	Defendant's Reply iso Motion to Strike Portions of Plaintiffs' Motion for Partial Summary Judgment (Declaratory Relief)
49	3/2/18	Clerk's Minutes (Plaintiffs' Motion for Partial Summary Judgment (Declaratory Relief) and Defendant's Motion to Strike)
50	3/2/18	Order Granting Plaintiffs' Motion for Partial Summary Judgment (Declaratory Relief) and Denying Defendant's Motion to Strike
52	3/22/18	Defendant's Motion for CR 54(b) Findings and Final Judgments and Stay of Litigation or New Trial Date
53	3/22/18	Declaration of Kari L. Vander Stoep iso Defendant's Motion for CR 54(b) Findings and Final Judgments and Stay of Litigation or New Trial Date
55	3/28/18	Plaintiffs' Response to Motion for CR 54(b) Findings and Final Judgments and Stay of Litigation or New Trial Date
57	3/29/18	Plaintiffs' Supplemental Memorandum iso Response to Motion for CR 54(b) Findings and Final Judgments and Stay of Litigation or New Trial Date

DESIGNATION OF CLERK'S PAPERS - 2

MASTERS LAW GROUP, P.L.L.C.
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Bainbridge Island, WA 98110
(206) 780-5033

Sub No.	Filing Date	Description/Name
59	3/29/18	Defendant's Reply re Motion for CR 54(b) Findings and Final Judgments and Stay of Litigation or New Trial Date
61	3/30/18	Clerk's Minute Entry (Motion for Certification and to Stay)
64	4/6/18	Notice of Discretionary Review (Order on Defendant's Motion for CR 54(b) Findings and Final Judgments and Stay of Litigation or New Trial Date)

Defendant/Appellant reserves the right to designate exhibits at a later date.

RESPECTFULLY SUBMITTED this 6th day of August 2018.

MASTERS LAW GROUP, P.L.L.C.



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ken@appeal-law.com
 Attorney for Defendant/Appellant

DESIGNATION OF CLERK'S PAPERS - 3

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CERTIFICATE OF SERVICE

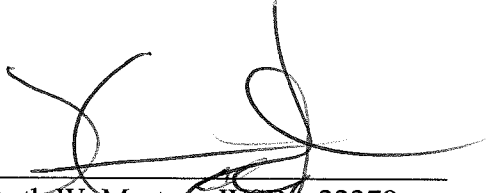
I certify that I caused to be filed and served a copy of the foregoing,
DESIGNATION OF CLERK'S PAPERS, on the 6th day of August 2018, as follows:

Co-counsel for Defendant/Appellant

K&L Gates, LLP	_____	U.S. Mail
Elizabeth Thomas	<u> x </u>	E-Service
Mark Filipini	_____	Facsimile
Kari Vander Stoep		
Daniel-Charles Van D Wolf		
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liz.thomas@klgates.com		
filipini@klgates.com		
kari.vanderstoep@klgates.com		
dc.wolf@klgates.com		

Counsel for Plaintiffs/Respondents

Helsell Fettersman, LLP	_____	U.S. Mail
David F. Jurca	<u> x </u>	E-Service
Andrew J. Kinstler	_____	Facsimile
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Kenneth W. Masters, WSBA 22278
Attorney for Defendant/Appellant