No. 57246-0-II

102604-8

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

CHRISTOPHER ANDERSON,

Petitioner,

and

THOMAS MCCARTHY,

Appellant,

v.

CITY OF TACOMA,

Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Christopher Anderson asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B.

B. COURT OF APPEALS DECISION

Division II filed its opinion on October 3, 2023. A copy is in the Appendix. Anderson moved for reconsideration; Division II denied that motion on November 9, 2023. A copy of the order denying reconsideration is in the Appendix.

C. ISSUES PRESENTED FOR REVIEW

1. Does a municipal broadband service qualify as "public utility" within the meaning of RCW 35.94.020 and this Court's case law interpreting that statute, requiring voter approval before the disposal of that utility's assets as surplus?

2. Under RCW 35.94.040(2), does a municipality have to demonstrate that a public utility or substantial components of it are unserviceable, inadequate, obsolete, worn out, unfit for operation of the utility, or unnecessary to be "surplus," and thereby avoid the election mandated by RCW 35.94.020?

3. Under City of Tacoma ("Tacoma") Charter § 4.6, is a vote of the people on a public utility's sale

required before a sale of a utility or significant components of it may occur, when the utility is essential, that is, it continues to be operable and used by the public?

D. STATEMENT OF THE CASE

The Court of Appeals opinion sets forth the facts and procedure, op. 1-7, but certain additional facts documenting Click! Network's ("Click") status as a public utility and Tacoma's surplussing decision merit particular attention. If Anderson, a Tacoma citizen taxpayer/ratepayer, is correct that a vote is required under RCW 35.94.020, then Click's sale is void.[1]

Pursuant to its broad charter authority in §§ 4.1-4.2 (*see* Appendix), in 1996 Tacoma Power[2] decided to construct a

[1] By disposing of Click without first obtaining the required approval of Tacoma's citizens, Tacoma exceeded its authority, and any contract entered pursuant to such an action to dispose of Click is *void ab initio*. A "contract contrary to the terms and policy of a legislative enactment is illegal and unenforceable." *South Tacoma Way, LLC v. State*, 169 Wn.2d 118, 233 P.3d 871 (2010). *See also*, *Chemical Bank v. WPPSS*, 99 Wn.2d 772, 798, 666 P.2d 329 (1983).

[2] Tacoma Public Utilities includes the city's water and rail utilities as well as its electrical utility, Tacoma Power.

hybrid fiber/coaxial telecommunications system as part of its electric utility. CP 2321-2324. To confirm its legal authority, Tacoma Power brought a declaratory judgment action in the Pierce County Superior Court against all Tacoma taxpayers and a certified class of all electric ratepayers. That court issued two orders, one authorizing the establishment of that system and the other authorizing revenue bonds to fund its construction. Relying on these orders, Tacoma Power invested in the telecommunications system. Click, a unit of Tacoma Power, used telecommunications system capacity to sell internet access and data transport services and cable television service to eligible Tacoma Power utility customers.

In a 2019 decision, Division II resolved the question of whether Click was a "public utility." In *Coates v. City of Tacoma*, 11 Wn. App. 2d 688, 697, 457 P.3d 1160 (2019), *review denied,* 195 Wn.2d 1025 (2020), the court concluded, as Tacoma had argued, that Click was a public utility, a part of Tacoma Power's

electric utility, but not a separate utility for state accounting purposes:

> The whole telecommunications system is just one network of wires. Additionally, in deciding to implement the system, the City focused on the benefits that Tacoma Power would receive with regard to electric generation, transmission, and distribution. The system's potential cable TV and internet service capabilities were incidental and merely a way to maximize the new technology's potential. That structure has not changed. As such, Click! simply runs on the excess capacity of Tacoma Power's telecommunications system, a system that, as discussed above, was designed and implemented to maximize electric utility functionality. Therefore, we conclude that Click! and Tacoma Power's electric utility are one undertaking for purposes of RCW 43.09.210(3).

Tacoma's telecommunications system was a "betterment" of its electrical utility activities and in turn, Click was a "betterment" of that telecommunications system. *Id.* at 698.[3]

Multiple additional factual points supported the view that Click's betterment of Tacoma Power's electrical utility's

[3] Such a betterment of Tacoma's existing utility was not subject to a vote to create it where the city charter, as here, authorized acquisition. RCW 35.92.070 (1)(a).

telecommunications services, specifically its provision of broadband services, constituted a public utility within the meaning of RCW 35.94.020:

- in 1996, when Click was created by the Tacoma City Council in Ordinance 25930, it provided broadband, high-speed Internet and data transport services as part of a telecommunications division of the Light Division of Tacoma Power, itself operated as a part of Tacoma Public Utilities; Tacoma committed $40 million to that telecommunications utility project initially. CP 468-69, 472;

- Click's rates were approved by Tacoma's Public Utility Board and published in Title 12 of the Tacoma Municipal Code, relating to public utilities. CP 145;

- Click grew to 1,400 miles of fiber and cable constructed by TPU, with 20,000 wholesale high-speed internet service customers and 100 wholesale broadband transport circuits, 66% of homes in Tacoma Power's service area. CP 277, 982, 1065;

- Tacoma represented publicly that Click was a public utility, CP 229-39, 310-20, 468-69, 510-14, 523, 1051-66, 2320;

- Tacoma represented in the 1997 litigation that Tacoma Power's telecommunication system was a public utility. CP 511, 528;

- Tacoma applied the utility tax to Click's rates. CP 523, 1051-66;

- TPU's website displayed Click with other utilities like power, rail, and water. CP 229-39.

When Click was constructed to address ratepayers' needs for "broadband" high-speed Internet and data transport services, the superior court in 1997 concluded that City Council's Ordinance No. 25930, establishing the telecommunications system as part of the City's "Light Division" and dedicating $40 million to fund a "Telecommunications Project" was in the public interest:

> The public interest, welfare, convenience and necessity require the creation of the Telecommunications System . . . plan.

CP 472. Thereafter, Click's telecommunications system was built at great public expense—with over $200 million spent in constructing the community's broadband telecommunications system. CP 165.[4]

[4] While Division's II opinion references a study promoting the surplussing of Click, op. at 9, it fails to mention the City's extensive 1996 "Telecommunications Study" which determined a modern broadband telecommunication system was

When the City Council adopted Resolutions 40467/40468 determining Click to be "surplus," it essentially determined that it no longer wanted to operate Click. CP 845-65. But it is clear that Click is not worn out or obsolete. Rather, Rainier Connect operated Click as a private concern. CP 145-46, 2190-91. Division II admitted Click is a "system that is still viable and will continue to function as before under a different operator." Op. at 12. Although Rainier Connect now operates Click, CP 1815-2023, Click's ownership will revert to Tacoma at the conclusion of the asset purchase agreement/indefensible right of use into which the parties entered. CP 853-54.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This case presents significant statutory interpretation issues with major importance statewide for municipalities. When such municipalities acquire telecommunications systems generally and a broadband internet service specifically and

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an essential utility in the "information age." CP 310-80.

operate them as a public utility, if municipalities then decide to divest themselves of such systems, RCW 35.94.020 requires a vote of the municipality's people before such systems can be sold. RCW 35.94.040(2) permits a municipality to evade that public vote and the accountability it entails, if the property is "surplus."

Division II dodged whether a broadband internet service is a public utility under RCW 35.94.020, but hinted that it was. Division II then determined that a vote of the people was not required, simply concluding that Tacoma's bare assertion that Click was no longer necessary for it satisfied RCW 35.94.040(2), and a public vote was unnecessary. It neglected to consider that Click continued to exist and provide broadband services, albeit through a private entity. Click was not worn out, obsolete or otherwise useless. Division II failed to properly interpret the statutes at issue here or the statutes that provide a context for

them.[5] A vote of the people was necessary here before Tacoma could dispose of Click to a private operator; that was why the Legislature enacted RCW 35.94.020

(1) Click Was a Public Utility to Which the Overarching Vote Requirement of RCW 35.94.020 Applied

The trial court concluded that a vote on Tacoma's disposal of Click was unnecessary because Click was not a public utility for purposes of RCW 35.94.020 and the Tacoma Charter § 4.6,

[5] The central goal of Washington statutory interpretation is to carry out legislative intent. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001). In analyzing that intent, Washington courts' analysis begins by looking at the words of the statute. *Federal Home Loan Bank of Seattle v. Credit Suisse Sec. (USA) LLC,* 194 Wn.2d 253, 258, 449 P.3d 1019 (2019) (the "bedrock principle of statutory interpretation" is the statute's "plain language."). In *State, Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002), this Court held that in discerning the plain meaning of a statute, courts are not confined to the text of the statute alone, but may also examine the *context* of the Legislature's enactment, looking to other statutes in the RCW relevant to the Legislature's action. *Cerrillo v. Esparza*, 158 Wn.2d 194, 202, 142 P.3d 15 (2006) (all that Legislature has said in statute and related statutes is part of the plain language analysis).

CP 2694-96. Division II's opinion does not address this issue. Instead, its entire focus is on the surplus issue under RCW 35.94.040(2). Op. at 8-10.[6] However, it intimates in addressing the City's appellate fee argument, that Anderson's analysis of whether Click was a public utility was entirely correct:

> But although *Coates* held that Click! was not a stand-alone public utility, *id.* at 698, both RCW 35.94.020 and TCC § 4.6 require a public vote for the lease of a *part* of a utility system. *Coates* did not necessarily resolve whether Click! is a "part of" Tacoma Power. In addition, the trial court in the Shook/Bowman lawsuit ruled against the City on this issue, and arguably collateral estoppel precludes the City from even raising this issue.

Op. at 11.

As a backdrop to the sale of a utility or its components, Washington law broadly permits cities to *acquire* public utilities, *e.g.*, RCW 35.92.050, RCW 35A.80.010, but it also generally requires a vote of the people in the municipality to do so. RCW

[6] As will be noted *infra*, Division II also does not address whether apart from statute, Tacoma Charter 4.6 mandated a popular vote.

35.92.070. *See* Appendix. The default rule is that elections are required to create a public utility or a special district offering utility services.

By its express terms, RCW 35.94.020 requires a vote to approve of the disposition by a municipality of a public utility or its substantial components. A public utility is broadly defined in that statute and in Washington law generally. Not only has the Legislature declared broadband to be essential to a modern society and encouraged broadband access, Laws of 2019, ch. 365, § 1, the Legislature created an office in the Governor's office to accomplish such a result. RCW 43.330.532. Broadband meets the definition of a utility in RCW 80.36.310.[7] Tacoma operated a "telecommunications company," as defined in RCW

[7] In *Community Telecable of Seattle, Inc. v. City of Seattle Dep't of Exec. Admin.*, 164 Wn.2d 35, 186 P.3d 1032 (2008), the Court concluded that Seattle could not tax cable internet services provided by high-speed cable providers under the city's taxation of telephone utilities because a statute specifically barred taxation if internet providers as telephone service providers. That taxation decision did not resolve Click's status as a utility for purposes of RCW 35.94.020.

80.04.010 (28).

This Court found in *Bremerton Municipal League v. Bremer*, 15 Wn.2d 231, 130 P.2d 367 (1942) that RCW 35.94.020's express language requiring a public vote was overarching, given the "long list" of specifically named public utility services that included "telephone or telegraph plant and lines," along with the sweeping language of "any similar or dissimilar utility or system." RRS § 9512.[8] *See* Appendix. *Bremer* determined a "public utility" included "any kind of utility in whose operations the public has an interest." *Id.* at 237. The *Bremer* court found that a wharf was a "public utility," and

[8] Division II's opinion does not discuss RCW 35.94.020 in detail. That statute is based on RCW 80.12.010. That statute rewrote RRS § 9512 in 1946 "for brevity." Anderson Br. at 21-24. RRS § 9512, which generally lists specific types of public utilities, includes telecommunication services – "telephone or telegraph plant and lines." RRS § 9512 codified a 1917 session law – Laws of 1917, ch. 137, § 1. *See* Appendix. That session law has *never* been amended *by the Legislature* and controls here. Session laws prevail over codified sections, RCW 1.04.121; *State ex rel. Town of Mercer Island v. City of Mercer Island,* 51 Wn.2d 141, 144, 361 P.2d 369 (1961).

the public vote was mandatory: "These sections of our statutes provide the only procedure by which the city can lawfully sell or lease municipal wharves." *Id.*

Given the statute's clear statement and specific list of utilities (which included telecommunications then telephone and telegraph), CP 2278-79, Click is a betterment of a "public utility" requiring an approving public vote for disposal. If a wharf qualifies as "public utility" under *Bremer*, then certainly a state-of-the-art fiber optic telecommunications system, providing ratepayers with essential broadband and data transport services, meets the statute's definition of a "public utility."

Division II's opinion fails to address whether Click's provision of broadband services qualified as a public utility under RCW 35.92.020. Tacoma decided in 1996 to construct a telecommunications system as a betterment of Tacoma Power's electrical utility services. That telecommunications system was used to sell broadband internet access and data transport services through Click. Thus, Click, too, was a betterment of Tacoma

Power's electrical utility services, and therefore, a public utility for purposes of RCW 35.94.020.

In sum, the trial court erred in concluding that Click was not a public utility for purposes of RCW 35.94.020, particularly where Click necessarily provided "telephone"-related services, and Tacoma treated it as a public utility in a variety of ways. Specifically, telephones are telecommunications services. The trial court's determination that a broadband telecommunications service like Click is not a public utility is contrary to *Bremer*, meriting review under RAP 13.4(b)(1), and is a major issue of public importance, meriting review under RCW 13.4(b)(4), as will be discussed *infra*.

(2) Division II's Interpretation of a Municipality's Authority to Declare Assets "Surplus" under RCW 35.94.040 So As to Avoid a Popular Election Is Contrary to Law and Swallows Up the Overarching Rule of Elections for the Acquisition or Sale of Public Utilities

The central focus of Division II's decision to uphold Click's disposal by Tacoma without a public vote was its

determination that Tacoma legitimately declared that broadband service for Tacoma residents to be "surplus" under RCW 35.94.040. Op. at 8-10.

But that decision is contrary to law in Washington and ignores the critical context for public acquisition or sale of public utilities, meriting this Court's review.

Critically, as noted *supra*, the overarching public policy is for *elections* to approve of the acquisition (RCW 35.92.070) or sale of public utilities (RCW 35.94.020). Such elections secure the input of the public on such key decisions as whether a public utility should be owned and operated by a municipality or a private concern.[9] The elimination of a popular vote as to the sale of a public utility in RCW 35.94.040 (2) is an *exception* to that

[9] When special purpose districts are created to address water, sewer, or electrical services, popular votes are similarly required. *See*, *e.g.*, RCW 54.08.010 (public utility districts); RCW 57.04.050 (sewer-water districts). As for the latter districts, elections are the norm when additional territory is annexed, RCW 57.24.020, or portions of the district are conveyed to a city. RCW 57.08.030.

overarching public policy favoring popular votes, and it should be *narrowly* construed. *Foster v. Wash. State Dep't of Ecology*, 184 Wn.2d 465, 473, 362 P.3d 959 (2015) ("…statutory exceptions are construed narrowly in order to give effect to the legislative intent underlying the general provision."). Instead, Division II's analysis of what constitutes surplussing of public utilities swallows up that overarching rule favoring a popular vote.

Division II's analysis of RCW 35.94.040(2)'s *exception* to the general principle that a vote of the people is required is notable for its failure to address any standards governing when a public utility or its property is truly "surplus." Op. at 8-10. Seemingly, that court believed that if a municipality goes through the *procedural* motions of hiring a consultant (who will likely say whatever the paymaster wants that consultant to say) and holds public hearings on disposal of the utility or its assets, the decision is a discretionary one and the municipality's decision is not "arbitrary or capricious" and will be blessed by the courts.

But such a superficial analysis allows the municipality to essentially swallow up the overarching rule of popular votes to create or dispose of public utilities, depriving a municipality's citizens of the right to decide if a public utility should remain public or to be sold off to a private concern. RCW 35.94.020/RCW 35.94.040. Washington law demands more.[10] *See*, *e.g.*, AGO 1962 No. 163 (city lacks the authority to dispose of airport property and facilities to private operator when a portion of that airport was still necessary for aircraft landings, takeoffs, and other aeronautic purposes).[11]

In an analogous setting, the Legislature has required public

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[10] Under Division II's analysis, the Seattle City Council or Tacoma City Council could convey Seattle City Light or Tacoma City Light respectively to PSE for example, without a vote, merely by saying the cities no longer wanted to be in the electrical utility business. Obviously, such a major policy decision should be the subject of an RCW 35.94.020-mandated vote of the people.

[11] Formal Attorney General Opinions are entitled to "great weight" by this Court. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 308-09, 268 P.3d 892 (2011).

utility districts to meet a more demanding standard, requiring such districts to hold a popular vote to approve of the disposition of assets, RCW 54.16.010, unless the property at stake is "unserviceable, inadequate, obsolete, worn out or unfit to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations." RCW 54.16.180(2)(b).[12] The requirement of a public vote to dispose of utility property is designed to advance voter participation in the sale decision and to forestall fraud and collusion in such sales. *Responsible Growth NE Wash. v. Pend Oreille Public Utility Dist. No. 1*, 13 Wn. App. 2d 517, 539-40, 466 P.3d 1122 (2020) (Div. III determines property met RCW 54.16.180(2)(b) because it was "useless" to the PUD).[13]

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[12] Tacoma Public Utilities, a proponent of the legislation that became RCW 35.94.040, told the Legislature that RCW 54.16.180 (2)(b) was meant as guidance for the interpretation of that statute. CP 769-70.

[13] Our Constitution provides an outer limit on a municipality's decision to convey public property when it forbids provision of money, property, or municipal credit to

Click's state-of-the-art telecommunications system remains "viable" and will "continue to function as before." Op. at 11. Click's services have certainly "continued" since March 30, 2020. Tacoma then ceded ownership and control over 23,000 active ratepayer accounts, including residential and commercial users, City, County and State government offices, hospitals and libraries, to a private company, Rainer Connect.[14] Click had 23,344 active broadband accounts, plus 173 Metro Ethernet data transport customers spread across six cities and parts of Pierce County. Click's continuing enterprise was not unserviceable, inadequate, obsolete, worn out, or unfit for providing broadband

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private parties. Wash. Const. art. VIII, § 7. *See generally*, *CLEAN v. State*, 130 Wn.2d 782, 799, 928 P.2d 1054 (1996) (art. VIII, § 7 meant to prevent government funds from being used to benefit private interests where public interest is not primarily being served); *Peterson v. Dep't of Revenue*, 195 Wn.2d 513, 460 P.3d 1080 (2019) (addressing gifts of public funds).

[14] Businesses large and small, federal and county courthouses, city and county libraries—all relied on Click for "data transmission circuits." *See* CP 1114-31.

internet services. Resolutions 40467/40468 made no such findings. CP 845-65.[15]

In fact, with schools, business, courts, and government offices shuttered in March 2020 by COVID-19, ratepayers who were quarantined at home, relied more than ever on Click's state-of-the-art telecommunications system to *continue* delivering their most essential services. Ratepayers shopped online, telecommuted to work, school and meetings, obtained news and information, virtually visiting doctors, courts, government agencies, friends and family, all via Click. Click was a "going concern." Rainier Connect even retains Click's name. CP 1870.

In sum, Tacoma's invocation of authority to declare Click surplus under RCW 35.94.020(2) violates Washington law, meriting review. RAP 13.4(b)(4).[16]

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[15] Nor could they. Why would Rainier Connect, a for-profit firm, buy Click otherwise? It would be absurd for Rainier to purchase a dysfunctional, money-losing enterprise.

[16] At a minimum, where the trial court did not address how Click was unserviceable, inadequate, obsolete, worn out, unfit,

(3) Apart from State Law, Tacoma Charter § 4.6 Mandates a Vote of the People on Click's Disposal by Tacoma

In addition to state law, Tacoma may itself decide to impose a requirement of a vote of the people before public utilities or their assets may be sold. Indeed, this authority for home rule cities like Tacoma was discussed in AGO 2003 No. 11, 2003 WL 23012252, wherein the Attorney General concluded that home rule cities could acquire and provide telecommunications services, as defined in RCW 80.04.010, without express authorization from the Legislature. *Accord, City of Issaquah v. Teleprompter Corp.*, 93 Wn.2d 567, 611 P.2d 741 (1980) (city could acquire/operate cable television system without legislative authorization, rejecting the argument that city operation of a cable television was beyond its statutory authority).[17]

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or no longer necessary *for its users*, there was a fact issue as to Click's alleged surplus status.

[17] There, the Court concluded that cable television is not

Tacoma's authority to establish public utilities is broad. Charter §§ 4.1, 4.2. clearly permitted Tacoma to add Click to its electrical utility as a "betterment" or "addition." Charter § 4.6 has no "surplus" authority; it mandates a public vote under Tacoma's home rule authority, regardless of RCW 35.94.040. § 4.6 states that Tacoma shall *never* sell utilities or their essential parts without a vote of the people. *See* Appendix. Division II merely accepted the City Council assertion that Click was not "essential to continued effective utility service," CP 854-55, at face value. The paucity of analysis on that key point is telling.

Division II's analysis of Tacoma Charter § 4.6 offers no clue as to how to analyze whether the broadband services Click offered are "essential." Impliedly, that court equated the standard for surplussing in RCW 35.94.040(2) with the Tacoma Charter provision, but the text of § 4.6 mandates a different analysis, as

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a public utility under RCW 35A.80 or RCW 35.92, but that is not dispositive as to telecommunications services generally or broadband internet specifically in light of the language of RRS § 9512.

noted above. The Charter starts with a proposition that is not found in RCW 35.94.040(2) – Tacoma shall *never* sell or dispose of any utility system. Moreover, the evidence here is that Click is far from being "non-essential;" Click's broadband services remain *essential* for thousands of Tacoma residents; they continue to receive the very same services Click always provided, albeit now from Rainier Connect.

Division II erred in its analysis of the Tacoma Charter. This Court has long been the final arbiter of a municipal charter provision. *E.g., Winkenwerder v. City of Yakima*, 52 Wn.2d 617, 631-633, 328 P.2d 873 (1958). Review is merited. RAP 13.4(b)(4).

(4) <u>This Court should Accept Review Because Vital Public Policies Are at Issue and the Case Law in This Area Is So Sparse</u>

This case involves issues of substantial public interest that should be determined by this Court because this case involves a *public* utility, paid for by *public* monies for decades. *E.g.*, *Chemical Bank*, *supra*. This Court has often allowed for direct

review or granted review where there are significant questions of municipal utility-related authority that must be resolved. *See*, *e.g.*, *Chemical Bank*, *supra* (authority of municipal and public utility authorities as to electrical generating facilities); *Ronald Wastewater Dist. v. Olympic View Water & Sewer Dist.*, 196 Wn.2d 353, 474 P.3d 547 (2020) (authority of competing municipalities over territory); *King County v. King County Water Dists. Nos. 20, 45, 49, 90, 111, 119, 125*, 194 Wn.2d 830, 453 P.3d 681 (2019) (direct review County authority to charging franchise fees to districts); *Community Telecable of Seattle, supra.* (taxation of cable internet services); *Burns v. City of Seattle*, 161 Wn.2d 129, 164 P.3d 475 (2007) (direct review of City authority to enter into forbearance agreements by which city paid other municipalities a share of franchise fees not to create their own utilities).

Moreover, Division II's decision deprives Tacoma citizens of the right to vote on the disposal of a key public utility. This Court should determine issues relating to the right to vote

on such a crucial public matter because the right to vote is fundamental under both the United States and Washington Constitutions. *Foster v. Sunnyside Valley Irr. Dist.*, 102 Wn.2d 395, 404, 687 P.2d 841 (1984). Indeed, Wash. Const. art. I, § 5 goes farther than the United States Constitution in guaranteeing "free and equal" elections and the unimpeded free exercise of the right of suffrage. *Id*.

Review is also important because the case law on public votes for the disposition of public utilities is sparse. *Bremer* was decided 81 years ago. This Court's authoritative interpretation of RCW 35.94.020/RCW 35.94.040 is plainly necessary. This controversy is capable of being repeated *anywhere* in Washington when a municipality determines to sell a public utility or substantial assets of such a utility.

Finally, this Court should decide the crucial public issue Division II avoided --- a municipally-operated telecommunications system providing broadband internet and data transport services is, in fact, a public utility under RCW

35.94.020 and *Bremer*.

For all these reasons, Division II's opinion merits review under RAP 13.4(b)(4).

F. CONCLUSION

Division II's opinion condones the privatization of a vital municipal broadband telecommunications system without a popular vote on so vital an issue, flying in the face of Tacoma municipal charter, and state statute, as interpreted by this Court.

Division II's opinion essentially grants unbridled authority to municipalities to dispose of broadband telecommunications systems, by simply declaring the public assets "surplus" under RCW 35.94.040—in avoidance of statutory requirements for an approving public vote by the electorate—even when those assets continue providing the very same utility service and fulfilling the public purpose to which they were initially dedicated.

This Court should grant review, RAP 13.4(b)(1), (4), reverse the trial court's erroneous summary judgment, and grant judgment in Anderson's favor.

This document contains 4,537 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 1st day of December, 2023.

Respectfully submitted,

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APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MITCHELL SHOOK, Plaintiff, v. CITY OF TACOMA, Respondent,	No. 57246-0-II UNPUBLISHED OPINION
THOMAS MCCARTHY and CHRISTOPHER T. ANDERSON, Appellants, v. CITY OF TACOMA, Respondent.	

MAXA, J. – Thomas McCarthy and Christopher Anderson appeal the trial court's grant of summary judgment in favor of the City of Tacoma and denial of their summary judgment motions regarding whether the City lawfully could lease its Click! Network to Rainier Connect without approval by the City's voters.

In 1996, the City authorized Tacoma Power's Light Division, a part of Tacoma Public Utilities (TPU), to build a new telecommunications system as part of its electric utility infrastructure to assist in the generation, distribution, and transmission of electricity. The system also had sufficient capacity to provide cable television, broadband transport, and high-speed

internet to Tacoma Power customers, which resulted in the formation of Click!. Click! operated for over 20 years as a sub-unit of Tacoma Power.

In 2019, the City determined that it no longer wanted to operate Click!. The City Council adopted a resolution that declared Click!'s assets and the telecommunications system's excess capacity to be surplus and not required for or essential to continued utility service. The City then entered into an agreement with Rainier Connect under which Tacoma Power would retain control and ownership of the telecommunications system and, in exchange for a fee, Rainier Connect would use the excess capacity to provide cable, video, and internet access. Rainier Connect subsequently assumed operational control of Click!.

RCW 35.94.010 states that a city may lease or sell any "public utility" works, plant, or system, but under RCW 35.94.020 such a lease or sale cannot take effect until approved in an election by the city's voters. However, RCW 35.94.040(2) provides that voter approval is not required if the property "is surplus to the city's needs and is not required for providing continued public utility service." In addition, § 4.6 of the Tacoma City Charter (TCC) states that the City cannot sell or lease parts of any "utility system" without a vote of the people if the system is "essential to continued effective utility service."

McCarthy and Anderson argue that the trial court erred in granting summary judgment in favor of the City because Click! was a public utility and the City's decision to declare Click! to be surplus was arbitrary and capricious. Therefore, a vote of the people was required. The City argues that (1) res judicata bars McCarthy's and Anderson's claims based on the trial court's summary judgment ruling in the Shook/Bowman lawsuit, (2) Click! was not a public utility, and (3) the City Council's decision to declare Click! to be surplus was not arbitrary and capricious.

We hold that the City Council's decision to declare Click! to be surplus and not required for or essential to continued utility service was not arbitrary and capricious, and therefore we do not address the other two issues. Accordingly, we affirm the trial court's grant of summary judgment in favor of the City and denial of McCarthy's and Anderson's summary judgment motions.

FACTS

Background

In 1996, the Tacoma City Council adopted ordinance 25930, which authorized the construction of a telecommunications system as a separate system of Tacoma Power's Light Division and the issuance of bonds to fund the construction. The telecommunications system was designed to perform a number of traditional electric utility functions, including substation communications functions, automated meter reading, automated billing and bill payment, distribution automation, and government communications functions. The system also was designed to provide cable television, internet access, and transport of signals for service providers offering telecommunications services.

The City then initiated a declaratory judgment against the City's taxpayers and ratepayers to confirm that the enactment of the ordinance and the City's ability to issue revenue bonds was lawful.[1] The trial court granted summary judgment in favor of the City, ruling that the City had authority to provide cable television services and to lease telecommunications facilities and capacity to telecommunications providers.

In 1997, the City Council adopted substitute resolution 33668, which approved Tacoma Power's plan to develop a fiber optic, broad band telecommunications system to provide

[1] *City of Tacoma v. Taxpayers and Ratepayers*, Superior Court No. 96-2-09938-0 (1996).

enhanced electric utility functions as well as cable television service, high speed internet access, and data transport. Tacoma Power constructed approximately 1,500 miles of fiber and coaxial cable. Using the excess capacity of this system, Tacoma Power in 1998 created a sub-unit to provide commercial telecommunication services to its customers under the brand name Click!. Click! operated for the next 20 years.

Over the years, Click!'s operational costs increased significantly, consumer demand for cable television reduced, and Click!'s business model became outdated. In January 2018, an outside consultant suggested a business model in which the City would retain ownership of the telecommunications system including Click!, and a third party would provide cable television and/or internet access while covering Click!'s capital and operating costs.

In August 2018, the consultant recommended that the City Council negotiate term sheets with Rainier Connect and another provider to take over operation of Click!. In March 2019, the City directed the TPU director to enter into good faith negotiation of agreements with Rainier Connect in which the City would retain ownership of the existing telecommunications system and Rainier Connect would use the system's excess capacity to provide cable, video, and internet access. Negotiations resulted in the drafting of the Click! Business Transaction Agreement between the City and Rainier Connect under which Rainier Connect would assume control of Click!.

In October, the City held a public hearing to discuss the proposed surplus of Click!'s assets and excess capacity of the telecommunications system. In November, the City Council adopted Resolution No. 40467, which found Click!'s assets and excess capacity were surplus to the needs of Tacoma Power and TPU. The resolution stated:

> [C]onsistent with RCW 35.94.040 and Section 4.6 of the City Charter, the City Council does hereby find and determine that the Click! Assets and Excess Capacity in the HFC Network, as described in the recitals above, are not required for, and are not essential

> to, continued public utility service or continued effective utility service and, pursuant to applicable law, are properly declared surplus property and excess to the needs of Tacoma Power, Tacoma Public Utilities, and the City.

Clerk's Papers (CP) at 854-55. The City then adopted Resolution No. 40468, which authorized the execution of the Click! Business Transaction Agreement between Tacoma Power and Rainier Connect.

In April 2020, Tacoma Power transferred full operational control of Click! to Rainier Connect.

Lawsuits Against the City

In April 2019, Mitchell Shook, representing himself, filed a lawsuit against the City under cause number 19-2-07135-0 seeking an order prohibiting the City from leasing Click! to Rainier Connect without approval from the City's voters. Shook alleged that he was "a resident of Tacoma, a Tacoma Public Utilities rate payer and Click! customer; and, as such has standing to seek the relief requested in this petition." CP at 3.

McCarthy and Anderson also filed suit against the City regarding the potential lease of Click! to Rainier Connect. Paragraphs 1.1 and 1.2 of the complaint described McCarthy and Anderson as follows:

> [McCarthy] is a resident of the city of Tacoma, county of Pierce, state of Washington. Mr. McCarthy is a residential customer and ratepayer of Tacoma Power. Mr. McCarthy also subscribes to residential Internet access over Click! Network.
>
> [Anderson] is a resident of the city of Tacoma, county of Pierce, state of Washington. Mr. Anderson is a residential customer and ratepayer of Tacoma Power. Mr. Anderson also subscribes to residential Internet access over Click! Network.

CP at 3290-91.

The trial court consolidated the Shook lawsuit and the McCarthy/Anderson lawsuit under the Shook cause number. Shook subsequently filed an amended complaint that asserted federal

claims. The City then removed the case to federal court in September 2019. The case eventually was remanded back to state court in April 2020.

In October 2019, Shook and Darrel Bowman filed separate lawsuits against the City regarding the potential lease of Click! to Rainier Connect. The lawsuits were consolidated under cause number 19-2-11506-3.

Summary Judgment in Shook/Bowman Case

In the Shook/Bowman case, the City, Shook, and Bowman all filed summary judgment motions. Bowman was represented by counsel and Shook represented himself. The trial court heard oral argument in February 2019.

The trial court first addressed whether Click! was a "public utility" under RCW 35.94.040 and TCC § 4.6. The court noted that Click! "is a telecommunications system that operates on the excess capacity of TPU's electric [utility's] existing infrastructure." CP at 2119. The court found that there was "no dispute that the CLICK! Network was never formally dedicated as a public utility," and that "the CLICK! Network is not a stand-alone utility." CP at 2119-20. However, the court concluded that Click! was "originally acquired for public utility purposes under RCW 35.94.040 and a part of a utility system under Tacoma City Charter Section 4.6." CP at 2120.

The trial court then addressed whether the City's determination that Click! was surplus and not essential to continued effective utility service under RCW 35.94.040 and TCC § 4.6 was lawful. The court reviewed this determination using the arbitrary and capricious standard – whether the City Council's decision was "willful and unreasoning or without consideration of and in disregard of facts or circumstances." CP at 2021. The court found that all of the City's reasons for declaring Click! surplus were reasonable and ruled in favor of the City:

> The plaintiffs have failed to raise genuine issues of material facts on this issue of whether the City's decisions were arbitrary and capricious. The Court has no basis to invalidate the City's decisions, and as such, the City's resolutions must stand. Because the City is determined that Click!'s assets and the excess capacity are surplus and not essential, the public vote requirements in RCW 35.94.040 and Tacoma City Charter Section 4.6 are not triggered.

CP at 2123.

The trial court entered an order granting summary judgment in favor of the City and dismissing Shook's and Bowman's claims against the City with prejudice on February 28, 2020.

Shook and Bowman appealed the trial court's summary judgment order. However, in April 2020 Shook entered into a settlement agreement with the City in which he agreed to dismiss all pending litigation against the City. In July 2020, this court dismissed the appeal in the Shook/Bowman lawsuit based on the parties' stipulation.

Summary Judgment in McCarthy/Anderson Case

In the McCarthy/Anderson case, both the City and McCarthy and Anderson filed summary judgment motions in July 2022. The trial court granted summary judgment in favor of the City. The court concluded that Click! was not a public utility within the meaning of RCW 35.94.020 or TCC § 4.6. Therefore, the agreement with Rainier Connect was not subject to a public vote. The court did not grant summary judgment based on res judicata relating to the Shook/Bowman lawsuit.

McCarthy and Anderson appeal the trial court's grant of summary judgment in favor of the City and the denial of their summary judgment motions.

ANALYSIS

A. SUMMARY JUDGMENT STANDARD

We review summary judgment orders de novo. *Mihaila v. Troth*, 21 Wn. App. 2d 227, 231, 505 P.3d 163 (2022). We view all evidence in the light most favorable to the nonmoving

party, including reasonable inferences from the evidence. *Id.* Summary judgment is appropriate when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *Id.* A genuine issue of material fact exists if reasonable minds can come to different conclusions on a factual issue. *Id.* But summary judgment can be determined as a matter of law if the material facts are not in dispute. *Antio, LLC v. Dep't of Revenue*, 26 Wn. App. 2d 129, 134, 527 P.3d 164 (2023).

We can affirm a trial court's grant of summary judgment on any ground supported by the record. *Johnson v. Liquor & Cannabis Bd.*, 197 Wn.2d 605, 611, 486 P.3d 125 (2021).

B. DETERMINATION THAT CLICK! WAS SURPLUS

McCarthy and Anderson argue that the City's decision to declare Click! to be surplus was contrary to law and arbitrary and capricious. We disagree.

As noted above, RCW 35.94.040(2) states that the public vote requirement in RCW 35.94.020 does not apply if a city determines that property originally acquired for public utility purposes "is surplus to the city's needs and is not required for providing continued public utility service." And the public vote requirement in TCC § 4.6 applies only to parts of a utility system that are "essential to continued effective utility service."

The City's Resolution 40467 expressly stated,

> [C]onsistent with RCW 35.94.040 and Section 4.6 of the City Charter, the City Council does hereby find and determine that the Click! Assets and Excess Capacity in the HFC Network, as described in the recitals above, are *not required for, and are not essential to, continued public utility service or continued effective utility service* and, pursuant to applicable law, are properly *declared surplus property* and excess to the needs of Tacoma Power, Tacoma Public Utilities, and the City.

CP at 854-55. The issue here is whether this determination was lawful.

The City Council's adoption of Resolution 40467 was a legislative decision. We review legislative decisions under an arbitrary and capricious standard. *Teter v. Clark County*, 104 Wn.2d 227, 234, 704 P.2d 1171 (1985). Under this standard,

> [a] legislative determination will be sustained if the court can reasonably conceive of any state of facts to justify that determination. To be void for unreasonableness, an ordinance or resolution must be "clearly and plainly" unreasonable. Thus, appellants have a heavy burden of proof that the respondents' actions were willful and unreasoning, without regard for facts and circumstances.

Id. at 234-35 (citations omitted).

Here, the City determined that it no longer made sense to operate Click! as part of its electric utility. The City Council made the following findings in Resolution 40467:

> WHEREAS, since [1998], technology and consumer demands have changed with consumers shifting from predominantly consuming cable programming services to predominantly consuming internet access services, and
>
> WHEREAS operational costs for the Click! Network have significantly increased since 1998 while the Click! Network business model has become outdated and unable to respond quickly or efficiently to changes in the market place or provide the capacity to make capital investments necessary to upgrade the network and compete with the private sector.

CP at 849. In other words, the City concluded that operating Click! as part of Tacoma Power no longer was cost effective or beneficial.

This decision was made after careful consideration. Resolution 40467 found that the Public Utilities Board (PUB) had engaged in "many years of study" regarding alternative Click! business models and in conjunction with the City Council had hired an outside consultant to assist in the analysis. CP at 850. The consultant recommended that the City no longer operate Click! and engage in negotiations with third party providers. In addition, both the PUB and the City Council held public hearings regarding the proposed surplus of Click! assets.

Finally, the facts supported the City's determination that operation of Click! was not required for or essential to continued utility service. The City provided a declaration from Tenzin Gyaltsen, the general manager of Click!, who testified that there were no Tacoma Power customers who were relying on any part of Click! for any of their utility services.

McCarthy and Anderson make two arguments in support of invalidating Resolution 40467. First, Anderson argues that Resolution 40467 was contrary to law and void because RCW 35.94.040 does not authorize a city to declare an entire utility system surplus. However, *Coates v. City of Tacoma* established that Click! was not a separate utility system. 11 Wn. App. 2d 688, 698, 457 P.3d 1160 (2019). Instead, this court concluded that Click! was merely a betterment of the City's electric utility. *Id.* Therefore, the City did not declare an "entire utility system" surplus.

Second, McCarthy and Anderson emphasize that Click! continues to provide the exact same services to Tacoma Power customers as when the City operated Click!. They claim that this fact means that Click! continues to be essential for continued utility service. However, the question is whether the operation of Click! is essential for *the City* to provide continued utility service, not whether some other entity is providing the service. There is no evidence suggesting that it was essential for the City to provide cable television and internet access to its electric utility customers.

We conclude that the City did not act arbitrarily or capriciously in adopting Resolution 40467. And although the trial court did not rule on this basis, we can affirm a summary judgment order on any ground supported by the record. *Johnson*, 197 Wn.2d at 611. Therefore, we hold that the trial court did not err in granting summary judgment in favor of the City.

C. ATTORNEY FEES ON APPEAL

The City argues that McCarthy's and Anderson's appeal is frivolous, and therefore we should award attorney fees to the City under RAP 18.9(a). In fact, the prevailing theme of the City's entire brief is that every argument McCarthy and Anderson made was frivolous. We disagree.

An appeal is frivolous if, considering the entire record, we determine that the appeal presents no debatable issues and is completely without merit. *Lutz Tile Inc. v. Krech*, 136 Wn. App. 899, 906, 151 P.3d 219 (2007).

The City argues that this appeal is frivolous because res judicata bars McCarthy's and Anderson's claims. But McCarthy and Anderson argue that res judicata should not apply to bar their claims because they were not parties to the Shook/Bowman lawsuit. This argument raises debatable issues and is not completely without merit.

The City argues that McCarthy's and Anderson's argument regarding whether the public vote requirements of RCW 35.94.020 and TCC § 4.6 apply to the lease of Click! are frivolous, primarily based on *Coates*, 11 Wn. App. 2d 688. But although *Coates* held that Click! was not a stand-alone public utility, *id.* at 698, both RCW 35.94.020 and TCC § 4.6 require a public vote for the lease of a *part* of a utility system. *Coates* did not necessarily resolve whether Click! is a "part of" Tacoma Power. In addition, the trial court in the Shook/Bowman lawsuit ruled against the City on this issue, and arguably collateral estoppel precludes the City from even raising this issue.

Finally, the City argues that McCarthy's and Anderson's challenge to the determination that Click! was surplus and not required for or essential public utility service is frivolous. But this issue involves unique facts – declaring "surplus" a system that is still viable and will

continue to function as before under a different operator. McCarthy's and Anderson's argument on this question raises debatable issues and is not completely without merit.

We reject the City's baseless claim that this appeal is frivolous and decline to award attorney fees to the City on appeal.

CONCLUSION

We affirm the trial court's grant of summary judgment in favor of the City and denial of McCarthy's and Anderson's summary judgment motions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Maxa, J.
MAXA, J.

We concur:

Glasgow, CJ
GLASGOW, C.J.

Price, J.
PRICE, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

Filed
Washington State
Court of Appeals
Division Two

November 9, 2023

MITCHELL SHOOK, Plaintiff, v. CITY OF TACOMA, Respondent,	No. 57246-0-II
THOMAS MCCARTHY and CHRISTOPHER T. ANDERSON, Appellants, v. CITY OF TACOMA, Respondent.	ORDER DENYING MOTION FOR RECONSIDERATION

Appellants Thomas McCarthy and Christopher Anderson each move for reconsideration of the court's October 3, 2023 opinion. Upon consideration, the court denies both motions. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Glasgow, Price

FOR THE COURT:

Maxa, J.

MAXA, J.

RCW 35.92.050:

A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain, and operate works, plants, facilities for the purpose of furnishing the city or town and its inhabitants, and any other persons, with gas, electricity, green electrolytic hydrogen as defined in RCW 54.04.190, renewable hydrogen as defined in RCW 54.04.190, and other means of power and facilities for lighting, including streetlights as an integral utility service incorporated within general rates, heating, fuel, and power purposes, public and private, with full authority to regulate and control the use, distribution, and price thereof, together with the right to handle and sell or lease, any meters, lamps, motors, transformers, and equipment or accessories of any kind, necessary and convenient for the use, distribution, and sale thereof; authorize the construction of such plant or plants by others for the same purpose, and purchase gas, electricity, or power from either within or without the city or town for its own use and for the purpose of selling to its inhabitants and to other persons doing business within the city or town and regulate and control the use and price thereof.

RCW 35.92.070:

When the governing body of a city or town deems it advisable that the city or town purchase, acquire, or construct any such public utility, or make any additions and betterments thereto or extensions thereof, it shall provide therefor by ordinance, which shall specify and adopt the system or plan proposed, and declare the estimated cost thereof, as near as may be, and the ordinance shall be submitted for ratification or rejection by majority vote of the voters of the city or town at a general or special election.

RCW 35.94.010:

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 35.94.020:

The legislative authority of the city, if it deems it advisable to lease or sell the works, plant, or system, or any part thereof, shall adopt a resolution stating whether it desires to lease or sell. If it desires to lease, the resolution shall state the general terms and conditions of the lease, but not the rent. If it desires to sell the general terms of sale shall be stated, but not the price. The resolution shall direct the city clerk, or other proper official, to publish the resolution not less than once a week for four weeks in the official newspaper of the city, together with a notice calling for sealed bids to be filed with the clerk or other proper official not later than a certain time, accompanied by a certified check payable to the order of the city, for such amount as the resolution shall require, or a deposit of a like sum in money. Each bid shall state that the bidder agrees that if his or her bid is accepted and he or she fails to comply therewith within the time hereinafter specified, the check or deposit shall be forfeited to the city. If bids for a lease are called for, bidders shall bid the amount to be paid as the rent for each year of the term of the lease. If bids for a sale are called for, the bids shall state the price offered. The legislative authority of the city may reject any or all bids and accept any bid which it deems best. At the first meeting of the legislative authority of the city held after the expiration of the time fixed for receiving bids, or at some later meeting, the bids shall be considered. In order for the legislative authority to declare it advisable to accept any bid it shall be necessary for two-thirds of all the members elected to the legislative authority

to vote in favor of a resolution making the declaration. If the resolution is adopted it shall be necessary, in order that the bid be accepted, to enact an ordinance accepting it and directing the execution of a lease or conveyance by the mayor and city clerk or other proper official. The ordinance shall not take effect until it has been submitted to the voters of the city for their approval or rejection at the next general election or at a special election called for that purpose, and a majority of the voters voting thereon have approved it. If approved it shall take effect as soon as the result of the vote is proclaimed by the mayor. If it is so submitted and fails of approval, it shall be rejected and annulled. The mayor shall proclaim the vote as soon as it is properly certified.

Laws of 1917, ch. 137, § 1:

It is and shall be lawful for any city or town in this state now or hereafter owning any water works, gas works, electric light and power plant, steam plant, street railway line, street railway plant, telephone or telegraph plant and lines, or any system embracing all or any one or more of such works or plants or any similar or dissimilar utility or system, to lease for any term of years or to sell and convey the same or any part thereof, with the equipment and appurtenances, in the manner hereinafter prescribed.

RCW 35.94.040:

(1) 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 and, in the case of personal property or equipment, has an estimated value of greater than fifty thousand dollars, then such legislative authority by resolution and after a public hearing may cause such lands, property, or equipment to be leased, sold,

or conveyed. Such resolution shall state the fair market value or the rent or consideration to be paid and such other terms and conditions for such disposition as the legislative authority deems to be in the best public interest.

(2) The provisions of RCW 35.94.020 and 35.94.030 shall not apply to dispositions authorized by this section. The provisions of this section and RCW 35.94.020 and 35.94.030 shall not apply to the disposition of any personal property or equipment originally acquired for public utility purposes that is surplus to the city's needs and is not required for providing continued public utility service and has an estimated value of fifty thousand dollars or less.

RCW 35A.80.010:

A code city may provide utility service within and without its limits and exercise all powers to the extent authorized by general law for any class of city or town. The cost of such improvements may be financed by procedures provided for financing local improvement districts in chapters 35.43 through 35.54 RCW and by revenue and refunding bonds as authorized by chapters 35.41, 35.67 and 35.89 RCW and Title 85 RCW. A code city may protect and operate utility services as authorized by chapters 35.88, 35.91, 35.92, and 35.94 RCW and may acquire and damage property in connection therewith as provided by chapter 8.12 RCW and shall be governed by the regulations of the department of ecology as provided in RCW 90.48.110.

Tacoma Charter § 4.1:

General Powers Respecting Utilities

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.

Tacoma Charter § 4.2:

Power to Acquire and Finance

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.

Tacoma Charter § 4.6:

Disposal of Utility Properties

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.

DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the ***Petition for Review*** in Court of Appeals, Division II Cause No. 57246-0-II to the following:

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Original E-filed via appellate portal with:
Court of Appeals, Division II
Clerk's Office

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

DATED: December 1, 2023 at Seattle, Washington.

/s/ Matt J. Albers
Matt J. Albers, Paralegal
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

December 01, 2023 - 10:02 AM

Transmittal Information

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Appellate Court Case Title:	Thomas McCarthy, et al, Appellants v. City of Tacoma, Respondent
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Comments:

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