

**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 an Order Requiring Puget Sound  
Energy to Fund Replacement of Electric  
Facilities

Docket UE-141335

**KING COUNTY, WASHINGTON’S;  
BNSF RAILWAY’S; FRONTIER  
COMMUNICATIONS  
NORTHWEST, INC.’S; VERIZON  
WIRELESS’S; AND NEW  
CINGULAR WIRELESS PCS,  
LCC’S PETITION FOR  
ADMINISTRATIVE REVIEW OF  
INITIAL ORDER (ORDER 03)**

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## I. INTRODUCTION

1. Pursuant to WAC 480-07-825, 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”) petition for administrative review of the initial order (Order 03) (“Initial Order”) filed by Administrative Law Judge (“ALJ”) Gregory J. Kopta, dated August 18, 2015, granting in part and denying in part Petitioners’ request for a determination from the Washington Utilities and Transportation Commission (“Commission”) that Puget Sound Energy (“PSE”)<sup>1</sup> is obligated to fund the replacement of electric facilities on a deteriorated 40-year-old underground cable (“Maloney Ridge Line”).<sup>2</sup> Although the Initial Order found that PSE must replace the Maloney Ridge Line, the Initial Order erred in concluding that Petitioners must pay all construction costs of the line in excess of \$335,000. The Commission should reverse this aspect of the Initial Order and find that the replacement costs should be recovered through electric rates in the same fashion PSE recovers infrastructure replacement costs associated with its retail distribution system from other ratepayers.

## II. BACKGROUND

2. Petitioners initiated this proceeding on June 26, 2014 to address the degradation of service each of them receives from PSE due to the physical deterioration of the Maloney Ridge Line. The Maloney Ridge Line is an 8.5 mile line in the Snoqualmie National Forest by which PSE, the

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<sup>1</sup> For ease of reading, this Petition refers to PSE and its predecessor, collectively, as “PSE.”

<sup>2</sup> The parties requested during the prehearing conference that the Commission convert the declaratory order proceeding to an adjudication.

owner and operator of the line, is obligated to provide safe and reliable service to Petitioners. As customers of PSE, Petitioners have invested millions of dollars in facilities served by the Maloney Ridge Line to provide essential emergency services to Washington residents, including facilities to support emergency communications, law enforcement, and 911 services. Petitioners made these investments relying on the Service Agreements and PSE tariffs which provide that PSE would own, operate, and replace the facilities as necessary, just as it does on other parts of the distribution system.

3. Petitioners seek a determination from the Commission that PSE is obligated to immediately begin permitting, planning, and replacing the Maloney Ridge Line, and to allocate the prudently incurred costs of such replacement in the same way PSE recovers costs for other line replacements when it files its next general rate case. Under the requested ruling, Petitioners would then bear a portion of the capital costs of the replacement line as PSE ratepayers under Schedule 24, just as they pay the costs of parts of the PSE distribution system used to serve other retail customers.
4. On May 27, 2015, the Commission conducted an evidentiary hearing on the testimony filed by Petitioners, PSE, and the Commission's regulatory staff ("Staff").
5. On August 18, 2015, ALJ Kopta filed the Initial Order, granting Petitioners' petition in part and denying it in part. Petitioners seek administrative review of the Initial Order. As discussed in more detail below, the Initial Order errs by: (a) concluding that the Maloney Ridge Line is not a part of PSE's distribution system; (b) determining that PSE's tariffs do not obligate PSE to incur the costs of replacing the line as a matter of law; and (c) in applying a fact-specific analysis to this matter.

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### III. ARGUMENT

#### A. The Initial Order Erred in Concluding That the Maloney Ridge Line Is Not a Part of PSE's Distribution System.

##### 1. There Is No Substantial Evidence in the Record to Support the Conclusion That the Maloney Ridge Line Is Not a Part of PSE's Distribution System.

6. The Commission erred by concluding that the Maloney Ridge Line facilities are outside of PSE's distribution system. In doing so, the Commission assigned cost responsibility for replacement of the Maloney Ridge Line to Petitioners, which is different from how replacements are treated on other parts of PSE's system. PSE Witness Lynn F. Logen described how maintenance and replacement of facilities are handled during the hearing:

Q. I'm sorry, maybe I misunderstood you. So ignoring this case, in general, if you have to replace a distribution line that's been in service, that serves customers, is replacement of that line governed by your line extension policy?

A. Yes. To some extent it is, yes.

Q. "To some extent it is." What does that mean?

A. The timing and whether it is replaced or there is some other action taken, it is not dictated in the tariff. The Schedule 85 simply says we will maintain lines that are installed under Schedule 85.

Q. So if you've got a group of residential customers that have been served for 25 years and the distribution lines need to be replaced, that's going to be covered under your line extension policy, or is it that done just as a matter of replacing infrastructure, which you do as a matter of course under a capital improvement plan?

A. **There's the general obligation under our line extension policy**, but the timing and everything else of those replacements and whether or not they are replaced is decided by our engineering group, which tracks outages, frequency and duration of outages, and evaluates all distribution circuits on the system.

**Q. So your line extension policy applies to the whole system at all times?**

**A. Yes, except when there is a special agreement.**

Q. Okay. So is replacement of the Maloney Ridge line governed by Schedule 85?

A. Its governed by the special agreement.<sup>3</sup>

7. It is undisputed that the Maloney Ridge Line was originally built as a line extension.<sup>4</sup> Line extensions become part of the distribution system, and replacement of those facilities is treated as an investment in the distribution system, the costs for which are collected in generally applicable rates and not allocated to specific customers served by those facilities, unless an agreement with the customer dictates otherwise. That is why PSE argues that the Service Agreements—and not Schedule 85—controls. In addition to the above-referenced testimony of Mr. Logen, this concept was further explained by Staff Witness David Nightingale under questioning by ALJ Kopta:

Q. Is it your understanding that in [PSE]'s system there is a distinction between its general distribution systems and any line extension customers?

A. **In general, no.** Most line extensions are done within the distribution system, if there's a distribution system, if there's a distribution extension required to get there.

Q. And in this case?

A. **In this case it's different because there's a contract in place** that covers historically the installation and now the ongoing maintenance and operation of that line. That's outside of the normal distribution system.

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<sup>3</sup> Logen, TR. 46:1-47:5 (emphasis added).

<sup>4</sup> See Logen, Exh. LFL-4 at 1; see also Logen, Exh. LFL-13 at 1.

Q. So the company's approach in terms of replacing facilities within the distribution system is different than replacing facilities that are outside that distribution system?

A. Correct.

Q. Okay. Thank you.<sup>5</sup>

8. Here, Commission Staff explains that line extensions—once built—become part of the distribution system, but then argues that “because there’s a contract in place that covers historically the installation and now the ongoing maintenance and operation of that line”—that the Maloney Ridge Line is “outside the normal distribution system.”<sup>6</sup> This statement and conclusion are unsupported by any other evidence in the record and draw a distinction that is not legally or factually supported. Even though Staff and PSE reach the wrong conclusion, the import of that testimony is that a line extension is part of the distribution system *unless* a contract makes it otherwise.
9. Staff and PSE argue that having a “contract in place” whereby Petitioners pay “ongoing maintenance and operation of the line”<sup>7</sup> justifies assigning the replacement costs to Petitioners and treating Petitioners different from other customers, in violation of RCW 80.28.100. Not only is their conclusion not reasonable, but the plain and unambiguous language in the Service Agreements in no way provides that the line is not part of the distribution system.
10. PSE is able to enter into special contracts with its customers pursuant to WAC 480-80-143. Special contracts by their nature “state charges or conditions that do not conform to the

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<sup>5</sup> Nightingale, TR. 95:18-96:10 (emphasis added).

<sup>6</sup> *See id.*

<sup>7</sup> *See id.*



company's existing tariffs.”<sup>8</sup> *In other words, the company's tariffs define the relationship between the company and customer, unless a contract alters that relationship.* That is exactly the case here. The Service Agreements merely assign the ongoing maintenance and operation expense to Petitioners, which does “not conform to the company's existing tariffs.”<sup>9</sup> But to make the logical leap that the line is therefore “outside the distribution system” is without merit, and no credible evidence in the record supports that conclusion. Every special contract customer by definition has an arrangement that is different from customers served under standard tariff rates. This does not mean that the facilities used to serve special contract customers are not part of the distribution system. The different treatment of special contract customers must be grounded in the express language of the contract that modifies the standard tariff provisions.

11. The Initial Order errs by carrying PSE's and Staff's conclusions forward and making the following conclusion:

At no time did PSE formally or informally incorporate the line into the system it uses to provide service to its larger customer base. The line has always been a separate facility dedicated to Petitioners, not a part of PSE's distribution system.<sup>10</sup>

12. The error in this statement is that it presumes a line extension must be “incorporated” because it is not already part of the system. Not only is a line extension inherently already incorporated into a system (because it is an extension of that system), the record contains no evidence of a process whereby the company could or would “incorporate” a line that was somehow not already part of the system, whether formally or informally. As explained below, when PSE builds a line

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<sup>8</sup> WAC 480-80-143(1)(a).

<sup>9</sup> *See id.*

<sup>10</sup> Initial Order ¶ 28.

extension, it extends the distribution system to provide service to the customer. There is no process for formal or informal incorporation of a distribution line—it becomes part of the system once it is built and energized. If PSE wanted to exclude the Maloney Ridge Line from its distribution system, it needed to have expressly done so through the Service Agreements; otherwise, the standard tariff provisions apply. But no term or condition in the Service Agreements indicates or suggests that the Maloney Ridge Line is not part of PSE’s distribution system—only that PSE determined that Petitioners needed to pay operations and maintenance expenses in addition to the standard tariff rates.

13. PSE serves Petitioners and other customers on the line through its regulated utility operations. These are core customers that pay Schedule 24 rates, and, only because of the Service Agreements, operations and maintenance expenses. To suggest that service to these customers is outside of PSE’s distribution system also suggests that this is an unregulated service. That is simply not the case here. As explained more fully below, WAC 480-100-033 and Schedule 85 presume that a line extension will become part of the utility’s distribution system, and if the Service Agreements do not expressly alter that presumption, then the line extension becomes part of the distribution system.
14. A “line extension” by its very nature is an addition to an existing distribution system. WAC 480-100-033 provides, in its entirety: “Each electric utility must file, as a part of its tariff, a distribution line extension rule setting forth the conditions under which it will *extend its facilities*”

to make service available to an applicant.<sup>11</sup> A line extension, therefore, is an extension of the utility’s distribution system. A line extension is not some stand-alone service line that is distinct from the rest of the distribution system.

15. The Maloney Ridge Line was built as a line extension—which extended PSE’s facilities—and makes it part of PSE’s distribution system. Moreover, the express terms of the GTN Agreement leave no doubt that the Maloney Ridge Line would become part of PSE’s distribution system. As previously noted, PSE’s predecessor originally constructed the Maloney Ridge Line pursuant to the GTN Agreement. The GTN Agreement provides that PSE was “willing to *extend*” service to GTN.<sup>12</sup> In doing so, PSE agreed to:

furnish and install a single phase primary electrical distribution system . . . from [PSE’s] Existing Facilities (presently terminating at Pole No. 15, approximately seven miles from the Microwave Station) along Foss River Road to Maloney Lookout Road and along Maloney Lookout Road to a transformer located at the Microwave Station.<sup>13</sup>

As provided in that language of the agreement, PSE’s existing distribution system was described as “*presently* terminating” at a certain point.<sup>14</sup> As a result of the GTN Agreement, that system would be added to when PSE furnished the additional seven miles of line, after which the distribution system would terminate at a different point—the microwave station at the end of the new line.

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<sup>11</sup> (Emphasis added.) The Commission has determined that PSE’s Schedule 85 implements (is required by) this rule. *See Mangat v. Puget Sound Energy, Inc.*, Docket UE-120522, Order 01, 2012 WL 2061937, at \*1 (June 5, 2012).

<sup>12</sup> Logen, Exh. LFL-3 at 1 (Recital C) (emphasis added).

<sup>13</sup> *Id.* at 1-2 (paragraph 1).

<sup>14</sup> *See id.*

16. No other language in the GTN Agreement even hints to the possibility that the new line would not be part of PSE's distribution system. To the contrary, other provisions reinforce the idea that the line would be part of PSE's system. For example, the GTN Agreement provides that the "Distribution System shall be and remain the sole and exclusive property of [PSE]."<sup>15</sup> Similarly, the GTN Agreement provides that maintenance of the line would be done "only by [PSE] or a contractor selected by it...."<sup>16</sup> Although PSE used the GTN Agreement to have GTN pay for the construction and maintenance of the line, those provisions address only the mechanism by which PSE would achieve cost recovery, and they do not offer any basis (express or implied) to conclude that the Maloney Ridge Line would not be part of the distribution system.
17. The GTN Agreement also "reserves the right [for PSE] to serve customers in addition to [GTN] from the Distribution System."<sup>17</sup> That reserved right required PSE to refund a portion of the line's construction costs to GTN through a contribution from a new customer if that customer connected to the line within the first five years. However, PSE was allowed to add one customer (the U.S. Forest Service) at any time, and to add other customers after the first five years, without any refund to GTN. The only way it makes sense for PSE to be able to serve new customers from the Maloney Ridge Line without charging those customers any contribution for construction is if the line was part of PSE's distribution system and available for providing service. There is no evidence in the record that PSE has a special contract with the Forest Service that, using the logic of Staff and the Initial Order, would make the line separate from the "base" distribution system.

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<sup>15</sup> *Id.* at 5 (paragraph 9).

<sup>16</sup> *Id.* at 3 (paragraph 3).

<sup>17</sup> *Id.* at 4 (paragraph 6).

18. Nothing in the language of the Service Agreements undermines the fact that the Maloney Ridge Line became part of the distribution system just like any other line extension. To the contrary, the stated purpose of the Service Agreements is to “establish the terms and conditions under which additional customers will be connected to the System.”<sup>18</sup> The Service Agreements define the “System” as “a single phase primary voltage electric distribution system” and contain no express language to indicate that the system to which the new customers will be connecting is separate from PSE’s distribution system.<sup>19</sup> And that is precisely what happened. New customers signed up for service—based on the terms and conditions outlined in the special contract (the Service Agreements). Those Service Agreements contain all of the indicia of ownership and control that one would expect PSE to exercise over its “base” system. For example, just as the GTN Agreement did, the Service Agreements provide that the system is “the sole and exclusive property of [PSE],” that the utility is responsible for maintenance of the system, and that the utility can continue to add new customers if it wanted.<sup>20</sup> Further, the Service Agreements adopt the general rules and standards PSE applies to its system through Schedule 80. It is also telling that the Service Agreements do not attempt to collect any contributions from new customers for the costs incurred for originally constructing the line. Nor do the Service Agreements attempt to assign or transfer any obligations of the original customer (GTN) to the new customers. This is because PSE used the line as it does any other part of its distribution system.

19. While the Maloney Ridge Line is in a remote area of PSE’s service territory, there are many other PSE customers and communities that also are located in remote areas, and these customers

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<sup>18</sup> Logen, Exh. LFL-4 at 1 (Recital E).

<sup>19</sup> *Id.* (Recital B).

<sup>20</sup> *See e.g., id.* at 1 (paragraphs 2-3), 3 (paragraph 7).

are served by and are part of PSE's distribution system.<sup>21</sup> PSE concedes, as it must, that there is no price differential for the distribution services provided to customers in urban or non-urban parts of PSE's service territory.<sup>22</sup> The fact that Petitioners are in a remote area does not justify treating them differently from other customers served in remote areas—*unless of course PSE's tariffs are expressly modified by contract*. As described above, the Service Agreements modify the PSE tariffs by requiring Petitioners to pay operations and maintenance expenses, but nothing in the Service Agreement justifies changing PSE tariffs to require Petitioners to pay for replacement costs or to treat the Maloney Ridge Line as if it is outside of PSE's distribution system.

**2. Petitioners Had No Notice That They Were Taking Service From Anything Other Than PSE's Distribution System.**

20. The Service Agreements are stand-alone documents *that expressly nullify the earlier GTN Agreement*. The record reveals that Petitioners, as new customers signing the Service Agreements, had no indication or notice, express or implied, that they somehow would be buying into their own system or otherwise taking service from anything other than PSE's distribution system. There was no notice to these customers that they would be treated differently than other customers, except for the differences expressly stated in the Service Agreement. While Petitioners agreed to pay certain costs for use of the line that are beyond what is contained in the tariffs, those payments do not transform the Maloney Ridge Line into a system that is separate from PSE's distribution system. This is true especially in light of the fact that Petitioners agreed

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<sup>21</sup> See Boyer, Exh. JAB-4 at 1.

<sup>22</sup> *Id.* at 2.

to pay for their electric service through Schedule 24. That schedule is generally applicable to customers across the entire system based on the size of the customer's electric load and makes no distinction between customers taking service from a line they paid for and customers taking service from a line they did not pay for. That Schedule serves customers in both rural and metropolitan areas.

21. As reflected in the record, both PSE and Staff assert that the sole basis for deeming the Maloney Ridge Line to be separate from the "base" system is the existence of the Service Agreements. Specifically, the following question and answer were presented during the hearing in these proceedings:

Q. All right. So is it fair to say that the basis of your conclusion that it is not part of your system is that there is a service agreement and that this was constructed by—through the line extension policy instead of something else?

A. Yes.<sup>23</sup>

22. A Staff witness provided similar testimony:

Q. Is it your understanding that in [PSE]'s system there is a distinction between its general distribution system and any line extension customers?

A. In general, no. Most line extensions are done within the distribution system, if there's a distribution extension required to get there.

Q. And in this case?

A. In this case it's different because there's a contract in place that covers historically the installation and now the ongoing

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<sup>23</sup> Barnard, TR. 62:14-19.

maintenance and operation of that line. That's outside the normal distribution system.<sup>24</sup>

23. The responses by PSE and Staff witnesses are nonsensical and attempt to support their positions by relying on the Service Agreements, which modify only certain aspects of PSE's generally applicable tariffs. Further, Staff and PSE attempt to describe a "base" system that covers a certain geography, with any additions to that system extending outward being considered not part of the distribution system, and any additions to that system extending inward, or "within," being considered part of the base system. PSE's line extension policies make no such distinction. A line constructed under Schedule 85 is a new line, built to serve a new customer, by extending the existing distribution system. While the location of that customer may impact the cost of that line, Schedule 85 contains no language to indicate that the location of the customer will result in the line either being part of the system or some stand-alone line that is not part of the system.
24. Nor does the existence of the Service Agreements create such a distinction. As acknowledged by PSE during the hearing, the primary tariffs governing service to Petitioners are Schedules 80 and 85, and the reason for the Service Agreements is to address "unique circumstances" and to contract around the provisions that would otherwise be the default provisions in the absence of such a contract.<sup>25</sup> If WAC 480-100-033 and Schedule 85 presume that a line extension will become part of the utility's distribution system, and if the Service Agreements do not expressly alter that presumption, then the line extension remains part of the distribution system as presumed.

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<sup>24</sup> Nightingale, TR. 95:18-96:8.

<sup>25</sup> See Logen, TR. 29:10-15.



25. In light of the mandate in WAC 480-100-033 that PSE have a line extension tariff to “extend its facilities,” it is clear that any facilities built under the line extension policy are part of the PSE system. PSE could have drafted either Schedule 85 or the Service Agreements using language that would have shifted the burden to Petitioners to pay directly for replacement costs, or using language to indicate that the Maloney Ridge Line was not part of PSE’s distribution system, but it did not.
26. Petitioners respectfully request that the Commission reconsider its conclusion that the Maloney Ridge facilities are outside of PSE’s distribution system.

**B. The Initial Order Erred in Determining PSE’s Tariff Is Not Dispositive of Whether PSE Must Pay to Replace the Maloney Ridge Line.**

27. As noted in Petitioners’ post-hearing brief, the relationship between PSE and Petitioners is legal in nature and arises from four different sources: (1) Schedule 85 of PSE’s Electric Tariff G, which governs line extensions and service lines; (2) Schedule 80 of PSE’s Electric Tariff G, which establishes general rules and provisions of electric service; (3) the Service Agreements, which establish the terms and conditions under which customers are connected to the Maloney Ridge Line; and (4) Schedule 24, which establishes the rates Petitioners pay for electric services they receive from the line.
28. The Initial Order concluded that the Service Agreements “Petitioners have with PSE do not address which party must pay the costs to replace the line.”<sup>26</sup> PSE argued that the term “repair” in the Service Agreements included “replacement.” The Initial Order correctly rejects that

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<sup>26</sup> Initial Order ¶ 12.

argument, noting that “[r]eplacement, by its nature, is distinct from operating, repairing, or maintaining an existing line,” and that “PSE tariff provisions recognize this distinction and specify facility replacement when the Company intends to include it.”<sup>27</sup> In other words, when PSE intends to include a requirement or concept that it knows how to articulate, it will include that requirement or concept. Based on that analysis, the Initial Order concludes that in the absence of an express requirement for Petitioners to pay to replace the line, the Service Agreements must not include such an obligation.<sup>28</sup>

29. The Initial Order also correctly concluded that because the Service Agreements did not impose an obligation on Petitioners to pay for replacement of the line, “we must look to PSE’s Electric Tariff G for other provisions that specify the circumstances under which the Company must provide electric service to Petitioners, including through replacement of the line.”<sup>29</sup>
30. A filed tariff, like PSE’s Electric Tariff G (which includes Schedule 85), “has the force and effect of law.”<sup>30</sup> Accordingly, similar to the standards and principles used to interpret contracts, “standard principles of statutory construction apply to the interpretation of a tariff.”<sup>31</sup> The Washington Supreme Court recently reaffirmed the principles of statutory construction, stating

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<sup>27</sup> *Id.* ¶ 13.

<sup>28</sup> *See id.*

<sup>29</sup> *Id.* ¶ 14.

<sup>30</sup> *Gen. Tel. Co. of N.W., Inc. v. City of Bothell*, 105 Wash. 2d 579, 585 (1986); *see also* RCW 80.28.050 (tariff schedules filed with the Commission must show “all rates and charges made, established or enforced, or to be charged or enforced, all forms of contract or agreement”).

<sup>31</sup> *Nat’l Union Ins. Co. of Pittsburgh, PA v. Puget Sound Power & Light*, 94 Wash. App. 163, 171 (1999) (internal quotations omitted).

that the starting point is the plain language of the law and that “[d]ifferent statutory language should not be read to mean the same thing.”<sup>32</sup>

31. Despite the requirement to adhere to standard principles of statutory construction when interpreting tariffs, and although the Commission adhered to those principles applicable to contracts when interpreting the Service Agreements, the Initial Order fails to follow the same process in its interpretation of PSE’s tariffs.

32. The language in Paragraph 1.A of Sheet No. 85-k of Schedule 85 states in relevant part:

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.<sup>33</sup>

33. The Initial Order recognizes that, based on this tariff language, PSE has an obligation to replace the line.<sup>34</sup> However, the Initial Order then attempts to draw a distinction between the obligation to replace the line and the obligation to incur the costs of that replacement.<sup>35</sup> That distinction is without basis.

34. The distinction between incurring the obligation and incurring the cost is not supported by the language of the tariff. Schedule 85 contains the following lead-in language: “This Schedule 85 also sets forth the circumstances, terms and conditions under which the Company is *responsible* for the ownership, installation, maintenance, repair or *replacement* of electric distribution

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<sup>32</sup> *Ass’n of Washington Spirits & Wine Distributors v. Washington State Liquor Control Bd.*, 182 Wash. 2d 342, 353 (2005) (“[w]hen the legislature uses different words in the same statute, we presume the legislature intends those words to have different meanings”) (internal quotations omitted).

<sup>33</sup> Logen, Exh. LFL-7 at 15.

<sup>34</sup> See Initial Order ¶¶ 19, 54.

<sup>35</sup> See *id.*

facilities...”<sup>36</sup> Further, Schedule 85, where it intends the customer to be responsible for replacement costs, expressly states that obligation. For example, subsection 1.B.(i) of the Additional Terms of Service provides that the owner of a multi-family residential structure “shall be responsible for . . . all costs for installation, maintenance, repair and replacement” of underground service lines.”<sup>37</sup> ***Thus, the tariff treats the replacement obligation and the cost of that obligation as one and the same, unless it carves out a part of that obligation in order to shift it to a customer.*** No such shift has occurred here, and there is no provision that imposes the cost portion of the replacement obligation on Petitioners.

35. The Initial Order mistakenly concluded that Schedule 85 “does not specify whether PSE or the customer is responsible for the costs to replace electric distribution facilities,” and that “PSE’s tariff thus does not resolve the issue before us.”<sup>38</sup> This conclusion fails to apply the same principles of interpretation the Initial Order applies to the Service Agreements, which is to look to the express terms of the instrument and identify how PSE uses those terms to determine its intent.

36. Here, Schedule 85 includes express language for imposing replacement costs on a customer. Thus, just as the Commission concludes for the Service Agreements, where PSE intends a concept, like imposing replacement costs on a customer, it knows how to articulate that concept. By not identifying Petitioners as being responsible for replacement costs in either the tariff or the Service Agreements, PSE did not intend for Petitioners to be responsible for those costs; otherwise, PSE would have articulated that concept in the same way it did in subsection 1.B of

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<sup>36</sup> Logen Exh. LFL-7 at 4 (emphasis added).

<sup>37</sup> *Id.* at 15.

<sup>38</sup> Initial Order ¶ 23.

the Additional Terms of Service. In the absence of that language, PSE, as the owner, is responsible for replacing the Maloney Ridge Line, and retains the costs associated with that obligation. The Initial Order provides no basis for adhering to that approach when interpreting the contracts, but departing from that approach when interpreting the tariffs. PSE still may recover those costs through electric rates in the same fashion PSE recovers infrastructure replacement costs associated with other ratepayers, but there is no basis in the tariffs to avoid those costs altogether.

37. Petitioners' interpretation of Schedule 85 is supported, rather than contradicted, by the positions of Staff and PSE. Staff and PSE concede (consistent with general rate-making principles) that replacements of facilities in general—including facilities that were line extensions—are recovered in generally applicable rates.<sup>39</sup> In fact, PSE witness Mr. Logen stated under questioning: "There's the general obligation under our line extension policy" to replace a line.<sup>40</sup> Staff and PSE justify treating Petitioners differently by arguing that the Service Agreements change the relationship of the parties. *But if the Initial Order's interpretation of Schedule 85 were correct, there would be no mechanism for the company to incur and recover any costs associated with the repair or replacement of a line extension. That is, if Schedule 85 is "silent" in terms of which party must bear the costs of maintaining, replacing or repairing the line, which the Initial Order concludes it is, then PSE would have to have a contract covering every component of every single line extension in order to determine which party is responsible for those costs—or the Commission would need to decide each case on a fact-*

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<sup>39</sup> See Logen, TR. 47:1-25, 48:18-49:17.

<sup>40</sup> *Id.* 46:19-24.

*specific basis.* This conclusion is contrary to Mr. Logen’s testimony and how PSE operates in practice, which is to take on the full costs of the line replacement unless it has affirmatively shifted that obligation to the customer.

38. Schedule 85 is clear that in certain circumstances the customer must pay directly for such replacement costs. PSE knows how to directly assign those costs where appropriate. Where Schedule 85 is silent on those costs, PSE must contract with the customer to bear those costs. Otherwise it is obligated to replace the facilities and recover the costs in generally applicable rates. As the Initial Order correctly concludes, the Service Agreements do not shift that obligation to Petitioners.
39. Because the Initial Order errs by concluding that the tariffs do not address this issue as a matter of law, there is no reason for the Initial Order to resort to the “fact-specific analysis” that it then uses to impose the replacement costs on Petitioners.

#### **IV. CONCLUSION**

40. Petitioners respectfully request that the Commission review and overturn the Initial Order and find that: (a) the Maloney Ridge Line is part of PSE’s distribution system; (b) Schedule 85 does address the cost responsibility of replacement of the line, and PSE is responsible for such costs; and (c) there is no reason to apply a fact-specific analysis to this matter because it may be resolved as a matter of law.

DATED in Portland, Oregon, this 8<sup>th</sup> day of September, 2015.

Respectfully submitted,

s/ Chad M. Stokes

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day caused to be served the foregoing document upon all parties of record (listed below) in this proceeding by mailing a copy properly addressed with first class postage prepaid.

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