

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the

Petition of King County, Washington, BNSF Railway, Frontier Communications Northwest, Inc., Verizon Wireless, and New Cingular Wireless PCS, LLC. For a Declaratory Order to address the degradation of service from Puget Sound Energy due to the physical deterioration of the Maloney Ridge Line underground cable.

DOCKET UE-141335

BRIEF ON BEHALF OF
COMMISSION STAFF

I. INTRODUCTION

1 This brief is submitted on behalf of Commission Staff. The Commission should deny the Petition for a Declaratory Order mandating the replacement of the existing power line serving the Petitioners on Maloney Ridge.

2 The power line at issue in this case is unique. It was constructed by PSE on a mountain in the Cascade Range to serve only one customer - GTE. PSE agreed to undertake the project because GTE contractually agreed to pay PSE for all costs incurred to install, operate, maintain and repair the facility. Such a contract was needed because the project was not economically feasible for PSE to build. There is nothing in this record to show that PSE or GTE ever presented the agreement or its successor agreements to the Commission for approval. Nor is there any evidence showing that prior to the present case, GTE or any other user of the facility over its 40-plus year history ever complained to the Commission about the service it received from PSE under the relevant contracts. The relative silence surrounding this discrete facility ended when the Petitioners approached the Commission

seeking an order requiring PSE to build the Petitioners a new facility. The Commission should deny the Petitioners' request.

3 Staff has analyzed the cost impacts of installing a new facility for the Petitioners. The facts show that PSE's replacement costs would exceed \$5 million dollars. Significantly, the Petitioners' electric use at the site would do very little to support PSE's cost recovery. The rates paid by the Petitioners will generate less than 5 percent of the revenues necessary for PSE to recover its costs. The Petitioners would solve this problem by passing these costs to other ratepayers. Staff joins PSE in opposing this result.

4 This brief will cover the central topics of Staff's testimony: the facility's estimated costs, the effects of the Petitioners' proposed ratemaking treatment, and the import of PSE's relevant tariffs. The Commission has before it a sufficient record to decide that the proposed facility serves very few customers, would be expensive to build, and the rates paid by the Petitioners would be far too little to support the facility's costs. Taken together, these facts direct the Commission to but one conclusion - any replacement facility serving the Petitioners should be paid for by the Petitioners - the cost causers.

5 The Petitioners have not carried their burden to prove that PSE is obligated to replace the existing facility at its cost and at the cost of the remaining ratepayers on PSE's Schedule 24. For this reason, the relief requested by the Petitioners should be denied and the status quo should be maintained.

II. HISTORY OF THE MALONEY LINE

6 The Maloney Ridge Line ("Maloney Line" or "Line") is a facility that was built under unique circumstances.¹ It serves four customers that have chosen to locate various

¹ Tr. at 29: 10-15.

facilities in steep and mountainous terrain northeast of the community of Skykomish, Washington.² The Maloney Line was not constructed by PSE (“PSE” or “Company”) through the application of PSE's line extension tariffs.³ Rather, the Line was built pursuant to a 1971 agreement between PSE and General Telephone and Electronics Corporation (“GTE”) that provided for the original construction of the project and its continuing operation and maintenance.⁴ Importantly, the 1971 agreement required GTE to cover all of PSE’s costs for the Maloney Line’s construction, maintenance, and removal.⁵ The 1971 agreement was necessary because the project exceeded the limits of PSE’s then-existing line extension tariff and could not meet the utility’s economic feasibility test.⁶

7 In 1994, the agreement with GTE was amended and superseded by a “Service Agreement” that required GTE to pay for all operating costs incurred by PSE relative to the operation, repair and maintenance of the Maloney Line.⁷ Service Agreements with similar terms and conditions were executed by PSE and counterparties BNSF, King County and the Maloney Ridge Users Association.⁸ By and through these agreements, the Petitioners accepted financial responsibility for any costs incurred by PSE to operate, repair and maintain the Maloney Line.

² Logan, Exh. No. LFL-1T at 2: 16-25. The Maloney Line’s four customers are the Burlington Northern Railroad (“BNSF”), King County, General Telephone and Electronics Corporation (“GTE”) through its successor in interest Frontier Communications, and the Maloney Ridge Users Association.

³ *Id.* at 4: 4-10.

⁴ *Id.* at 2: 5-14. *See also*, Logan, Exh. No. LFL-3. Exhibit 3 is a copy of the original 1971 agreement.

⁵ *Id.* at 2: 9-14. *See also*, Logan, Exh. No. LFL-3 at ¶¶ 3 and 5.

⁶ *Id.* at 4: 6-9.

⁷ *Id.* at 2: 18-19 and at 3: 6-11.

⁸ *Id.* at 2: 20-25 and at 3: 6-11.

III. THE SERVICE PROVIDED THE PETITIONERS

8 The Petitioners operate communications and data transmission equipment supporting various business and government operations. PSE provides electric service to the Petitioners pursuant to its Commission-approved Schedule 24. Schedule 24 is made available to “non-residential customers with a demand of less than 50 kW.”⁹ With such limited demand, the Petitioners are relatively small commercial customers of PSE. The relative lack of electrical energy required by the Petitioners is a critical factor in determining the economic feasibility of installing a new service line on Maloney Ridge.

9 The activities pursued by the Petitioners on Maloney Ridge are largely irrelevant to the outcome of this case. Staff does not dispute the Petitioners’ representations that certain activities conducted on Maloney Ridge support communications and data transfers that benefit both business and government interests, and as a result, benefit certain segments of the public. Staff does however dispute any conclusion suggested or implied by the Petitioners that the purpose of such activities should override in part or in whole the intent of PSE’s applicable tariffs or the operative contract terms they voluntarily agreed to perform.

10 Many of PSE’s customers operate businesses or governments that support the public good. But the purpose of these activities does not call out such customers for special treatment. PSE’s tariff schedules are principally use or demand driven. Its tariff schedules do not divide customers into those that provide some kind of public service and those that do not. Indeed, if this were true, then police and fire stations, schools, government buildings and other entities would also be entitled to preferential treatment under PSE’s tariffs. They

⁹ *Id.* at 3: 17-18. Electric demand refers to the maximum amount of electrical energy that is being consumed by a customer at a given time.

do not receive such preferential treatment and neither should the Petitioners. The law does not allow it.

11 The Commission’s statutory framework permits few exceptions to the requirement that similarly-situated customers be treated equally in the tariffs of regulated companies. The statutory exceptions do not include railroads, communications companies, county governments, or federally operated electrical companies. The limited exceptions provided by statute include hospitals, eleemosynary institutions and national or state homes for disabled volunteer soldiers.¹⁰ None applies to this matter. The nature of the activities carried on by the Petitioners on Maloney Ridge is irrelevant and should have no bearing on the outcome of this case.

IV. THE MALONEY LINE IS FULLY FUNCTIONAL TODAY

12 There is no real dispute that the Maloney Line is near the end of its useful life. It is however, fully functional today, and “may ... [continue to provide service] for a few more years before its condition would mandate replacement.”¹¹ PSE has provided the Petitioners “several options to improve service” on the Line, including full replacement and “replacing portions of the line with new material.”¹² The Petitioners have rejected PSE’s outreach on these issues in favor of its advocacy in this proceeding.¹³

V. THE PETITIONERS’ REQUEST FOR RELIEF

13 The *Petition for Declaratory Order* would have the Commission direct PSE to “immediately begin permitting, planning and replacing” the Maloney Line.¹⁴ It further

¹⁰ See RCW 80.28.080(1)(a).

¹¹ Nightingale, Exh. No. DN-1T at 11: 23-24. See also, Tr. at 57: 1-8.

¹² Sanders, Exh. No. JMS-1T at 3: 17-20.

¹³ Sanders, Exh. No. JMS-1T at 4: 7-10.

¹⁴ Docket UE-141335, *PETITION FOR DECLARATORY ORDER*, at ¶ 53(d).

requests that PSE “include all of the capital costs of such replacement in its generally applicable rates”¹⁵ In effect, the Petitioners seek to shift the cost of installing a new service line to PSE and via rates, to *all* customers of Schedule 24.

14 The replacement of the Maloney Line would be an expensive and difficult undertaking. The terrain is steep and unaccommodating and would require the crossing of creeks and rivers.¹⁶ To replace the Line, permits from the US Forest Service would need to be obtained, and a new underground cable would have to be laid approximately 8.5 miles up Maloney Ridge.¹⁷

15 PSE now estimates the cost of the project to be \$5.3 million dollars.¹⁸ From the perspective of the Petitioners, this entire amount would be incurred by PSE and then recovered in Schedule 24’s rates, including the Company’s return on its \$5.3 million dollar investment.¹⁹ PSE would also remain obligated to repair and maintain the line. The costs associated with these additional and ongoing activities would also be borne by the Schedule 24 customers.²⁰

16 To be clear, the Petitioners also take service under Schedule 24 today and would be allocated some of these costs. But, the amounts allocated to them pale in comparison to the amounts that would be allocated to other customers taking service under the schedule if the Commission were to grant the petition. As estimated by Mr. Ball, the Petitioners seek to

¹⁵ *Id.* at ¶ 53(e).

¹⁶ Sanders, Exh. No. JMS-1T at 2: 11-16.

¹⁷ Sanders, Exh. No. JMS-1T at 3: 5-7. *See also*, Logan, TR, at 34: 23-24.

¹⁸ *See* revised Exh. No. LFL-9T at 7:3 and TR 26: 10-18.

¹⁹ To be clear, the Petitioners also take service under Schedule 24 and as such, would be allocated a small amount of these costs.

²⁰ The Petitioners demand that PSE replace the Maloney Line and include its costs in general rates. Staff assumes that under this circumstance the replacement line would be treated as other PSE-owned distribution facilities for ratemaking purposes. Therefore, the repair and maintenance costs would be included in the general rates paid under Schedule 24.

avoid approximately 95.6% of the Maloney Line's estimated installation costs, and foist these costs onto the customers of Schedule 24. Importantly, Mr. Ball's estimate does not include ongoing maintenance and repair costs. Staff cannot support this inequitable result.

VI. THE ECONOMIC FEASIBILITY OF CONSTRUCTING A NEW MALONEY LINE

17 The economic feasibility of the Maloney Line is not a close call. The un rebutted record evidence clearly demonstrates that the installation of a new service line on Maloney Ridge would produce less than 5% of the revenue needed to cover the Line's costs and return on investment over its projected life.²¹ The Petitioners have led the Commission to only two outcomes - either the Petitioners will pay the high costs required to build and maintain the line or the other customers taking service under Schedule 24 will pay substantially all of these costs thereby subsidizing the delivery of electricity to the Petitioners.

18 Having reviewed the economics of the project, Staff concludes that PSE's applicable tariff provisions and the principles of equity and fairness dictate that the Petitioners pay the costs required to serve them. This result would avoid creating an unreasonable subsidy that benefits only a handful of customers to the detriment of the remaining customers on the rate schedule.

19 Staff thoroughly analyzed the economics of installing a new service line on Maloney Ridge. Mr. Ball performed this analysis,²² and compared the line's forecasted regulated costs with the "level of potential revenues from the customers taking service on the line over

²¹ Ball, Exh. No. JLB-2Cr (Revised June 8, 2015) at 1: 8-11 and at 6: 13-16, citing to Figures 1 and 2 at 7.

²² Ball, Exh. No. JLB-1Tr at 3: 8-10.

... [its] expected lifetime.”²³ He concluded without reservations or qualifications that the projected costs of a new line would far exceed the recovery of these costs in the rates paid by the Petitioners.²⁴

20 As shown by Mr. Ball’s economic analysis, the Petitioners’ usage and rates are only forecasted to generate \$296,598 in revenue over the 35-year life of the project.²⁵ Over this same period, the regulated costs associated with the project are forecasted to be \$6,781,319. Mr. Ball then calculated the percentage of costs to be contributed by the Petitioners over the project’s useful life and concluded that nearly \$6.5 million (or 95.6%) of the project’s expected \$6.8 million in costs would be borne by the remaining customers taking service under Schedule 24.²⁶ Based on Mr. Ball’s economic analysis, Staff appropriately concluded that the project would not be economic to build, and if a new line is installed all costs associated with the project should be borne by the cost-causers - the Petitioners.²⁷

21 The Maloney Line’s history indicates the line offers little potential for producing more revenue.²⁸ However, in order to afford the Petitioners a complete and fair-minded analysis, Mr. Ball considered the possibility of new users locating facilities at the site. For this purpose, his study projected an “extremely large increase in the revenues from customers on the Maloney Line.”²⁹ Even when calculating extraordinary revenue “growth of 500 percent” from Maloney Line users, he determined that a new line would still produce

²³ Ball, Exh. No. JLB-1Tr at 5: 8-12.

²⁴ Ball, Exh. No. JLB-1Tr at 8: 15-21.

²⁵ Ball, Exh. No. JLB-1Tr at 6: 7-8. The expected useful life of the project is 35 years, based on PSE’s response to Staff’s data request No. 009. See footnote 2 therein.

²⁶ Ball, Exh. No. JLB-2Cr (Revised June 8, 2015) at 1: 8-11 and at 6: 13-16, citing to Figures 1 and 2 at 7.

²⁷ Ball, Exh. No. JLB-1Tr at 2: 20-23.

²⁸ The Service Agreements were executed in 1994 and 1995. To Staff’s knowledge, no similar agreements have been executed by PSE and other entities taking service on Maloney Ridge.

²⁹ Ball, Exh. No. JLB-1Tr at 5: 12-13.

a revenue shortfall of over \$5 million dollars.³⁰ He concluded that even if the Maloney Line users could produce such extreme revenue growth, the revenues received by PSE would still not “adequately justify ... the Petitioners’ request.”³¹

22 Importantly, Mr. Ball’s study did not include future operations and maintenance costs over the life of the project.³² As noted above, the Maloney Line has experienced significant operating problems directly linked to the “rugged terrain, weather and environmentally sensitive areas” upon which it is built.³³ For example, Mr. Sanders testified that the project’s “[r]epair costs for 2012 and 2013 were approximately \$200,000 and \$231,000, respectively.”³⁴ Mr. Nightingale’s testimony showed that repairs to the Line required expenditures of approximately \$700,000 dollars between 2009 and 2012.³⁵ PSE has projected the operations, maintenance and repair costs over the life a new Maloney Line to be approximately \$6.7 million dollars.³⁶ If PSE’s forecast is accurate, these additional costs would effectively double the project’s costs over its useful life and double the subsidy sought by the Petitioners.

23 The testimony presented by Staff is compelling. Mr. Ball’s careful and well-reasoned analysis of the economics of the project demonstrate that the costs to install a new line would unquestionably overwhelm any return of and on PSE’s investment in the project. The Petitioners have made no attempt to rebut the substantive elements of Mr. Ball’s study.³⁷ In

³⁰ Ball, Exh. No. JLB-2Cr at 1: 15.

³¹ Ball, Exh. No. JLB-1Tr at 6: 11-13.

³² Ball, Exh. No. JLB-1Tr at 5: 16-17.

³³ Sanders, JMS-1T at 3: 5-6.

³⁴ Sanders, JMS-1T at 3: 7-9.

³⁵ Nightingale, Exh. No. DN-1T at 2, Figure 1.

³⁶ Ball, Exh. No. JLB-2Cr at 1: 4.

³⁷ Gorman, Exh. No. MPG-6T at 11: 9-16.

summary, Staff cost analysis and its conclusions are rock solid, and can be relied upon by the Commission.

VII. PSE's APPLICABLE TARIFFS AND LEGAL FRAMEWORK

24 PSE's filed and approved tariffs have the force and effect of state law.³⁸ PSE is not permitted to charge more or less than that set forth in its approved tariff, and cannot impose terms and conditions different from those in its tariffs.³⁹ Neither can PSE "grant any undue or unreasonable preference ... to any person, corporation, or locality, or to any particular description of service in any respect whatsoever"⁴⁰ PSE and its customers are bound by these tariffs.

25 The Service Agreements executed by the Petitioners expressly refer to PSE's Electric Tariff G, which includes Electric Tariff Schedules 80 and 85.⁴¹ PSE's Schedule 85 governs the terms and conditions applicable to the extension or modification of its electric distribution facilities.⁴² As noted by Mr. Nightingale, the Service Agreements include references to PSE's Schedule 80, Schedule 85, or its Electric Tariff G in "five of their eleven paragraphs."⁴³

³⁸ *Gen. Tel. Co. of the Northwest, Inc. v. City of Bothell*, 105 Wn.2d 579, 585, 716 P.2d 879 (1986). See also

³⁹ See RCW 80.28.080(1)(a). The applicable language is as follows: No ... electric company ... may charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time"

⁴⁰ See RCW 80.28.090.

⁴¹ Nightingale, Exh. No. DN-1T at 8: 16-18 and 10: 11-15.

⁴² See http://pse.com/aboutpse/Rates/Documents/elec_sch_085.pdf.

⁴³ Nightingale, Exh. No. DN-1T at 10: 1-2.

A. Schedule 80 Does Not Require PSE to Provide Service to the Petitioners Unless Economically Feasible.

26 Schedule 80 expresses the Company's general rules and provisions governing its electric service to customers.⁴⁴ The Schedule has been in effect since 1985.⁴⁵ Under its express terms, PSE is not required to provide service to a customer "if to do so would be economically unfeasible."⁴⁶ Given its high cost and low return, the Maloney Line was not economically feasible in 1971 and as demonstrated by both Staff and PSE, its replacement would not be so today.

27 It is apparent that PSE performed an economic feasibility review prior to the execution of the 1971 agreement with GTE. To this point, Mr. Sanders stated in his declaration that the existing Maloney Line was not economically feasible when proposed and would not have built but for GTE's agreement to pay PSE for the "construction, maintenance, and repair" of the line.⁴⁷ His declaration is consistent with the testimony of Mr. Logan, who explained that PSE required the 1971 agreement because GTE's proposed project was not economically feasible.⁴⁸ Providing detail on PSE's economic analysis, Mr. Logan cites to the project's "small load, high costs of line installation, limited operational rights" and the Company's "expectation that future maintenance would far outweigh maintenance costs included in electric rates."⁴⁹ These same deficiencies would exist today for any replacement of the Maloney Line.⁵⁰

⁴⁴ Logan, Exh. No. LFL-7 at 3, 4 and 5. See also http://pse.com/aboutpse/Rates/Documents/elec_sch_080.pdf

⁴⁵ Logan, Exh. No. LFL- 1T at 4: 14.

⁴⁶ Nightingale, Exh. No. DN-1T at 9: 4-6. See also Logan, Exh. No. LFL-7 at 1, last sentence in paragraph 9 therein.

⁴⁷ PSE's Statement of Fact and Law, Sanders Decl. at ¶ 3.

⁴⁸ Logan, Exh. No. LFL-1T at 8: 1-2. See also Nightingale, DN-1T at 10: 18-22 and 8: 1-4.

⁴⁹ Logan, Exh. No. LFL-1T at 8: 1-5. See also Ball, Exh. No. JLB-2Cr at 1: 4

⁵⁰ Nightingale, Exh. DN-1T at 11: 1-8.

28

The Petitioners claim that the economic feasibility requirement set forth in Schedule 80 does not apply to them because the schedule only applies to “new or ‘additional’ service.”⁵¹ However, and as argued below, the record clearly demonstrates that Schedule 80’s economic feasibility test is not limited to new or additional services.

29

The Commission’s analytical framework for determining the meaning of a tariff has been expressed in numerous cases and is embodied in the following statement:

When, as here, parties dispute what particular provisions require, we must look first to the plain meaning of the tariff. *Nat’l Union Ins. Co. v. Puget Power*, 94 Wn. App. 163, 171, 972 P.2d 481 (1999). If the tariff language is plain and unambiguous, there is no need to resort to rules of construction. *Whatcom County v. Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996); *Food Servs. Of Am. v. Royal Heights, & Transp. Comm’n*, 123 Wn. 2d 621, 629, 869 P.2d 1034 (1994); *Vita Food Prods., Inc. v. State*, 91 Wn.2d 132, 134, 587 P.2d 535 (1978). If the tariff language is not plain, or is ambiguous, the Commission may examine the legislative history and other evidence to determine the meaning of the tariff and how it should be applied to the facts at hand.⁵²

30

Without question, the economic feasibility language expressed in Section 9 of Schedule 80 entitled “Refusal of Service” is clear and unambiguous. In whole, it states:

“The Company shall not be required to provide service if to do so would be economically unfeasible.”

Given its clear expression of intent, the Commission need not go beyond the plain language of the statute.⁵³ This result is supported by the record evidence presented by PSE and Staff.

31

Mr. Logan’s testimony effectively rebuts the Petitioners’ contention that PSE’s rights under Schedule 80 are somehow limited to new or additional services. First, he points out

⁵¹ Gorman, Exh. No. MPG-1T at 10: 9-11.

⁵² *City of SeaTac, et al. v. Puget Sound Energy, Inc.*, Third Suppl. Order at ¶ 13, Docket Nos. UE-010891 and UE-011027 (January 28, 2002). See also, *City of Kent, et al. v. Puget Sound Energy, Inc.*, Third Suppl. Order at ¶ 17, Docket Nos. UE-010778 and UE-010911 (January 28, 2002) and *Air Liquide America Corp. v. Puget Sound Energy, Inc.*, Docket No. UE-981410, Fifth Supplemental Order Granting Complaint, Ordering Refunds and Other Relief, at 5-6 (Aug. 3, 1999).

⁵³ See *Tracfone Wireless, Inc. v. Dep’t of Revenue*, 170 Wn.2d 273, 281, 242 P.3d 810 (2002).

that the economic feasibility language expressed in Section 9 of Schedule 80 is not in any way limited to new or additional services.⁵⁴ The veracity of his conclusion is easily tested by the clear and concise language expressed in Section 9. As further support, he then compares the language in Section 9 with the section's other provisions. This comparison shows that other sections of this tariff section explicitly refer to the connection of service or additional service. In other words, where expressed as such, the tariff language's applicability would be limited. On the other hand, the economic feasibility language expressed in Section 9 is broadly stated and not limited in any manner to a particular circumstance.⁵⁵

32 Mr. Nightingale also testified to the import of Section 9 and reached a similar conclusion finding that PSE would only be responsible to build a new line for the Petitioners if the Company found it "economically feasible to do so."⁵⁶ Thus, the compelling evidence points to one conclusion - the intent of Section 9 is clear and unambiguous. The Commission needs no further analysis to interpret this language. In sum, Section 9 makes perfectly clear that PSE is required to provide service only when it is economically feasible to do so. Given Section 9's clear intent, the Petitioners' interpretation of the provision should be dismissed as baseless argument.

33 In further support of Staff's interpretation of Section 9, Mr. Ball testified to the sound policy considerations bolstering the economic feasibility requirement set forth in PSE's tariff. He explained that without this test ratepayers could be required to "pay inequitably high rates" caused by another ratepayer whose costs are driven by unique

⁵⁴ Logan, Exh. No. LFL-8T at 5: 34-40, citing to ¶ 9 of Schedule 80.

⁵⁵ Logan, Exh. No. LFL-8T at 5: 35-40.

⁵⁶ Nightingale, Exh. No. DN-1T at 9: 7-11.

circumstances and are “extraordinarily greater than other ratepayers of the same schedule.”⁵⁷

He went on to render his opinion that PSE should not be required to provide service to a remote customer at a “large additional expense ... [to] other similarly situated customers.”⁵⁸

He reasoned that regulation should promote the adoption of sound business practices by the Company and service should only be provided when economically feasible to do so⁵⁹

34 Staff also directs the Commission to Section 34 of Schedule 80, and its application to an entity requesting PSE to replace or change some characteristic of the service it provides to the customer. In pertinent part, this section of Schedule 80 provides:

“Where a Requesting Entity requests a Project that replaces existing Electric Facilities, the Requesting Entity shall pay the Company for all of its Costs, including, but not limited to, the cost of all Electric Facilities removed or no longer of use, due to such Project.”⁶⁰

35 There should be no argument that the Maloney Line is an “electric facility” covered by this section of the schedule and the Petitioners are the requesting entity. Given its clear application, the cost allocation language expressed in this section of Schedule 80 places upon the Petitioners all costs necessary to replace the Maloney Line. This further supports Staff’s position in this case, and contradicts the Petitioners’ claim that PSE alone is responsible to replace the Maloney Line at its cost.

36 In summary, the economic test set forth in Section 9 of Schedule 80 unambiguously applies to the Petitioners. As shown, it is not limited in any way to new or additional services as argued by Mr. Gorman.⁶¹ The economic feasibility test reflects sound policies that promote efficient business practices and protect customers from unreasonable

⁵⁷ Ball, Exh. No. JLB-1T at 4: 4-7.

⁵⁸ *Id.* at 4: 21-23.

⁵⁹ *Id.* at 4: 14-16 and 5: 1-4.

⁶⁰ See Schedule 80, Construction of Electric Facilities at ¶ 34(b)(ii).

⁶¹ Gorman, Exh. No. MPG-6T at 2: 23-25 and at 3: 1-3.

investments serving only a few. Mr. Ball's economic analysis demonstrates the negative impacts that could result from the absence of such a requirement. Further, the clear language of Section 34(b)(ii) of Schedule 80 requires the Petitioners to pay the costs necessary to replace the Maloney Line. The unreasonable imposition of costs on Schedule 24 customers posited by the Petitioners can be avoided by applying the clear and unambiguous language in Sections 9 and 34(b)(ii) of Schedule 80. This, the Commission should do.

B. PSE's Schedule 85 Encompasses PSE's Line Extension Tariff and Overarching Tariff G.

37 PSE's Schedule 85 became effective on June 6, 1991 - approximately three years prior to the execution of the Service Agreements.⁶² It governs the "circumstances, terms and conditions under which the Company is responsible for the ownership, installation, maintenance, repair or replacement of electric distribution facilities"⁶³ Included in this Schedule are the terms and provisions governing PSE's obligations to customers that request line extensions.

38 As in PSE's Schedule 80, the determination of economic feasibility is one of the cornerstones that inform PSE's decisions to extend or replace lines requested by customers. If the proposed project fails to meet this test, then PSE has no obligation to provide service to or extend service to the customer.⁶⁴ While the original language in PSE's prior Schedule 85 has been modified, it clearly and unambiguously refers to and incorporates by reference PSE's Electric Tariff G. As noted above, PSE's Tariff G includes Schedules 80 and 85.

⁶² Logan, Exh. No. LFL-1T at 4: 14-15.

⁶³ See http://pse.com/aboutpse/Rates/Documents/elec_sch_085.pdf at pg. 1.

⁶⁴ Logan, Exh. No. LFL-1T at 4: 17-18. As noted above, the Maloney Line did not meet PSE's economic feasibility test when originally constructed. As a result, PSE installed the project pursuant to an agreement with GTE - its original requestor.

39

In pertinent part Schedule 85 states:

“GENERAL RULES AND PROVISIONS. Service under this schedule is subject to the General Rules and Provisions contained *in this tariff*.”⁶⁵
(Emphasis Added).

The word “tariff” in the above provision makes a clear reference to overarching Tariff G, which includes the economic feasibility language expressed in Section 9 of Schedule 80. As such, both are applicable to projects installed under Schedule 85.⁶⁶

40

The Petitioners claim that PSE is obligated to install a replacement for the existing Maloney Line.⁶⁷ Their argument turns on their interpretation of a particular provision of Schedule 85 that states:

“1. A. OWNERSHIP OF FACILITIES: The Company shall own, operate, maintain and repair all electric distribution facilities installed by or for the Company under this schedule, including replacement of such facilities, if necessary so long as such replacement is not inconsistent with this schedule or a contract governing such facilities. Other than as provided in Section 1.B., below, the Company shall not own or shall have no responsibility to operate, maintain, repair or replace any electric distribution facilities that were not installed by or for the Company under this schedule.”⁶⁸

To support their claim, the Petitioners argue that replacement of the Maloney Line would be consistent with Schedule 85, and as such PSE is responsible for the requested replacement.⁶⁹

The Petitioners’ argument misses the mark.

41

First, the plain language of the above-referenced section of Schedule 85 relied upon by the Petitioners is limited to projects “installed by ... the Company *under this schedule*.” (Emphasis added). While the subsequent Service Agreements make reference to Schedule

⁶⁵ Logan, LFL-7 at 22: ¶ 16. See also Schedule 85, Line Extensions and Service Lines (Continued), Additional Terms of Service, Section 16.

⁶⁶ Nightingale, Exh. No. DN-1T at 9: 4-6 and Logan, Exh. No. LFL- 1T at 5: 4-6.

⁶⁷ Gorman, Exh. No. MPG-1T at 14: 8-12.

⁶⁸ Gorman, MPG-1T at 13: 26-28 and at 14: 1-7. See also Schedule 85, Line Extensions and Service Lines (Continued), Additional Terms of Service, Section 1.A.

⁶⁹ Gorman, MPG-1T at 14: 10-12.

85, the original 1971 agreement between PSE and GTE does not. The Commission can therefore conclude that the Maloney Line was not originally installed as a line extension under PSE's then-applicable tariff schedule.⁷⁰ As such, the Schedule's "replacement" language relied upon the Petitioners is clearly inapplicable.

42 Also, Schedule 85's reference to Tariff G (and its included Schedule 80) require that any "replacement" of the Maloney Line must be economically feasible. As demonstrated above, it is not economically feasible and PSE's refusal to install a new line for the Petitioners is consistent with its tariffs and sound economic business practices.

43 Finally, the Service Agreements require the Petitioners to pay all costs associated with operating the Line.⁷¹ To place the obligation to replace the Line upon PSE and the customers of Schedule 24 would be patently inconsistent with the clear intent of the parties as expressed in the Service Agreements and the original 1971 agreement.

44 The specific tariff provisions in Schedules 80 and 85 and the Petitioners' explicit agreement to these tariff provisions in the Service Agreements support Staff's conclusion that "PSE is under no obligation to replace the Maloney Line at its cost," in the absence of satisfaction of the economic feasibility test.⁷² Here, that test is not satisfied.

VIII. THE COMMISSION HAS PREVIOUSLY DENIED UNECONOMIC LINE EXTENSIONS

45 The Commission has previously determined that in certain circumstances the high cost to serve militates against the provision of service through a line extension. In Verizon, the Commission examined the reasonableness of extending service to an isolated group of

⁷⁰ Nightingale, Exh. No. DN-4T at 3: 5-7.

⁷¹ Logan, Exh. No. LFL-1T at 3: 4-11.

⁷² Nightingale, Exh. No. DN-1T at 9: 10-11.

residents living approximately thirty miles from Verizon's nearest distribution system point of interconnection.⁷³ The Commission addressed the economic feasibility of extending telecommunications service to two small groups of potential customers. One group consisted of three applicants ("Taylor") located approximately 14 miles from the town of Bridgeport, Washington. To serve this group, the utility would have been required to build 17 miles of new service line.⁷⁴ Another group consisted of five applicants ("Timm") located in Okanogan County along Timm Road in the Bridgeport exchange. The utility would have been required to install "approximately 30 miles of fiber cable" to serve this location.⁷⁵ The Commission determined that Verizon's estimated cost to serve the Taylor location was \$329,839.⁷⁶ The cost estimate to serve the Timm location was \$881,497.⁷⁷ Qwest's estimate to serve the Timm location was \$811,920.⁷⁸

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The Commission found these costs "extraordinarily high" considering the number of customers served and the "future maintenance costs."⁷⁹ The Commission also questioned "the value of adding so small a number of customers to the network."⁸⁰ After reviewing the evidence presented, the Commission granted Verizon's request to waive the requirement to extend service to the two locations.⁸¹ To this end, the Commission opined:

"[T]he Commission is persuaded that there would be a potentially significant adverse effect on the company and other ratepayers if a waiver is not granted. A denial of the waiver would send the signal that extraordinarily costly line extensions to serve few customers are warranted under the new rule. This in turn would make it increasingly difficult for carriers to devote resources to

⁷³ *Re Verizon Northwest Inc.*, Docket No. UT-011439, 12th Supplemental Order (April 23, 2002).

⁷⁴ *Id.* at 4, ¶ 14.

⁷⁵ *Id.* at 4, ¶ 15.

⁷⁶ *Id.* at 22, ¶ 94.

⁷⁷ *Id.* at 22, ¶ 96.

⁷⁸ *Id.* at 23, ¶ 100.

⁷⁹ *Id.* at 17, ¶ 63.

⁸⁰ *Id.* at 17, ¶ 64.

⁸¹ *Id.* at 19, ¶ 70.

their existing network and would create an unreasonable increase in the subsidies paid by other ratepayers. It would increase maintenance costs and burdens for which carriers either would not obtain cost recovery or would have to seek recovery from other ratepayers.”⁸²

47 The instant case shares many of the characteristics of the Taylor and Timm line extensions. The Maloney Line’s replacement would be prohibitively expensive to install, the costs to maintain and repair the project would be significant, the revenues generated from serving the Petitioners would cover less than 5% of PSE’s costs to install the project, and the ratepayers of PSE would be expected cover the remainder of the costs. While the Commission’s earlier decision is not dispositive precedent on the issues raised by the Petitioner’s request, it highlights how much weight the Commission should place on the cost of project, the number of customers served, and the project’s cost to other ratepayers. While not expressly stated, the Commission’s decision represents adherence to a common ratemaking principle - the cost causers should bear the cost to serve them. This sound principle should be affirmed by the Commission on the facts presented in this case.

IX. CONCLUSION

48 The Commission should deny the Petitioners’ *Petition for Declaratory Order*. The Maloney Line is still serving the Petitioners. Whether it will need to be replaced in the near future is not an issue the Commission has been asked to determine in this case. Rather, the Petitioners seek an order determining that PSE should replace the Line at its cost and then pass these costs to the ratepayers on Schedule 24.

49 PSE would not have built the project in 1971 but for GTE’s agreement to pay all costs to install, maintain and repair the facility. At that time, the Maloney Line was not economically feasible for PSE to build. This fact remains true today. If the Commission

⁸² Id. at 18, ¶ 68.

orders PSE to build a new line for the Petitioners, the ratepayers on Schedule 24 would bear over 95% of the replacement line's costs, including all of PSE's costs to repair and maintain the facility. Staff's case clearly demonstrates the project's dramatic absence of economic feasibility. Even if the Petitioners could possibly generate a 500 percent increase in electricity usage, the ratepayers on Schedule 24 would still bear over \$5 million of the project's estimated \$6.8 million total cost. The immense gap between the costs to serve the Petitioners and revenues generated by them to cover those costs cannot be bridged.

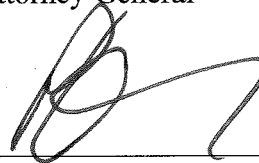
50 PSE's applicable tariffs clearly place the costs of a new facility on the Petitioners. Staff sees no ambiguity in PSE's tariff language and supports PSE's advocacy in this regard. Under the circumstances presented in this case, this result is fair and equitable to the Petitioners and the ratepayers on Schedule 24. In this instance, the cost causers should pay the cost to serve them.

51 In conclusion, the Petitioners request should be denied and the status quo should be maintained.

DATED this 30th day of June 2015.

Respectfully submitted,

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