

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

PSE'S STATEMENT OF FACT AND
LAW

I. INTRODUCTION

1. 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 ("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.
2. 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 issues raised by the Petition. Pursuant to the Notice, PSE hereby submits the following Statement of Fact and Law.

II. BACKGROUND FACTS

3. 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. *See* paragraph 2 of the Declaration of Jason Sanders (“Sanders Decl.”), filed herewith. 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. *Id.*
4. 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. *See* Sanders Decl. at ¶3. “Maintenance” is defined to include, “the furnishing of all necessary manpower, materials, and equipment to keep the Distribution System in operating condition.” *Id.* 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. *Id.*
5. Through subsequent service agreements (“Service Agreements”), additional entities were connected to the Maloney Ridge line. *See* Sanders Decl. at ¶4. These agreements are listed below and are attached as Attachment A to Sanders Decl.

Date	Parties
September 20, 1994	PSE and GTE
December 12, 1994	PSE and Burlington Northern Railroad
March 29, 1995	PSE and King County
June 6, 1995	PSE and Maloney Ridge Users Association

6. 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. *See* Att. A to Sanders Decl. and Sanders Decl. at ¶5. 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.” *Id.*
7. PSE currently serves a total of four entities on the Maloney Ridge line: 1) BNSF, 2) King County, 3) Frontier, and 4) the Maloney Ridge Users Association (collectively, “Maloney Ridge users”). *See* Sanders Decl. at ¶6. PSE’s Maloney Ridge line serves no other customer. *Id.* Paragraph 7 of each Service Agreement states that additional users may become a party to each Service Agreement by providing PSE with a notarized letter indicating its desire to do so. *Id.* BPA, Verizon, and AT&T have not indicated a desire to become a party to any Service Agreement. *Id.* Contrary to the Petition, BPA, Verizon, and AT&T are not retail tariff customers served by the Maloney Ridge line. *Id.* PSE does not have any customer service obligation or contractual relationship with BPA, Verizon or

AT&T with respect to the Maloney Ridge line. *Id.* Therefore, BPA, Verizon, and AT&T do not have standing to request a declaratory order from the Commission.

8. Under the Service Agreements, the Maloney Ridge users agreed to pay, and are currently responsible for, all repair and maintenance costs based on the economic feasibility provisions of Schedule 85 to PSE's Tariff G. *Id.* at ¶7. 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. *Id.* Similarly, it is economically unfeasible for PSE to construct a new line at this time. *Id.* As stated above, if GTE had not agreed to pay for construction of the line, it would have been economically unfeasible for PSE to do so and the line would not have been built. *Id.* It is also economically unfeasible for PSE to entirely construct a replacement line at this time. *Id.* 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". PSE's Electric Tariff G, Schedule 80-d(9).

9. Over the years, the Maloney Ridge line has deteriorated. *Id.* at ¶8. Its reliability has decreased while costs for repairs have increased. *Id.* The Maloney Ridge line's remote location and difficult weather in the area contribute to its high costs of maintenance and repair. *Id.* Repair costs for 2012 and 2013 were approximately \$200,000 and \$231,000, respectively. *Id.*

10. PSE has continued to repair and maintain the line at the Maloney Ridge users' cost in order to provide safe and reliable service, but now continuing the pattern of piecemeal repairs and temporary maintenance is not preferred. *Id.* at ¶9. Petitioners considered various options, including more permanent repair of the line *i.e.*, replacement of the line. *Id.* Petitioners want the line to continue in operating condition and want the line replaced but do

not want to pay for it. *Id.* 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. *Id.* Full replacement in its entirety is not the only option available for the Maloney Ridge line. *Id.* PSE provided at least five repair and replacement options to the Maloney Ridge users. *Id.* For example, in March 2013, PSE recommended replacement of the four sections of line that were experiencing the highest number of outages. *Id.* PSE estimated that such option would cost \$3,300,000. The Maloney Ridge users rejected PSE's recommendation. *Id.* PSE roughly estimates the costs to replace the entire line at \$8,100,000. *Id.* Attached as Attachment B to Sanders Decl., please find a copy of minutes from the March 2013 Maloney Ridge Electrical Service Next Steps Meeting.

11. PSE and the Petitioners disagree as to who is responsible for costs for the work to keep the Maloney Ridge line operating. 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 would be performed as part of a new agreement for a new line under Schedule 85. In contrast, Petitioners believe that all PSE customers should be responsible for the costs of a new line.

12. PSE agrees that this issue is appropriate for resolution through a declaratory order, but PSE requests that the Commission issue an order declaring that the Petitioners are responsible for costs to replace the Maloney Ridge line.

III. DISCUSSION OF FACTS AND LAW

A. The Service Agreement Governs Replacement of the Maloney Ridge Line

13. Under the Service Agreements, PSE is responsible for repairing and maintaining the line, "including the furnishing of all necessary labor, materials, and equipment to keep the

System in good operating condition.” The costs for all such operation, maintenance and repair are shared among the four Maloney Ridge users: The Service Agreements provide, “All operating costs in connection with the System will be shared among the Customers” and “Operating costs shall include any repair and maintenance costs incurred by Puget...” Note that the definition of the term “Operating costs” is not necessarily limited to repair and maintenance costs, but it merely *includes* repair and maintenance costs and also includes costs related to securing or maintaining operating rights. While the Service Agreements make no specific reference to “replacement”, it is a reasonable interpretation of the Service Agreements that replacement costs are included in “operating costs”, if replacement is necessary to maintain operation of the line.

14. Given the broad obligation of PSE to “keep the system in good operating condition” and the customers’ obligation to pay for all costs incurred in doing such, PSE understands the Service Agreement to require the Maloney Ridge users to pay for costs to replace the Line if necessary. PSE’s interpretation of the Service Agreement conforms with the parties’ practices and performance during the terms of the Agreements. At all times, the Maloney Ridge users have paid all costs to keep the line in operating condition. Now, when the Petitioners request replacement to keep the line in operating condition, they claim that it is no longer their responsibility to cover such costs.

15. Because there is no Washington case law or Commission order directly on point, one must look to case law from other jurisdictions for guidance on this issue. In *Parris Props., LLC v. Nichols*, the Georgia Court of Appeals decided a similar case that is directly on point. *Parris Props., LLC v. Nichols*, 305 Ga. App. 734, 700 S.E.2d 848 (2010). There, with respect to an easement that permitted “repair and maintenance” of a sewer pipeline, a jury found that the easement unambiguously authorized replacement of the pipeline with a larger

pipeline when there was evidence that the pipeline was in a state of disrepair and needed to be replaced to function properly. *See Parris Props., LLC v. Nichols*, 305 Ga. App. 734, 737-39, 700 S.E.2d 848 (2010). The jury determined that the sewer pipeline would not constitute a substantial change of the scope of the easement. On appeal, the landowner argued that the easement language authorizing “construction,” “repair,” and “maintenance” of a sewer pipeline did not include replacing the existing pipe. The court applied rules of contract construction and concluded that “the easement unambiguously authorize[d] the removal and replacement of a malfunctioning or worn-out sewer pipeline.” *Id.* The right to remove and replace the pipe “[fell] within the ambit of ‘repair’ and ‘maintenance.’” The court reasoned that the common definition of repair was very broad, and included “to make good by replacing a structure in poor condition.” *Id.* (quotation omitted). The court also relied on the following definitions of repair and maintenance:

“repair” means “to restore by replacing a part or putting together what is torn or broken,” “to restore to a sound or healthy state,” or “to make good” or “remedy”. Furthermore, to “maintain” equipment means to “preserve [it] from failure or decline,” and a sewer cannot be properly maintained if the pipe cannot be replaced when it no longer functions properly or wears out.

Id. at 738 (internal citations omitted).

16. Because there was “some evidence that the existing sewer pipe was not functioning properly and was worn out, and because the terms of the easement permitted replacement of a pipe in that condition,” the court affirmed the trial court.

17. The same analysis should be applied here. Here, the Service Agreements authorize “repair” and “maintenance” and instruct the Maloney Ridge users to pay costs for both. Here, as in *Parris Props*, the line is worn out, not operating in good order, and seemingly would make sense to be replaced. The Maloney Ridge users agreed to pay the costs to keep

the line in good operating condition, and they now request that PSE replace the line in order to maintain their service. If the Line must be replaced in order to operate as the Service Agreements anticipate and the parties intend, then the Maloney Ridge users should be responsible for such costs to keep the line in operation.

18. PSE's position is supported by the intent of the Service Agreements and applicable case law, but also by PSE's tariffs. If the Commission finds that the Service Agreements do not govern costs related to replacement, then construction of a new line is governed by Schedule 85, which calls for the applicant to pay for costs of installing a new distribution line.

B. If the Service Agreements Do Not Direct Replacement Costs to the Maloney Ridge users, Then Schedule 85 Governs

19. Schedule 85 of PSE's Electric Tariff G governs the installation of new distribution and service lines. It calls for the applicant to pay costs related to the construction of new primary or secondary overhead or underground lines. Here, the Petitioners request a new primary underground distribution line; therefore, if the Service Agreements do not apply to construction of a new Maloney Ridge line, then Petitioners are required to pay for the new line pursuant to Schedule 85.

20. The Petitioners claim that they should not pay for a new line pursuant to Schedule 85 because there are "multiple customers" on the Maloney Ridge line, not a single customer requesting a line extension. To be clear, there are only four customers on the Maloney Ridge line: BNSF, King County, Frontier, and the Maloney Ridge Users Association. Additionally, nothing in Schedule 85 requires the applicant to be a "single customer". On the contrary, Schedule 85 specifically contemplates a wide range of applicants. "Applicant" is defined as "a person, partnership, firm, corporation, municipality, cooperative organization,

governmental agency, etc.” Just as the Maloney Ridge Users Association likely includes multiple members that pay a portion of the maintenance costs under the Service Agreement, an applicant under Schedule 85 may also include multiple entities. In this case, given the remote access and the single request for line replacement, it is entirely reasonable that the four Maloney Ridge users apply as one applicant and share costs of construction of the new line.

21. Each of the Service Agreements specifically refers to Schedule 85 to reinforce PSE’s position that the four Maloney Ridge users, rather than all ratepayers, should pay for a new distribution line. The Service Agreements incorporate paragraph 13 of Schedule 85, which at the time 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.

22. The language of both the Service Agreements and Schedule 85 make clear that the four Maloney Ridge users, not all ratepayers, should pay the costs for reconstruction of the line.

23. The Petitioners muddle the meaning of paragraph 1 of each of the Service Agreements to argue that the Service Agreements govern operation of the System and recovery of costs of operation, but then electric service is generally governed by Electric Tariff G thereby somehow applying costs of replacement to the system-wide PSE distribution system. Yet, this is not a correct interpretation of Paragraph 1. Paragraph 1 clearly states that operation and costs of the Maloney Ridge line is governed by the Service Agreement, whereas electrical service shall be governed by the terms and provisions of

Schedule G. This is a clear distinction between the tariffs and the Service Agreements, illustrating that while the electrical service is governed by PSE's tariff, all costs related to the line itself are governed by the Service Agreement and paid for by the Maloney Ridge users. This distinction also underscores the intent of the Maloney Ridge users to cover costs necessary to keep the system in good operating condition. If it is necessary to replace the line in order to keep the system in good operating condition, then the Service Agreement calls for the Maloney Ridge users to cover such costs, and PSE's tariffs allow for such contractual arrangement.

24. The Petitioners next refer to Paragraph 1.A. of Sheet 85-k of Schedule 85 to claim, incorrectly, that PSE must replace the line at cost to all customers. Paragraph 1.A. states,

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 as long as such replacement is not inconsistent with this schedule or a contract governing such facilities.

25. Petitioners' reliance on Paragraph 1.A of Sheet 85-k, however, is completely misplaced. Paragraph 1.A. solely establishes who owns electric distribution facilities installed under Schedule 85. It is completely inapplicable to the issue at hand. First, there is no issue as to ownership of the facilities, nor is there any issue as to who is to conduct any operation, maintenance, repair or replacement. The only issue here is who should pay for such work, and Paragraph 1.A. has nothing to do with payment of any costs for operation, maintenance, repair or replacement. Second, Paragraph 1.A. only applies to facilities installed under Schedule 85, Line Extensions and Service Lines. The Maloney Ridge line was not installed under Schedule 85; it was installed under a separate Service Agreement, which addresses all costs related to the line. Paragraph 1.A does not relieve Petitioners of

their contractual obligation to pay for replacement of the line.

C. Payment of Replacement Expenses by the Users of the Maloney Ridge Line is Not Discriminatory Treatment

26. Petitioners claim that requiring the four Maloney Ridge users to pay for costs to replace the line is discriminatory treatment in violation of RCW 80.28.100. This statute states,

No gas company, electrical company, wastewater company, or water company may, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, wastewater company services, or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

27. Recovery of replacement expenses pursuant to the Service Agreement or Schedule 85 is not discriminatory treatment because PSE is not charging, demanding, collecting or receiving greater or less compensation for any electricity services than any other person or corporation in the same or substantially similar circumstances. The Service Agreements state that electrical service provided by PSE is governed by Puget's Electric Tariff G, and the Maloney Ridge users pay PSE the Commission-approved standard rates for electrical services. Recovery for expenses to replace the line when it is no longer operational falls under the Service Agreements. After forty years of paying costs to keep the line in operation, the Petitioners now disregard their commitment set forth in the Service Agreements and request that such costs be paid for by all PSE customers.

IV. RELIEF REQUESTED

28. For 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 as operating costs pursuant to the Service Agreements.

Alternatively,

a. Schedule 85 of PSE Electric Tariff G applies to installation of a new Maloney Ridge Line, and

b. Costs of installing a new Maloney Ridge line shall be paid by the Petitioners pursuant to Schedule 85.

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