NO. 99278-9

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

COURT OF APPEALS, DIVISION I, NO. 80162-7

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PUGET SOUND ENERGY, INC.,

Appellant,

vs.

PILCHUCK CONTRACTORS, INC.,

Respondent

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# ANSWER TO PETITION FOR REVIEW

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Ted Buck, WSBA #22029
Mark Conrad, WSBA #48135
FREY BUCK, P.S.
1200 Fifth Avenue, Suite 1900
Seattle, WA 98101
Telephone: (206) 486-8000
Facsimile: (206) 902-9660
*Attorneys for Respondent Pilchuck Contractors, INC.*

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## I. INTRODUCTION

While PSE[1] claims that factual disputes rendered summary judgment inappropriate, the reality is the facts are not in dispute; merely the application of those facts to the law is in dispute. There is no dispute that in 2004 PSE contracted with Pilchuck[2] to perform a construction project on the 8400 block of Greenwood Avenue in Seattle. Pilchuck was to relocate a natural gas main line, install new service lines and meters and deactivate existing lines ("8400 Greenwood project"). It is undisputed that Pilchuck installed the new main and new service lines. It is also undisputed that Pilchuck failed to properly deactivate a single service line to one customer. PSE's customers then used the new lines and did not use the old lines for more than a decade. The Court of Appeals correctly found that if the Statute of Repose ("SOR") does not bar PSE's claims in the context of this undisputed fact pattern, the SOR will have no meaningful application in the future.

PSE claims Pilchuck's failure to deactivate one of the old service lines falls outside the purview of the SOR as a project not "substantially completed." PSE's position ignores undisputed facts, warps the SOR by ignoring the statute's plain language and ignores long-standing Washington

[1] Puget Sound Energy, Inc., or "PSE."
[2] Pilchuck Contractors, Inc., "Pilchuck."

precedent. PSE argues, in the alternative, for a judicially created fraud exception to the SOR, which similarly ignores the statute and precedent.

Both the trial court and the Court of Appeals took a thorough, reasoned approach in rejecting PSE's arguments. First, the work falls within the broad purview of the SOR because work on gas service lines, like power lines, constitutes an existing "improvement upon real property."

Second, "substantial completion" undisputedly occurred in 2004 when Pilchuck terminated services and PSE's customers began using the new gas service lines and ceased using the old, all as intended by PSE,

Third, because substantial completion occurred in 2004 and PSE's claims did not accrue until 2016, the claims are barred by SOR.

Last, the panel correctly ruled that it could not constitutionally ignore a clear mandate from the legislature by creating an exception to the SOR for fraud given the Legislature's sweeping choice of words – "all claims or cause of action of any kind."

For all these same reasons, this honorable Court should deny PSE's petition for review of this unpublished opinion.

## II. COUNTER-STATEMENT OF THE CASE

### A. Statement of the Undisputed Facts

PSE provides electricity and natural gas to customers in the Puget

Sound region.[3] In 2001, PSE entered into a Master Services Agreement ("MSA") with Pilchuck to provide utility work for PSE.[4]

In 2004, pursuant to the MSA, PSE hired Pilchuck to perform work on the 8400 block of Greenwood Ave N in Seattle.[5] Specifically, Pilchuck agreed to relocate gas service in the 8400 block of Greenwood Ave, including a new main and service lines.[6]

PSE obtained a permit from the City of Seattle for the following purpose: (a) installation of a new gas main in the alley of 8400 Greenwood; (b) installation of new service lines connecting the 8400 Greenwood customers to the new main; (c) deactivation ("cut and cap") of those customers' old service lines feeding from the old main; and (d) relocation of those customers' meters from the deactivated service lines to the new service lines.[7] PSE now posits the irrelevant point that the permit number is off, yet significantly it does not assert that the permit obtained was not associated with the 8400 Greenwood project or that it was not sought for that specific purpose, because such claim would be patently untrue.

PSE admits the Greenwood 8400 project fell under one "superior work order number," which as PSE states, "referred to all the various

[3] Clerk's Papers ("CP") at 45.
[4] CP at 2 ¶ 3.1.
[5] Appellant's Opening Brief ("AOB") at 9; see also CP at 241 ln. 20; CP at 423-36.
[6] AOB at 9; see also CP at 395 ¶9; CP at 461 ¶5; CP at 46.
[7] CP at 429; CP at 427.

different types of gas relocation work to be done in the Greenwood neighborhood in 2004 (installation, deactivation, relocation, etc.)."[8] PSE also admits that "specific sub order numbers" described discrete work to be performed and specific work notification numbers were assigned to each address on the project under a sub order.[9] All were components of the "superior work order," also not disputed.[10]

In short, despite PSE's claim, no dispute actually exists as to the activity involved: (1) PSE and Pilchuck entered into the MSA; (2) PSE's intent was to replace the existing main and service lines for the 8400 block of Greenwood; (3) PSE obtained a permit from the city to proceed with the 8400 Greenwood project; (4) Pilchuck commenced work on the 8400 Greenwood project under the MSA and the superior work order; and (5) the component parts of Pilchuck's work on 8400 Greenwood superior work order were designated by subordinate sub numbers and specific activity numbers. PSE cites to no material dispute to these truths.

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[8] AOB at 6; see also CP at 423.
[9] Id.
[10] During PSE's corporate deposition it conceded that both activation and deactivation were part of a singular project:

> Q: Did PSE ever claim, prior to the end of 2010, that the work was not substantially complete?
>
> A: There's no indication of that. Again, the work is—*there's a lot of work that was involved in **this project**, from installation of a new main and new services to deactivation*, those were all suborders or the job structure was such that there were multiple suborders, and *so substantially complete would require that all of that work be done*

CP 473, lns. 8-16 (emphasis added).

By September 2004, Pilchuck had completed its work[11] and terminated its services on the project.[12] PSE's customers were receiving their gas through the new gas service lines; Pilchuck was paid in full for the work.[13] PSE treated the work as complete and treated the old service lines as abandoned; there were no objections that Pilchuck's work on the 8400 Greenwood Project was not substantially complete.[14]

On March 9, 2016, an explosion occurred.[15] The Washington Utilities and Transportation Committee (WUTC) investigation determined the explosion resulted from man-made damage to one of the old service lines Pilchuck documented as deactivated in 2004 as part of the 8400 Greenwood block.[16]

## B. Procedural History

### 1. The trial court reviewed all the relevant facts and caselaw and dismissed PSE's claims on summary judgment pursuant to the SOR.

Two years after the explosion PSE filed a complaint against Pilchuck. Pilchuck moved for summary judgment based on the construction SOR. The trial court applied the SOR to the undisputed facts in light most

[11] CP at 469-73; CP at 93-95; CP 353; see also AOB at 8-9.
[12] CP at 469 ¶3(a)-(g).
[13]CP at 472.
[14] CP at 249, lns. 1-11; CP at 472-73.
[15] CP at 2 ¶3.5.
[16] CP at 43-44 CP at 46 ¶8.

favorable to PSE and granted Pilchuck's motion.

**2. The Court of Appeals again thoroughly reviewed all the relevant facts and caselaw and affirmed the trial court's ruling in an unpublished opinion.**

The Court of Appeals again reviewed the undisputed facts and held the work fell within the SOR. It further determined that statutory "substantial completion" occurred in 2004 when Pilchuck terminated service, PSE's customers began to use the new gas service lines, the old lines were no longer used, and no party had any complaints about completion of the project for over a decade. Thus, the claims are accordingly barred by the SOR.

Last, the panel reviewed existing caselaw and determined that Washington courts defer to legislature's authority to prescribe liability limitation periods, and the legislature's choice of words, "all claims or causes of action of any kind" applied even to claims of latent defects/fraud. The panel declined to adopt an exception to the SOR for alleged fraud.

## III. ARGUMENT AND AUTHORITY

### A. The Standard of Review of the Trial Court's Order

The standard of review is *de novo*.[17] Summary judgment is appropriate if the evidence, when viewed in the light most favorable to the

[17] *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

nonmoving party, shows that no genuine issue of material fact remains, and the moving party is entitled to judgment as a matter of law.[18]

The interpretation of a statute is a matter of law reviewed *de novo*.[19] The purpose of interpreting a statute is to ascertain and carry out the intent of the legislature.[20] If the plain meaning of the statute is clear on its face, the court must give effect to that plain meaning as an expression of the legislature's intent.[21] Courts should avoid adding to or taking away from the language of a statute.[22]

## B. The SOR bars all of PSE's claims because Pilchuck substantially completed construction activities on improvements on real property more than eleven years before PSE's claims accrued.

### 1. Both the trial court and Court of Appeals properly found that PSE's claims fall within the scope of the SOR because Pilchuck was hired to construct, alter, or repair improvements on real property.

PSE's Petition takes an imaginative and ambiguous path to argue that this Court should grant review because Pilchuck's acts were not within the scope of the SOR. However, PSE's petition is not premised upon the argument that the decision of the Court of Appeals conflicts with any other

[18] *Life Designs Ranch, Inc. v. Sommer*, 191 Wn. App. 320, 327, 364 P.3d 129 (2015). See also CR 56(c).
[19] *Porter v. Kirkendoll*, 194 Wn.2d 194, 200, 449 P.3d 627 (2019); *Smith v. Showalter*, 47 Wn. App. 245, 248, 734 P.2d 928 (1987)
[20] *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 435, 395 P.3d 1031 (2017).
[21] *Id.*
[22] *Porter*, 194 Wn.2d at 211–12.

decision by a Washington court; but instead petitions for review solely pursuant to RAP 13.4(b)(4). Contrary to PSE's position, this is not a case of first impression, and PSE's arguments ignore the undisputed facts and misconstrues the Court of Appeals' sound decision which rests on existing jurisprudence.

As a preliminary matter, PSE wrongly contends that the Court of Appeals recognized a factual dispute existed but found it to be "irrelevant." Rather, the panel noted that PSE *claimed* there was a factual dispute, but that Pilchuck noted the alleged dispute was in reality an argument on the proper application of the SOR to the undisputed facts.[23] The appellate panel then applied the undisputed facts (and inferences that Pilchuck acknowledged for purposes of summary judgment) to the SOR, finding that such application mandated dismissal under the SOR.[24] Specifically, the appellate panel found that if Pilchuck's interpretation was correct – that the "improvement" was the 8400 Greenwood project, the SOR applied. Alternatively, the panel also found that if PSE's interpretation was correct – that the only "improvement" to consider was the specific service line at issue – the SOR still applied.[25]

The panel's approach was correct. Washington's construction SOR

[23] See PSE's Petition for Review, Appendix A, pg. 6.
[24] *Id.*, 6-9.
[25] See PSE's Petition for Review, Appendix A, pg. 8.

is set out in two parts:

> RCW 4.16.300 defines the scope of the statute and describes those entitled to claim its protection. RCW 4.16.310 defines when this statute of repose bars a claim. Together, they bar certain claims arising from construction of any improvement on real property that have not accrued within six years after substantial completion of construction.[26]

The first step of any SOR analysis is determining whether the claims at issue fall within the scope of the statute.[27] As provided in RCW 4.16.300, the scope of claims barred by the SOR includes "***all*** claims or causes of action ***of any kind*** against any person, arising from such person having ***constructed, altered, or repaired any improvement upon real property***."[28] The statute specifically notes that it is intended to "benefit persons performing work for which the person must be registered or licensed" to perform the work.[29]

PSE contends that because the particular gas line that caused the explosion was not properly retired, Pilchuck's construction activity does not constitute work as an "improvement upon real property." After reviewing the language of the statute and existing caselaw, the Court of Appeals rejected PSE's argument and correctly determined that Washington courts have long held that construction work on utilities falls under the purview of

[26] *Cameron v. Atl. Richfield Co*., 8 Wn. App. 2d 795, 800, 442 P.3d 31 (2019).
[27] *Pfeifer v. City of Bellingham*, 112 Wn.2d 562, 567, 772 P.2d 1018 (1989)
[28] See Appendix A for full text of RCW 4.16.300 (emphasis added).
[29] *Id*.

the SOR.[30] Indeed, PSE admits that deactivation activity on utility lines falls within the purview of "improvement" under the SOR.[31] PSE could hardly have argued otherwise.

In *Washington National Gas Co. v. Tyee Construction Co*., Tyee was hired to install underground power lines at 10 locations in a residential subdivision, which Tyee completed in 1968.[32] In 1977, the gas company discovered that Tyee had failed to install a protective barrier between the powerlines and its gas lines, leading to corrosion and potential leaks.[33] The court held the SOR barred the gas company's claims because installation of a system of power lines throughout a residential subdivision was "an improvement upon real property even though potentially subject to removal under some circumstances."[34]

Here, both the trial court and the Court of Appeals properly held that *Tyee* controls; gas service lines, just like power lines, are an improvement on real property.[35] Pilchuck contracted to perform construction work on these existing improvements, that is, to "alter" an improvement. The fact that the work was not done as represented may give rise to a claim but does not remove the situation from the purview of the SOR.

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[30] See PSE's Petition for Review, Appendix A, pg. 7
[31] PSE's Petition for Review, p. 10.
[32] *Wash. Natural Gas Co., v. Tyee Constr. Co*., 26 Wn.App. 235, 238-240, 611 P.2d 1378 (1980)
[33] *Id.*
[34] *Id.*
[35] See PSE's Petition for Review, Appendix A, pg. 7

PSE's tortured argument that the individual line should be the sole focus of the court's analysis is factually unsupported and, as the Court of Appeals described, leads to the same conclusion. First, PSE's position ignores the undisputed facts that the deactivation was subsumed within the 8400 Greenwood project, was performed under the same city permit and was admittedly catalogued under the project's superior work order number. Deactivation did not and could not exist in a vacuum. PSE's admitted purpose was to supply its customers with gas via new service lines. Abandoning the old lines would not have occurred had the new lines not been installed as part of Pilchuck's work. Asserting this specific line deactivation existed as an unrelated activity to the rest of the project creates a factual absurdity.[36]

Second, the panel recognized that even if one were to accept this illogical interpretation, the SOR still applies. PSE admits deactivation of a gas utility line is an "improvement" and admits that Pilchuck was hired to undertake that work. Pilchuck's failure to deactivate is squarely within the statute's scope – *any* claim *arising from* construction, alteration, or repair of an improvement – and a claim of *failing to properly alter* is inherent to

[36] To the extent that PSE's argument here pertains to "parcels," that argument is not properly before this Court. At no point in the prior proceedings did PSE raise this "parcel" argument, and there is no evidence in the record that the 8400 Greenwood project concerned different parcels. PSE cites no such instance in the record.

any such claim. Otherwise, any failure to complete a project fully or correctly would fall outside the SOR, which the panel recognized would gut the obvious legislative intent behind the SOR's broad protections. Washington courts have routinely and consistently rejected the idea that a failure to complete a job properly falls outside the SOR.

Furthermore, the appellate panel also appropriately found that the SOR evidences a legislative intent to apply broadly to protect contractors such as Pilchuck.[37] The language of the statue is sweeping and, as established in *Pinneo v. Stevens Pass, Inc*., is intended to protect from extended potential tort and contractual liability.[38]

PSE's contention that this case presents an issue of first impression and review should be granted to determine the scope of the SOR is without merit. The Court of Appeals correctly relied on existing jurisprudence and determined that Pilchuck's work falls within the type of activity the statute was intended to cover.

**2. Both the trial court and the Court of Appeal's determined that substantial completion occurred in 2004 when Pilchuck stop work on the project, PSE's customers were receiving service through new gas lines install by Pilchuck as intended, and the old service lines were no longer being used, also as intended.**

The second step of the SOR analysis is to determine whether the

[37] PSE's Petition for Review, Appendix A, pg. 8.
[38] *Pinneo v. Stevens Pass, Inc*., 14 Wn. App. 848, 852, 545 P.2d 1207 (1976)

cause of action accrued within the period allowed by the statute. Per RCW 4.16.310, if a cause of action accrued more than six years after substantial completion or termination of services the claim is barred by the SOR.[39] Because termination of services here plainly occurred in 2004, the only question is what "substantial completion" means: "The phrase 'substantial completion of construction' shall mean the state of completion reached when an improvement upon real property may be used or occupied for its intended use."[40] Here, it is undisputed that Pilchuck stopped work in 2004, PSE paid them in full in 2004, the customers used gas via the new lines as intended in 2004, and the line in question was no longer used.

"Substantial" modifies "completion" – the result unmistakably means something less than total completion.[41] "The fact that additional contract work remains, including punch list work, does not affect the conclusion that a project is substantially complete if it is otherwise fit for occupancy."[42] In *Dania*, the court found that construction of a warehouse was substantially complete despite the fact that an entire layer of the roof was missing.[43] Per *Dania*, a property can be occupied for its intended use notwithstanding that the project remains incomplete.

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[39] See Appendix A for full text of RCW 4.16.310.
[40] RCW 4.16.310
[41] *Mattingly v. Palmer Ridge Homes, LLC*, 157 Wn. App. 376, 394, 238 P.3d 505 (2010)
[42] *Dania, Inc. v. Skanska USA Bldg. Inc*., 185 Wn. App. 359, 371, 340 P.3d 984 (2014).
[43] *Id*.

The statutory bright line rule is consistent with the purposes of the SOR to guarantee that construction professionals have predictability and avoid the uncertainty of the long tail of liability.[44] Here, both the trial court and the Court of Appeal were correct in finding substantial completion.

PSE also complains that the Court of Appeals erred in describing the intended use of the individual line to be disuse. PSE argues its intended use was "deactivation." Here again, however, PSE is wrong both on the undisputed facts and in logic. It remains undisputed that the intent was to start supplying customers via new lines and stop supply via old lines, a result that undeniably occurred. "Deactivation" is not a use, but rather a means of attaining the desired use – namely disuse.

Finally, PSE again conjures the California case *Hensel Philips Construction Co. v. Superior Ct. of San Diego Co.* in an oblique effort to suggest "substantial completion" is a factual question to be determined by a jury. As the Court of Appeals recognized, however, neither PSE nor Pilchuck is asserting that some standard for "substantial completion" other than the statutory definition applies. Here it is undisputed the new service lines replaced the old, including at this particular address. That this particular line was abandoned incorrectly is irrelevant to the question.

[44] *Davis v. Baugh Indus. Contractors*, 159 Wn.2d 413, 419, 150 P.3d 545 (2007).

PSE's claims accrued more than ten years after substantial completion and termination of services; its claims are barred by the SOR.

**3. Both the trial court and the Court of Appeals determined they could not constitutionally ignore a clear mandate from the legislature by creating a judicial exception to the SOR for alleged fraud. The language of the statute is broad and sweeping encompassing "all claims or causes of action of any kind."**

When reading a statute, a court "will not construe language that is clear and unambiguous, but will instead give effect to the plain language without regard to rules of statutory construction."[45] The plain language of the SOR demonstrates that claims related to fraud are within its broad scope, as RCW 4.16.300 expressly provides that it "… shall apply to ***all claims or causes of action of any kind***." The statute literally includes every conceivable cause of action, including fraud.

Washington courts have consistently interpreted the language of the SOR broadly. In *Parkridge,* the court examined whether the legislature intended to include claims of equitable indemnity (a claim akin to fraud) within the broad sweep of RCW 4.16.300.[46] The court determined that analysis of the legislative history and intent was inappropriate given the clear and unambiguous language of the statute:

> RCW 4.16.300 states that RCW 4.16.300-.320 "shall apply to *all claims or causes of action of any kind* against any

[45] *Parkridge Assocs. V. Ledcor Indus.,* 113 Wn. App. 592, 602, 54 P. 3d. 225 (2002).
[46] *Parkridge Assocs*., 113 Wn. App. at 602.

> person, arising from such person having constructed, altered or repaired any improvement upon real property." The legislature's choice of the words "all claims or causes of actions of *any kind* . . . arising from . . . construction" is broad and sweeping. The dictionary defines the adjective "all" as meaning, variously, "being or representing the entire or total number, amount, or quantity," "constituting, being, or representing the total extent or the whole," "being the utmost possible of," "every," "any whatsoever," and other, similarly comprehensive terms. We do not read the word "all" or the phrase "of any kind" to imply an exception for equitable indemnity claims…To read the statute to impliedly exclude equitable indemnity claims is an absurd view of the statute.[47]

PSE now invites this Court to adopt the very "absurd view" of this statute that the *Parkridge* court rejected.

Washington precedent, however, uniformly aligns with the *Parkridge* reasoning. Indeed, the SOR applies even in the case of illegal activity. In *Yakima Fruit*, this Court specifically found that even if a contractor committed an unlawful act by performing work for which it was not licensed, the broad language providing protection for "[a]ny person" allowing the contractor to "fit into the statute regardless of its allegedly having furnished design services in violation of another statute."[48]

Moreover, the appellate panel was correct in rejecting PSE's claim that a fraud exception would not subvert the SOR's underlying policy. The panel noted that the court in *Hudesman* held the SOR legislatively "restricts

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[47] *Id*.
[48] *Yakima Fruit & Cold Storage Co. v. Cent. Heating & Plumbing Co.*, 81 Wn.2d 528, 530–31, 503 P.2d 108 (1972).

application of the discovery rule" exception, whereby a plaintiff may bring a cause of action outside the time period allowed by the statute of limitations due to latent defects.[49] In so doing, the statute "sets the outer limit for discovery" of contractor conduct giving rise to a claim.[50] The court in *Rodriguez* confirmed this point:

> The creation of limitation periods is primarily a legislative function, and the legislature has the constitutional power to enact a clear line of demarcation to fix a precise time beyond which no remedy will be available. . . . [RCW 4.16.310] has a broad scope barring [a]ll causes of action that do not accrue within 6 years after substantial completion or termination of any of the specified services, whether the damage was or could have been discovered within that period. This court cannot constitutionally ignore such a clear mandate from the legislature.[51]

PSE proffers a curious argument that the Court of Appeals erred by conflating latent defects with fraud, yet it simultaneously made this exact juxtaposition to this Court, stating, "without a mechanism akin to the discovery rule (like equitable estoppel)," business can escape liability.[52] Washington courts have repeatedly recognized the legislature's authority to limit the period of liability, and for 52 years the legislature has refused to change the language. The law is clear

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[49] *Hudesman v. Meriwether Leachman Assocs*., 35 Wn. App. 318, 321, 666 P.2d 937 (1983) quoting *Metro. Servs., Inc. v. City of Spokane*, 32 Wn. App. 714, 720, 649 P.2d 642 (1982)).
[50] *Hudesman,* 35 Wn. App. at 322.
[51] *Rodriguez v. Niemeyer*, 23 Wn. App. 398, 400-01, 595 P.2d 952 (1979) (citations omitted) (citing *Gazija v. Nicholas Jerns Co*., 86 Wn.2d 215, 222 n.2, 543 P.2d 338 (1975)).
[52] PSE's Petition for Review, Appendix A, pg. 13 (citing PSE's Opening Appellate Brief, pg. 40).

– no matter why the defect was undiscovered or undiscoverable, a court simply cannot ignore the legislature's clear mandate to include *every conceivable claim*.

#### 4. No State has judicially created an exception to its construction SOR.

PSE erroneously cites to the law of other states to support its request for a fraud exception to the SOR.[53] Contrary to the impression PSE attempts to create, PSE fails to cite a single instance where a court created an exception to a construction SOR. Of the cases cited by PSE that even concern a construction SOR, the court simply recognized an exception provided by the legislature within the language of the statute.[54]

There is thus no precedent for this Court to consider creating a judicial exception to the SOR against the clear intent of the Legislature.

## IV. CONCLUSION AND RELIEF REQUESTED

The Court of Appeals' unpublished ruling follows Washington precedent and the plain language of the SOR, and rightfully determined that PSE's claims are barred by the SOR. PSE's petition for review is not warranted under RAP 13.4(b)(4).

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[53] Petition at 17 n.58.

[54] Miss. Code Ann. § 15-1-67 (Mississippi); Ga. Code Ann. § 9-3-96 (Georgia); Cal. Code Civ. Proc. § 337.15(f) (California); N.C. Gen. Stat. § 1-50(f) (North Carolina); S.D. Codified Laws § 15-2A-1 (South Dakota); Minn. Stat. § 541.051(a) (Minnesota); Mo. Rev. Stat. § 516.097(4)(2) (Missouri); Wis. Stat. § 893.89(4)(b) (Wisconsin).

RESPECTFULLY SUBMITTED this 6th day of January 2021.

FREY BUCK, P.S.

By: _____

Ted Buck, WSBA #22029
Mark Conrad, WSBA #48135
1200 Fifth Avenue, Suite 1900
Seattle, WA 98101
Telephone: (206) 486-8000
Facsimile: (206) 902-9660
*Attorneys for Respondent Pilchuck Contractors, INC.*

## CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury according to the laws of the State of Washington that on this date I caused to be served in the manner noted below a copy of ***Answer to Petition for Review*** on:

| | |
|---|---|
| Jeffrey M. Thomas, WSBA #21175<br>Mark Wilner, WSBA #31550<br>John D. Cadagan, WSBA #47996<br>Gordon Tilden Thomas & Cordell LLP<br>600 University Street, Suite 2915<br>Seattle, WA 98101<br>jthomas@gordontilden.com<br>mwilner@gordontilden.com<br>jcadagan@gordontilden.com<br><br>*Counsel for Appellant Puget Sound Energy, Inc.* | ☐ Via Legal Messengers<br>☐ Via Facsimile<br>☒ Via email/efiling |
| Jimmy Meeks, Jr.<br>Brandon Smith<br>Holt Woods & Scisciani, LLP<br>701 Pike Street, Suite 2200<br>Seattle, WA 98101<br>jmeeks@hwslawgroup.com<br>bsmith@hwslawgroup.com<br><br>*Co-Counsel for Respondent Pilchuck Contractors* | ☐ Via Legal Messengers<br>☐ Via Facsimile<br>☒ Via email/efiling |

DATED this 6th day of January 2021, at Seattle, Washington.

Mark R. Conrad
Mark Conrad

# Appendix A

**RCW 4.16.300**
**Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property.**

RCW 4.16.300 through 4.16.320 shall apply to all claims or causes of action of any kind against any person, arising from such person having constructed, altered or repaired any improvement upon real property, or having performed or furnished any design, planning, surveying, architectural or construction or engineering services, or supervision or observation of construction, or administration of construction contracts for any construction, alteration or repair of any improvement upon real property. This section is specifically intended to benefit persons having performed work for which the persons must be registered or licensed under RCW 18.08.310, 18.27.020, 18.43.040, 18.96.020, or 19.28.041, and shall not apply to claims or causes of action against persons not required to be so registered or licensed.

[ 2004 c 257 § 1; 1986 c 305 § 703; 1967 c 75 § 1.]

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**RCW 4.16.310**
**Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property—Accrual and limitations of actions or claims.**

All claims or causes of action as set forth in RCW 4.16.300 shall accrue, and the applicable statute of limitation shall begin to run only during the period within six years after substantial completion of construction, or during the period within six years after the termination of the services enumerated in RCW 4.16.300, whichever is later. The phrase "substantial completion of construction" shall mean the state of completion reached when an improvement upon real property may be used or occupied for its intended use. Any cause of action which has not accrued within six years after such substantial completion of construction, or within six years after such termination of services, whichever is later, shall be barred: PROVIDED, That this limitation shall not be asserted as a defense by any owner, tenant or other person in possession and control of the improvement at the time such cause of action accrues. The limitations prescribed in this section apply to all claims or causes of action as set forth in RCW 4.16.300 brought in the name or for the benefit of the state which are made or commenced after June 11, 1986.

If a written notice is filed under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the period of time during which the filing of an action is barred under RCW 64.50.020 plus sixty days shall not be a part of the period limited for the commencement of an action, nor for the application of this section.

[ 2002 c 323 § 9; 1986 c 305 § 702; 1967 c 75 § 2.]

# FREY BUCK

## January 06, 2021 - 9:46 AM

## Transmittal Information

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- ebariault@freybuck.com
- jcadagan@gordontilden.com
- jlucien@gordontilden.com
- jmeeks@hwslawgroup.com
- jthomas@gordontilden.com
- lsmith@freybuck.com
- mwilner@gordontilden.com
- tbuck@freybuck.com

**Comments:**

Pilchuck previously filed the incorrect version of its Answer on January 4, 2021. This Answer is intended to replace the previous filing.

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Sender Name: MARK CONRAD - Email: mconrad@freybuck.com
Address:
1200 5TH AVE STE 1900
SEATTLE, WA, 98101-3135
Phone: 206-486-8000 - Extension 805

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