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	NO. UE-141335 POST-HEARING BRIEF OF PUGET SOUND ENERGY, INC.

POST-HEARING BRIEF OF
PUGET SOUND ENERGY, INC.

JUNE 30, 2015

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I. INTRODUCTION

On June 25, 2014, King County, Washington ("King County"), BNSF Railway ("BNSF"), Frontier Communications Northwest, Inc. ("Frontier"), Verizon Wireless ("Verizon"), and New Cingular Wireless PCS, LLC ("AT&T") (collectively, "Petitioners"), jointly filed a Petition for a Declaratory Order interpreting RCW 80.28.010, Schedule 85 of Puget Sound Energy, Inc.'s ("PSE") Electric Tariff G, and certain Service Agreements. Petitioners request a declaration from the Washington Utilities and Transportation Commission ("WUTC" or "Commission") that PSE is required to replace an 8.5 miles long, single phase 15kV cable underground distribution line known as the Maloney Ridge line and that the associated costs must be recovered through electric rates applied to all retail customers.[1]

On June 27, 2014 the Commission issued a Notice of Receipt of Petition for Declaratory Order and Opportunity to Submit Statements of Fact and law ("Notice") in this proceeding. In the Notice, the Commission invited interested persons to submit a statement of fact and law on the issued raised by the Petition. PSE and WUTC Staff submitted statements of fact and law in response to the Commission's notice. On August 27, 2014, the Commission held a prehearing conference in this matter and subsequently issued Order 01. In Order 01, the Commission converted this declaratory order proceeding to an adjudication pursuant to WAC 480-07-930(4) in order to develop the factual record necessary to rule on Petitioners' petition.

[1] *See* Petition for a Declaratory Order at ¶1.

PSE respectfully requests that the Commission issue an order finding that costs to replace the Maloney Ridge distribution line must be recovered only by the users of the Maloney Ridge line.

II. BACKGROUND

PSE constructed the Maloney Ridge line pursuant to an Agreement Relating to the Extension of Electrical Service, dated September 23, 1971, between PSE and the General Telephone Company of the Northwest, Inc. ("GTE"), wherein GTE requested PSE to extend single phase electric service to GTE's microwave station.[2] The Maloney Ridge line is approximately 8.5 miles long, with single phase 15kV cable underground facilities located in a remote section of the Snoqualmie National Forest.[3]

Through the above-referenced agreement, GTE paid PSE to construct the Maloney Ridge line, and GTE agreed to pay all costs to maintain the line.[4] "Maintenance" is defined to include, "the furnishing of all necessary manpower, materials, and equipment to keep the Distribution System in operating condition."[5] Had GTE not agreed to pay for construction, maintenance, and repair, then the line would not have been economically feasible and would never have been built.[6]

Through four subsequent service agreements ("Service Agreements"), three additional entities were connected to the Maloney Ridge line, and PSE now serves a total of

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2 *See* Exh. No. LFL-1T at 2:3-9.
3 *See* Exh. No. JMS-1T at 2:2-8.
4 *See* Exh. No. LFL-1T at 3:6-11.
5 *See* Exh. No. LFL-3 at 3.
6 *See* Exh. No. LFL-9T at 3:18-20.

four customers on the Maloney Ridge line.[7] Through the Service Agreements, BNSF, King County, Frontier, and the Maloney Ridge Users Association agreed to pay all operating costs for the Maloney Ridge line.[8] Paragraph 4 of each Service Agreement states, "Operating Costs shall include any repair and maintenance costs incurred by Puget pursuant to [Repair and Maintenance of System], and costs in connection with securing or maintaining operating rights."[9] PSE interprets this to include replacement if replacement is necessary to maintain operation.

Under the Service Agreements, the Maloney Ridge users are currently responsible for all repair and maintenance costs based on the economic feasibility provisions of Schedule 85 to PSE's Tariff G[10] because the revenue generated by the electric load does not support the investment necessary to operate, maintain and/or repair the Maloney Ridge line without the financial commitments under the Service Agreements. Similarly, it is economically unfeasible for PSE to construct a new line.[11] PSE's Electric Tariff G provides that in such a case, PSE is not obligated to provide service. "The Company shall not be required to provide service if to do so would be economically unfeasible."[12]

The 8.5 miles containing the Maloney Ridge line is steep, rugged, mountainous terrain that includes boulders, creeks and rivers, and which is subject to rock and landslides.

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7 BNSF, King County, Frontier and Maloney Ridge Users Association (collectively, "Maloney Ridge users"). *See* Exh. No. LFL-1T at 2:16-3:3. GTE Northwest Inc. is successor to General Telephone Company, and Frontier is successor to GTE Northwest Inc. *See* Petition for Declaratory Order at ¶20.

8 *See id.* at 3:6-8.

9 *Id.* at 3:8-11.

10 *See* Exh. No. LFL-4 at 1, 4, 7, and 10.

11 *See* Exh. No. JMS-1T at 4:14-5:5.

12 Exh. No. LFL-7 at 1.

Its elevation means it is covered in heavy snowpack several months out of each year, and access is usually limited to the months from July through September.[13] Not only is the Maloney Ridge line difficult to access, its terrain contributes to maintenance and repair costs.[14] Rockslides and other rock movement are common on the steep slopes of Maloney Ridge, and these can cause direct damage to, and degradation of, the cable.[15] Additionally, shifts in the terrain (including rock and landslides) expose the cable to dig-ins and rock damage.[16] When a fault occurs and is identified, a crew must dig to the location of the fault before repairing it. This may involve a backhoe or hand-digging, if a backhoe cannot reach the location.[17] During the winter, repair and maintenance often involve using special equipment like a snow cat.[18] Some of the equipment used to identify the location of a fault is audio;[19] therefore, snow, rain or other weather conditions can impair a lineman's ability to identify the location of the fault.[20]

Over the years, the Maloney Ridge line has deteriorated and its reliability has decreased while costs for repairs have increased.[21] Petitioners agree that "Service is repeatedly interrupted, sometimes for prolonged periods of time."[22] Repair costs for 2012 and 2013 were approximately $200,000 and $231,000, respectively.[23] PSE has continued to

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13 *See* Exh. No. JAB-1T at 2:20-3:2.
14 *See* Exh. No. JMS-1T at 3:5-6.
15 *See id.* at 3:16-20.
16 *See id.*
17 *See id.* at 4: 13-16.
18 *See id.*
19 *See id.* at 4:10-12.
20 *See id.*
21 *See* Exh. No. JMS-1T at 3:8-9.
22 Exh. No. JOT-1T at 11:7-8.
23 *See* Exh. No. JMS-1T at 3:8-9.

repair and maintain the line at the Maloney Ridge users' cost, but now continuing the pattern of piecemeal repairs and temporary maintenance is not preferred.[24] Petitioners want the line to continue in operating condition but do not want to pay for it.[25] Contrary to Petitioners' wishes, PSE's obligation to provide safe and reliable service does not require PSE to completely replace the line at the expense of all PSE customers.[26] However, full replacement in its entirety is not the only option available for the Maloney Ridge line. PSE provided at least five repair and replacement options to the Maloney Ridge users.[27] The Maloney Ridge users rejected PSE's recommendation and took the position that all costs for installing, operating and maintaining a new Maloney Ridge line should be recovered through retail rates applicable to all retail customers.[28] PSE roughly estimates the costs to replace the entire line at $5,300,000.[29]

Petitioners believe that all PSE customers should be responsible for the costs of a new line. PSE believes the four Maloney Ridge users should bear the costs of any work on the line, including rebuilding the line, pursuant to their agreement to pay operating costs under the Service Agreements. Alternatively, if a new line is to be constructed, such work should be paid for by the Petitioners and Maloney Ridge users pursuant to Schedule 80, paragraph 34, or as part of a new agreement under Schedule 85.

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24 *See id.* at 3:11-12.
25 *See* Petition for a Declaratory Order at ¶1.
26 Exh. No. LFL-7 at 1.
27 *See* Exh. No. JMS-4.
28 *See* Exh. No. JMS-1T at 4:7-11. *See also* Exh. No. JMS-5.
29 *See* Exh. No. JMS-9.

III. ARGUMENT AND AUTHORITY

A. Replacement of the Maloney Ridge Line is Economically Unfeasible.

When GTE requested that PSE build a single phase electric distribution line to serve GTE's microwave station on Maloney Ridge, PSE determined that construction of such line would not be economically feasible due to several reasons: small load, high costs of line installation, limited operational rights, and the expectation that future maintenance costs would far outweigh the maintenance costs included in electric rates.[30] PSE's expectations were realized over the subsequent 44 years, with only three customers adding services to the line at an annual revenue of $36,000 and annual repair costs exceeding $200,000.[31]

PSE estimated costs for replacement of the Maloney Ridge line at $5,300,000.00, and no party challenges that estimate. PSE and WUTC Staff both conducted multiple economic analyses of replacement of the Maloney Ridge line and both parties concluded that, given the high capital cost and low revenue from the line, replacement of the line is economically unfeasible.[32] WUTC Staff estimated that even if the line were to miraculously generate extraordinary growth of 500 percent, it would not be economically feasible.[33] "The size and cost of replacement dwarfs any potential revenues from customers serviced by the line. Without phenomenal growth in billed kilowatt-hours to justify the increased revenue requirement of building the Maloney Line, PSE's other customers in Schedule 24 would suffer a disproportionately large increase in their rates."[34] An increase in rates is exactly

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30 *See* Exh. No. LFL-1T at 8:2-5.
31 *See* Exh. No. BR-1PSE at 1.
32 *See* Exh. No. JMS-1T at 5:3-5 and Exh. No. JLB-1T at 2:22-23.
33 *See* Exh. No. JLB-1T at 6:11-13.
34 Exh. No. JLB-1T at 8:17-21.

what the Petitioners anticipate from this proceeding.[35] However, the Petitioners' proposed rate increase must be considered in light of ability to pay. The financial disparity between the Petitioners and the average PSE rate payer cannot be ignored.[36]

Petitioners criticized PSE's economic analyses because Petitioners argued that PSE 1) should have used a 35-year depreciation life for the line, 2) PSE did not accurately consider revenue generated by Maloney Ridge customers, and 3) PSE did not exclude operations and maintenance costs from its analyses.[37] Each of these criticisms is addressed in the Prefiled Cross Answering Testimony of Lynn F. Logen, Exh. LFL-9T. In summary, 1) PSE used a 30-year life because that is the plant life used in PSE's most recent cost of service study, 2) PSE initially included O&M costs because Petitioners initially disclaimed paying those, and 3) PSE used estimated annual revenue of $25,000 instead of actual revenue of $35,000. However, WUTC Staff's economic analysis did use the variables and assumptions recommended by the Petitioners, and that analysis resulted in a gap between revenue and costs of $296,809 and $10,071,832, respectively.[38] This "significant difference" illustrates that replacement of the Maloney Ridge line is economically unfeasible even when using Petitioners' variables and assumptions.

What, then, is economically feasible? In its response to Bench Request No. 002, PSE analyzed the current usage of the Maloney Ridge customers, the operations and maintenance ("O&M") arrangement established in the Service Agreements, and the cost to replace the

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35 *See* Exh. No. MPG-1T at 15:1-3.

36 As WUTC Staff witness Jason Ball points out, "Verizon wireless has approximately $81 billion in revenues during 2013. BNSF reported over $21 Billion in revenues during 2013. By contrast, PSE's revenues were approximately $2.1 Billion in 2013." The Petitioners are in a far better financial position than the average Schedule 24 customer. Exh. No. JLB-4T at 4:21-5:3.

37 *See* Exh. No. MPG-1T at 11:9-20.

38 *See* JBL-1T at 6:7-11.

Maloney Ridge line and determined that, to be economically feasible, replacement of the Maloney Ridge line would have to cost PSE no more than $335,000 and would exclude costs for maintenance and repair.[39] This is the cost that would create an annual revenue requirement that closely matches the Maloney Ridge customers' annual revenue of $36,000. Therefore, in order for replacement of the Maloney Ridge line to be considered economically feasible, the Maloney Ridge customers would have to pay all costs in excess of $335,000, or approximately $5 million, and continue with the current contractual arrangement for payment of O&M costs.

B. Cost Causers Should Be the Cost Payers.

The Commission has a long-held belief that the cost causer should be the cost payer.[40] "It is reasonable and consistent with the general principles of regulatory rate design for the 'cost causers' to be the 'cost payers.'"[41] This Commission has seen many customers like Petitioners, who request construction or other services but do not want to pay the costs, and the Commission has repeatedly refused to require other ratepayers to foot their bill. In a water utility case the Commission found that only new water customers should be responsible for the costs to construct a new water well to meet their needs.[42] In a telecommunications case a competitive local exchange carrier ("CLEC") requested that US West remove certain equipment from existing facilities. The Commission held that the

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39 *See* Exh. No. BR-2.

40 *WUTC v. Tenino Tel. Co., et al.*, Cause No. U-83-62 *et al.*, Third Supp. Order, 1984 WL 1022554 at 21 (May 14, 1984). ("The Commission also believes in the philosophy that cost causers should bear the costs they cause").

41 *WUTC v. Summit View Water Works, LLC* Docket UW-110107, Order 05, 2011 WL 5822170 at 5 (Nov. 14, 2011).

42 *See id.*

CLEC who requested removal should pay for removal.[43] In another, the Commission determined that a utility, not ratepayers, should be responsible for taxes on contributions in aid of construction. "The cost causer -- the person or entity whose activity results in the tax -- is responsible for payment of the tax. Other ratepayers are not."[44]

The Petitioners state that replacement of the Maloney Ridge line would be economically feasible if PSE were simply to shift the costs to other ratepayers. "If PSE is allowed to fully include the costs of the line replacement in its retail cost of service and reflect that in its tariff rate charges to retail customers, then yes, replacing the Maloney Ridge Distribution Line would be an economically feasible investment to PSE and its shareholders."[45] However, any such cost shifting violates Commission precedent. Petitioners are clearly the cost causer here because they are the entities using the Maloney Ridge line and they are the entities requesting that the line be replaced. Commission precedent calls for the Petitioners to be the cost payer.

The Petitioners next argue that PSE's and WUTC Staff's economic feasibility analyses should just be ignored and, instead, the Petitioners suggest a new standard for determining whether the line should be replaced.[46] Mr. Gorman suggests the Commission weigh only 1) the impact of construction costs on PSE's retail rates, and 2) whether

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43 "Load coils or a bridge tap are removed to satisfy the requirements of a particular end-user. We believe that it is appropriate to recover these customer specific costs from the cost-causer." *In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale*, Docket Nos. UT-960369, UT-960370, UT-960371 (consolidated), 8th Supp. Order at ¶155 (May 11, 1998).

44 *WUTC v. Harbor Water Co.*, Docket No. U-87-1054-T, 1988 WL 1664306, Commission Decision and Order Denying Reconsideration at 3 (July 13, 1988).

45 Exh. No. MPG-6T at 4:9-12.

46 *See* Exh. No. MPG-6T at 4:22-26.

replacement is in the public interest and produces public benefits.[47] There is no authority for this standard, but even hypothetically applying Mr. Gorman's proposed standard, the Commission should reject the Petitioners' request. Mr. Gorman admits that all rates would increase as a result of replacing the Maloney Ridge line, a line that serves only four customers.[48] This subsidy is justified, according to the Petitioners, if it produces public benefits. There are no "public benefits", however, that have been quantified or even identified by the Petitioners. The Petitioners merely imply that there are public benefits because the line services emergency and public safety communications. However, as discussed more fully below, there is no evidence or even any claim that such communications have been affected by the current condition of the Maloney Ridge line. Similarly, there is no evidence in the record that such communications would be enhanced, improved, or even protected by replacement of the Maloney Ridge line. PSE continues to maintain the line and, as described more fully below, Petitioners have several months of generator back-up in the event of outages.[49] The Petitioners simply conclude that because the Maloney Ridge customers provide emergency communications services to certain communities in PSE's service territory, all PSE customers would benefit by the line's replacement. There is no support for this conclusion, and, as explained above, Mr. Gorman's proposed standard conflicts with the cost causer, cost payer principle.

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47 *Id.*

48 *See* Exh. No. MPG-1T at 14:26-15:3.

49 *See* Exh. No. JMS-7 at 66-67.

B. PSE is Not Obligated to Replace the Maloney Ridge Line When it is Not Economically Feasible.

PSE has an obligation to serve pursuant to RCW 80.28.010, which states in part, "Every gas company, electrical company, wastewater company, and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable." However, this obligation is not absolute. A utility company may refuse to serve a customer under specific conditions, one of which is if such service is economically unfeasible.[50]

1. Schedule 80 allows PSE to refuse service if it would be economically unfeasible.

Schedule 80 of PSE's Electric Tariff G is the General Rules and Provisions that apply to all services that PSE provides, including the service provided pursuant to the Petitioners' Service Agreements.[51] PSE's tariffs have the force and effect of law.[52] Schedule 80 also applies to all electric service under Schedule 24 and Schedule 85. Schedule 80, paragraph 9, states "The Company shall not be required to provide service if to do so would be economically unfeasible." PSE considered the Maloney Ridge line an economically unfeasible line extension when constructed in 1971, and the line remains economically unfeasible today. Petitioners argue that paragraph 9 of Schedule 80 does not apply to the Maloney Ridge line because, they claim, paragraph 9 refers only to "new" or "additional"

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50 *See also*, WAC 480-100-123 - Refusal of Service.

51 Exh. No. LFL-4 at 3, ¶10; at 6, ¶ 10, at 9, ¶ 10, and at 12, ¶ 10. ("This Agreement is subject to General Rules and Provisions (Schedule 80) of Puget's Electric Tariff G and to Schedule 85 of such Tariff, as such Schedules may be revised from time to time upon approval of the Washington Utilities and Transportation Commission.")

52 *Gen. Tel. Co. of the Nw v. The City of Bothell, et al.*, 105 Wn.2d 579, 585, 716 P.2d 879 (1986) (internal cites omitted).

service. PSE disagrees. The Schedule 80 provision makes no reference to new or additional service, and clearly applies to any service:

> REFUSAL OF SERVICE -The Company may refuse to connect an applicant for service or may refuse to render additional service to a Customer when such service will adversely affect service being rendered to other Customers or where the applicant or Customer has not complied with state, county, or municipal codes or regulations concerning the rendition of such service.
>
> The Company may refuse to serve an applicant or a Customer if, in its judgment, said applicant's or Customer's installation of wiring or electrical equipment is hazardous, or of such character that satisfactory service cannot be provided.
>
> The installation of proper protective devices on the applicant's or Customer's premises at the applicant's or Customer's expense may be required whenever the Company deems such installation necessary to protect its property or that of its other Customers.
>
> The Company shall not be required to connect with or render service to an applicant unless and until it has all necessary operating rights, including rights-of-way, easements, franchises, and permits.
>
> The Company may refuse to connect service to a master meter in any new building with permanent occupants when: there is more than one dwelling unit in the building or property; the occupant of each unit has control over a significant portion of electric energy consumed in each unit; and the long-run benefits of a separate meter for each customer exceed the cost of providing separate meters.
>
> The Company shall not be required to provide service if to do so would be economically unfeasible.

Other provisions in paragraph 9 do expressly apply to new or additional service, but the separate economic feasibility provision does not. The Petitioners misinterpret paragraph 9 of

Schedule 80 in an attempt to apply a limitation on PSE's refusal of service rule that clearly does not exist.

2. Schedule 80 calls for the customer to pay if the customer requests a change to facilities.

Paragraph 34 of Schedule 80 broadly governs the construction of electric facilities. Paragraph 34 expressly provides for the recovery of costs for projects requested by a "Requesting Entity." "Project" is defined as, "Electric Facilities constructed, relocated or rebuilt at the request of a Requesting Entity or Electric Facilities that are constructed, relocated or rebuilt in a different manner than initially proposed by the Company upon request of a Requesting Entity."[53] "Requesting Entity" is defined as, "Any Government Entity or other party or entity requesting or requiring services provided under this schedule."[54] Accordingly, because Petitioners are an entity that has requested PSE to rebuild the line, paragraph 34 of Schedule 80 applies in this proceeding.

The cost allocation provision of paragraph 34 of Schedule 80 states, in part,

> Where a change in existing Electric Facilities is requested or required by a Requesting Entity, the Requesting Entity shall pay the Company for the cost due to such change, including the cost of additional facilities that are necessary, in the sole judgment of the Company, to maintain the existing level of reliability, as well as the cost to enhance reliability beyond the existing level of reliability if the Project requested by the Requesting Entity is intended to enhance reliability for the Requesting Entity.[55]

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53 Paragraph 34(a)(v) of Schedule 80, located at: http://pse.com/aboutpse/Rates/Documents/elec_sch_080.pdf (emphasis added).

54 *Id.* at paragraph 34(a)(vii).

55 *Id.* at paragraph 34(b)(ii).

The Petitioners are the entity requesting PSE to rebuild the line in order to enhance reliability; therefore, paragraph 34 of Schedule 80 requires the Petitioner to cover all costs of such replacement.[56]

WUTC Staff agrees with PSE that paragraph 34 of Schedule 80 applies to the Petitioners.[57] The Petitioners, however, strain the definition of "change" in arguing that they are not requesting any change at all. "The Maloney Ridge Distribution Line customers are not requesting a change in the Maloney Ridge Distribution Line."[58] They go on to claim they are not requesting any change in their service; rather, they "want to continue to receive safe and reliable service, consistent with PSE's obligation to provide safe and reliable service."[59] If the Petitioners did not request a change to their existing electric facilities, there would be no proceeding. The Petitioners are clearly requesting PSE to rebuild the Maloney Ridge line in order to enhance reliability. The "cost to enhance reliability beyond the existing level of reliability" is specifically identified in paragraph 34(b)(ii) as a cost to be recovered from the Requesting Entity. The Petitioners' claim that they are not requesting any change to their service is to contradict their own evidence in this proceeding.

3. Schedule 85 also allows PSE to refuse service if it would be economically unfeasible.

Recital B of each Service Agreement states that the Service Agreement was made "pursuant to the economic feasibility provisions" found in paragraph 13 of Schedule 85.[60] At

56 *See* Exh. No. LFL-1T at 11:22-12:2.
57 *See* Exh. No. DN-1T at 12-13.
58 Exh. No. MPG-6T at 13:10-11.
59 *Id.* at 13:12-16.
60 *See* Exh. No. LFL-4.

the time of the execution of the Service Agreements, the economic feasibility provision was found in paragraph 13 of Schedule 85, which stated,

> ECONOMIC FEASIBILITY - The Company shall not be required to construct any distribution extension under this schedule if such extension is, in the reasonable judgment of the Company, economically unfeasible. Service may, however, be provided to customers on terms which require payment of an amount sufficient to justify the Company's investment in facilities.

This provision reflects the general Schedule 80 rule that PSE is not obligated to provide service if to do so would be economically unfeasible, but it allows for PSE to nonetheless provide service if payment is made by the customer in an amount sufficient to economically justify the construction. This is exactly what occurred when the Maloney Ridge customers agreed to pay for installation, operation, and maintenance of the Maloney Ridge line. At the evidentiary hearing in the proceeding, WUTC Staff witness David Nightingale explained this, stating, "My understanding of the contract reference was to specifically site a provision in Schedule 85 that allowed lines to be constructed that were not economic."[61] Schedule 85 provided the mechanism that allowed the Maloney Ridge line to be constructed despite it being economically unfeasible. PSE contracted with GTE outside of Schedule 85 and established terms for the Maloney Ridge line construction independent of Schedule 85's terms. Today, in addition to line extensions, Schedule 85 allows PSE to "modify existing electric distribution facilities", even economically unfeasible modifications if the customer contributes.[62] As explained above, that contribution would amount to approximately $5 million, plus operation and maintenance costs.

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[61] Nightingale, TR. 77:1-4.
[62] Exh. No. LFL-7 at 4.

The Petitioners misinterpret the Service Agreements' incorporation of Schedule 85's economic feasibility provision, however, when they attempt to assign PSE an obligation to pay for the line's replacement. The provision the Petitioners rely on 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 and 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.

The Petitioners' argument fails for several reasons. First, the provision expressly excludes repair or replacement of facilities that were not installed under Schedule 85. The Maloney Ridge line was installed under a Service Agreement, not Schedule 85. If it were installed under Schedule 85, then PSE would have been paying for operation and maintenance for the last forty years rather than the Petitioners. The Service Agreements incorporate the economic feasibility provision of Schedule 85, but they were not installed under the Schedule. Mr. Logen[63] and Mr. Nightingale[64] both explained this at the evidentiary hearing.

Second, even if the line were installed under Schedule 85, which it was not, the provision above excludes PSE paying for replacement of facilities if replacement is inconsistent with Schedule 85. Forcing PSE or its other customers to pay for replacement of the facilities is inconsistent with Schedule 85 because Schedule 85's economic feasibility provision allows PSE to reject such projects. By the Petitioners' logic, because PSE refused

63 Logen, TR. 46:25-47:5.
64 Nightingale, TR. 73:24-75:19.

to install an economically unfeasible line in 1972, PSE must pay to re-install that same line today even though it is still economically unfeasible. Such interpretation is untenable.

4. Case law calls for PSE to refuse service if it would be economically unfeasible.

In addition to the multiple cost causer, cost payer cases described above, one case in particular outlines the reasons why the Petitioners should be responsible for costs to construct an economically unfeasible line. In *In the Matter of the Petition of Verizon NW Inc.* Docket UT-011439, Twelfth Supp. Order (April 2003)("*Verizon*"), this same issue was raised when Verizon requested a waiver of its regulatory obligation "that telecommunications companies that file tariffs with the Commission must extend service, upon application, to occupied premises."[65]

In *Verizon,* eight applicants requested service to their homes located in two remote areas of Eastern Washington.[66] Verizon argued that it would have to build miles of fiber optic cable to provide service to these few customers at a cost of $1.2 million, or $150,000 per applicant.[67] Verizon argued that the cost was disproportionate to the value obtained by the construction.[68] The regulation at issue in *Verizon* requires a company to extend service to any customer "reasonably entitled" to service.[69] The regulation is similar to RCW 80.28.110, which states,

> Every gas company, electrical company or water company, engaged in the sale and distribution of gas, electricity or water, shall, upon reasonable notice,

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65 *Verizon* at ¶12, "WAC 480-120-071(2)(b) states that telecommunications companies that file tariffs with the Commission must extend service, upon application, to occupied premises."

66 *See id.* at ¶¶14-15.

67 *See id.* at ¶¶22-26.

68 *See id.* at ¶27.

69 *Verizon* at note 2.

> furnish to all persons and corporations who may apply therefor **and be reasonably entitled thereto**, suitable facilities for furnishing and furnish all available gas, electricity and water as demanded…

Emphasis added. Like PSE's tariffs, the regulation in *Verizon* contains an exception to this obligation: "Subsection (7)(b) permits petitions for waiver of subsection (3)(a) and allows a company to build an extension but charge the applicants for all or part of it, if shifting the cost to other ratepayers is found unreasonable."[70]

The Commission determined that its job was to weigh the factors in light of applicable regulations to determine what is reasonable.[71] "The fundamental task before the Commission is to consider and weigh all relevant factors, in order to determine, under the rule and under RCW 80.36.090, whether an applicant is "reasonably entitled" to service from the local exchange company."[72] The Commission looked at several factors, which they stressed were "non-exclusive" and "non-mandatory":

- The total direct cost of the extension;
- The number of customers to be served;
- The comparative price and capabilities of radio communications service or other alternatives available to customers;
- Technological difficulties and physical barriers presented by the requested extensions;
- The effect on the individuals and communities involved;
- The effect on the public switched network;
- The effect on the company.

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70 *Verizon* at note 5.
71 *Id.* at ¶17.
72 *Id.*

After considering these factors in light of the applicable rules, the Commission determined that Verizon was not obligated to provide service to the eight applicants.[73] "Relative to the number of customers, the cost of each project, including future maintenance costs, is extraordinarily high."[74] The Commission also found that a service provider's obligation to serve is not absolute, "There is no provision of federal or state law that prescribes that every location and every potential customer, no matter how remote or expensive to reach by wireline, is entitled to wireline service."[75] Finally, the Commission concluded that to require Verizon to construct the new lines "would send the signal that extraordinarily costly line extensions to serve few customers are warranted under the new rule"[76] The Commission made it very clear that a customer is not entitled to service when to provide such service would be economically unfeasible:

> This in turn would make it increasingly difficult for carriers to devote resources to 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. It would increase the possibility of stranded investment if other alternative technologies, such as wireless, erode wireline business.[77]

Every one of the enumerated considerations in *Verizon* is applicable in our case, and this Commission should similarly rule that PSE is not obligated to construct the new line. First, the cost of construction of the Maloney Ridge line is objectively extraordinarily high in

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73 *See id.* at ¶63.
74 *Id.*
75 *Id.* at ¶66.
76 *Id.* at ¶68.
77 *Id.*

light of the customers that would receive service. The cost to replace the line has been estimated at $5.3 million, and no party challenges this estimate. There are four customers that receive service from the Maloney Ridge line: Frontier, BNSF, King County, and the Maloney Ridge Users Association. There are four members of the Maloney Ridge Users Association, one of which is BNSF. [78] Therefore, there are seven separate entities that receive power from the Maloney Ridge line. That amounts to replacement costs of $757,143 per entity, or $1,325,000 per customer, far more than the $150,000 in the *Verizon* case, which was found to be "extraordinarily costly".[79]

a. Comparative price and capabilities of alternatives

The comparative price analysis weighs in favor of PSE's position, and considering the other factors above, the scale tips even further in PSE's favor. Unlike the customers in *Verizon*, who had no wireline service at all,[80] the Maloney Ridge line customers are not without power. They simply (and understandably) request more reliable power. However, there are at least five alternative options to replacing the Maloney Ridge line that have been presented to, and rejected by, the Petitioners. Additionally, if power does fail on the Maloney Ridge line, Petitioners have generators available for their use. In an October 30, 2013 customer meeting, AT&T, BNSF, King County, and Frontier described their contingency plans in the event of winter outages:

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78 There are four members of the Maloney Ridge Users Association. *See* Exh. No. JOT-1T at 5:13-16 ("Q. Who are the members of the Maloney Ridge Electronic Users Association? A. The members of the Maloney Ridge Electronic Users Association include Verizon Wireless, and New Cingular Wireless PCS, LLC, BNSF and Bonneville Power Administration.").

79 *Id.*

80 *Id.* at ¶52.

> **AT&T** maintains the generator for all the companies in the Maloney Ridge Association. They have a 3000 gallon fuel tank for their diesel generator (last till late spring/ early summer). They have a snow cat and equipment that maybe available to assist in restoration efforts.
>
> **BNSF** has snow cats and can assist with road clearing but coordination must be made through the Forest Service.
>
> **King County** has a 5000 gallon fuel tank for their diesel generator on standby at Sobiesky that should last 2.5-3 months. WADOT has snow cats, road clearing equipment and a helicopter they could use if needed for restoration. They are located on Sobiesky which is higher elevation than Maloney. It is typically not accessible by vehicle until after July 4th.
>
> **Frontier** has a 1500 gallon diesel generator and a snow cat located in Monroe that could be used for road clearing.[81]

These minutes illustrate that the Petitioners have generator fuel to last several months and equipment to assist in outage repairs. Therefore, they are in a much better position than the customers in *Verizon*, who had no wireline service at all.

b. Technological difficulties and physical barriers to Petitioners' request

While there is no evidence of technological difficulties, the physical barriers to construction of the line are significant and have been well documented in this proceeding. Not only is actual construction and maintenance of the line physically challenging, obtaining permits for construction is expensive,[82] time consuming, and has not been fully accomplished. In response to a data request from PSE, the Petitioners identified at least two

81 Exh. No. JMS-7 at 66-67.

82 *See* Exh. No. JMS-8 at 5-9, estimating permitting costs at $150,000 for each construction option.

permits that had expired by the end of 2014.[83] The Petitioners did not supplement their response to the data request by the time of the evidentiary hearing in this case, so it is reasonable to infer that such permits have not been secured. Therefore, while the obstacles are not insurmountable, there are clearly several barriers to the Petitioners' request.

c. Effect on individuals and community involved, and the public

PSE acknowledges that all the communications services provided by the Petitioners are important. However, the Petitioners have presented no evidence that outages on the Maloney Ridge line have negatively impacted communications or that replacing the Maloney Ridge line would improve such communications. As demonstrated above, when an outage occurs on the Maloney Ridge line, Petitioners can utilize backup generators to prevent interruptions to their customers' communications services. Petitioners are expected to benefit from replacement of the line primarily through reduced operations and maintenance costs. Other PSE customers, however, would see no benefit from the line replacement.

On the other hand, if the Petitioners were excused from paying the $5.3 million replacement costs, these costs would be shifted to other customers who do not benefit from the line's replacement and would not see reduced operations and maintenance costs. This is the situation the Commission intended to avoid in *Verizon*. It "would create an unreasonable increase in the subsidies paid by other ratepayers."[84]

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83 *See. e.g.,* Exh. LFL-8. "The King County permit for its facilities on the Maloney Ridge has expired. (a) "King County is in the process of renewing its permit. (b) King County is working with the US Forrest (sic) Service and expects to obtain a permit before the end of the year." "Frontier anticipates a permit renewal by the end of 2014." *See also* Exh. No. JSM-7 at 71 ("Permitting was identified as a significant scheduling impact and a permitting meeting will be held in late November/early December with customers to identify ways to expedite this process. Support from the Forest Service and other agencies will be needed.").

84 *Verizon* at ¶68.

d. Effect on the company

At first glance, the effect of whether the Petitioners or PSE's other customers pay replacement costs may be unclear or may appear to be neutral for PSE. However, the Commission in the *Verizon* case recognized that a significant percentage of company resources would be dedicated to only a few customers rather than being devoted to the company's existing network. Such concern applies to PSE here, as well. Also, the Commission considered stranded costs, which are also similarly an issue here. If Petitioners turned to alternative technologies for their communications services,[85] it would increase the possibility of stranded investment. In *Verizon,* the Commission determined that there would be a potentially significant adverse effect on the company and ratepayers because of these concerns.

In addition to diverting resources and the potential for stranded costs, requiring other ratepayers to pay for Maloney Ridge line replacement would likely impact future PSE rate proceedings. Allowing the Petitioners to shift replacement costs to other ratepayers would send the signal that it is appropriate for ratepayers to subsidize extraordinarily costly capital projects, even if those projects benefit only a small group or a few individuals. This is contrary to the well-established practice of cost of service allocation, which seeks to assign revenue responsibility to those customer groups who are responsible for the costs. In other words, the cost-causer should be the cost-payer.

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85 *See, e.g.,* Exh. No. JOT-2.

C. The Rates Petitioners Pay Under Schedule 24 Do Not Cover Replacement of the Maloney Ridge Line.

Petitioners claim that they are part of PSE's general distribution system and as such, they are entitled to replacement of the line as Schedule 24 customers.[86] While the Petitioners do pay Schedule 24 rates, they are not similarly situated as every other Schedule 24 customer. The Petitioners' payment of Schedule 24 rates cover costs of PSE's basic distribution system. However, the Maloney Ridge line's installation, operation, maintenance, repair, and replacement are outside the general distribution system and are governed by the Services Agreements. As stated in Mr. Logen's Prefiled Cross Answering Testimony, the Petitioners are not in the same situation as other Schedule 24 customers and to treat them the same as other customers would be to ignore the Services Agreements and the special conditions involved.[87] Katherine J. Barnard also explained the distinction between the Petitioners and other Schedule 24 customers in the evidentiary hearing. There she explained that the Schedule 24 rates cover the basic distribution system up to the point of the Petitioners' line extension. "Anything beyond that is -- that eight and a half mile line is beyond our base system."[88] WUTC Staff witness Jason Ball echoes this understanding.

> This bundled service rate covers the costs of service to the end of the general distribution system for Schedule 24 customers. However, absent the existing special contract between PSE and the Petitioners, PSE could refuse to extend its general distribution service to serve Maloney Ridge.
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> ***
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> PSE's bundled service rate covers the cost of providing power to *similarly* situated customers receiving *similar* service. The petitioners' bundled service

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86 *See* Exh. No. MPG-1T at 3:17-23.
87 *See* Exh. No. LFL-12:16-13:3.

88 Barnard, TR. 62:2-13.

> rate includes the cost of delivering power through PSE's general distribution system to the beginning of the Maloney Ridge Line.

Emphasis in original.

IV. CONCLUSION

This is not a novel or complicated case. Petitioners request increased reliability on a distribution line that was installed and is maintained pursuant to Service Agreements that provide that Petitioners will pay operations and maintenance costs. The Petitioners want the line replaced, but they want PSE ratepayers to pay for it. To replace the line would be economically unfeasible, and PSE is not obligated to replace the line if it is economically unfeasible. PSE's tariffs and extensive case law supports the cost-causer, cost-payer notion that economically unfeasible projects should not be subsidized by other ratepayers. For these and the foregoing reasons, PSE respectfully requests that the Commission enter an order declaring:

> Any and all costs related to the replacement of the Maloney Ridge line are to be paid by the Petitioners and other Maloney Ridge Line users as operating costs pursuant to the Service Agreements.
>
> Alternatively, any and all costs related to the replacement of the Maloney Ridge line are to be paid by the Petitioners and other Maloney Ridge Line users pursuant to Schedule 80, paragraph 34.
>
> Alternatively, any and all costs related to the replacement of the Maloney Ridge line are to be paid by the Petitioners and other Maloney Ridge Line users pursuant to a Schedule 85 agreement.

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PERKINS COIE LLP

By ____________________

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