

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the

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

DOCKET UE-141335

COMMISSION STAFF ANSWER TO KING COUNTY, WASHINGTON'S, BNSF RAILWAY'S, FRONTIER COMMUNICATIONS NORTHWEST, INC.'S, VERIZON WIRELESS'S AND NEW CINGULAR WIRELESS PCS, LLC'S PETITION FOR ADMINISTRATIVE REVIEW OF INITIAL ORDER (ORDER 03)

I. INTRODUCTION

1 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) filed for administrative review of the Initial Order (Initial Order or Order 03) filed by Administrative Law Judge Gregory J. Kopta in this docket.

2 The Petitioners argue that Judge Kopta erred by concluding that the exclusive service line used to supply electricity to the Petitioners' facilities on Maloney Ridge was not part of PSE's distribution system.¹ The Petitioners' also maintain that Judge Kopta erred by determining that PSE's Schedule 85 did not apply to the unique facts presented by this case.

¹ The Petitioners claim of error relies in part on Commission's treatment of Special Contracts under WAC 480-80-143. Importantly, nothing in this record shows that PSE or GTE ever presented the agreement or its successor agreements to the Commission for approval. Therefore, there is no evidence showing that the agreements were treated by the parties or the Commission as Special Contracts falling within the rule's ambit.

3 The Petitioners' claims of error are not supported by the facts, and ignore the Maloney Line's origin, long history of cost allocation, and the plain language of PSE's applicable tariffs. The Petitioners' request to overturn Judge Kopta's Initial Order should be denied.

II. ESSENTIAL FACTS

4 The facts in this case are straightforward and compelling. The Maloney Line was constructed in 1971 to serve only one customer - GTE.² It was built by PSE in mountainous terrain near Skykomish, Washington pursuant to an agreement wherein GTE agreed to pay all PSE's costs to construct, maintain and remove the facilities.³ Such an agreement was made necessary because the Maloney Line was not economically feasible to build, and exceeded the limits of PSE's then-existing line extension tariff.⁴ The 1971 agreement was amended and superseded in 1994, wherein GTE and later the Petitioners agreed to pay all costs incurred by PSE to operate, repair and maintain the Maloney Line.⁵ The Petitioners now claim that PSE is obligated to build them a new line, and asks the Commission to foist the line's high costs onto other customers - namely those that take service under PSE's Schedule 24.⁶

5 The Maloney Line's replacement would be an expensive and difficult project to build. PSE estimates the replacement costs to be \$5.3 million dollars. Under the Petitioners' preferred outcome, they would avoid the vast majority of the new line's costs. Staff's un rebutted evidence showed that the Petitioners' forecasted usage of the line would generate

² Logan, Exh. No. LFL-1T at 2: 5-14. *See also*, Logan, Exh, No. LFL-3. Exhibit 3 is a copy of the original 1971 agreement.

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

⁴ *Id.* at 4: 6-9.

⁵ *Id.* at 2: 18-25 and at 3: 6-11.

⁶ Docket UE-141335, *PETITION FOR DECLARATORY ORDER*, at ¶ 53(d) and (e).

less than 5% of the revenue needed to pay for the Maloney Line's costs and return on investment over its projected life.⁷ Informed by Mr. Ball's cost analysis and a fair reading of PSE's applicable tariffs, Staff concluded that the Petitioners alone should pay for replacement of the Maloney Line.

6 In sum, the Initial Order largely supports Staff's advocated position, relying in part on Staff's cost analysis. Staff believes Judge Kopta's decision is reasonable and results in an outcome that is fair to the Petitioners, PSE, and the customers of Schedule 24.

III. PSE's APPLICABLE TARIFFS

A. The Petitioners Challenge to the Initial Order

7 The Petitioners first argue that Judge Kopta erred by finding that the exclusive service line used to supply electricity to the Petitioners' facilities on Maloney Ridge was not part of PSE's distribution system.⁸ Staff's response here does not address Judge Kopta's decision as to the character of the Maloney Line. While the character of the line is material, the dispositive question is whether or not Schedule 85 demands that PSE replace the Maloney Line at its cost. To carry the burden of persuasion on this issue, the Petitioners must demonstrate that the terms and provisions of Schedule 85 both apply to the Maloney Line's unique circumstances and unequivocally require PSE to build a new line for them. On these issues, Judge Kopta's order concluded that the Petitioners failed to carry this burden.

⁷ Ball, Exh. No. JLB-2Cr (Revised June 8, 2015) at 1: 8-11 and at 6: 13-16, citing to Figures 1 and 2 at 7. The Petitioners' forecasted usage would generate \$296,598 in revenue over the life of the project. *See* Ball, Exh. No. JLB-1Tr at 6: 7-8. In fact, the regulated costs associated with the project are forecasted to be \$6,781,319. This amount includes both return on and of the initial construction costs. As a result, nearly \$6.5 million (or 95.6%) of the project's \$6.8 million in costs would be borne by the customers taking service under Schedule 24. *See* Ball, Exh. No. JLB-2Cr (Revised June 8, 2015) at 1: 8-11 and at 6: 13-16, citing Figures 1 and 2 at 7.

⁸ *See, Initial Order*, Order 03 at p. 14 ¶ 47 "Maloney Line is dedicated to serving the Petitioner and is adjunct to, not a part of, PSE's distribution system."

Although Staff's reasoning on these questions may differ from Judge Kopta's, Staff agrees with the result dictated by Order 03, and explains why below.

B. The Petitioners Reliance on Schedule 85 Was Demonstrated by Order 03 to be Misplaced

8 The Petitioners core legal theory turns on their interpretation PSE's Schedule 85. They argue that certain language from subsection 1.A. imposes on PSE the obligation to replace the Maloney Line at no cost to the Petitioners.⁹ At hearing, Staff disagreed with the Petitioners' interpretation of Schedule 85, having concluded that the tariff imposed no such obligation on the Company. In his order but for a different reason, Judge Kopta came to the same conclusion.

9 In its testimony and on brief, Staff explained that Schedule 85 only requires PSE to replace electric distribution facilities when those facilities had been "installed by ... the Company *under* this schedule."¹⁰ As the Maloney Line was not constructed pursuant to PSE's Schedule 85, the Company bears no obligation to replace it.¹¹

10 Although Judge Kopta did not adopt Staff's reasoning as to why Schedule 85 fails to support the Petitioners claims, his analysis of the schedule reached the same conclusion. He reasoned that subsection 1.A. of Schedule 85 assigns no payment responsibility to PSE in the circumstances presented here, and concluded that the tariff's silence on the obligation to pay should not be interpreted to reflect PSE's intent to pay all costs¹²

⁹ "1. A. OWNERSHIP OF FACILITIES: The Company shall own, operate, maintain and repair all electric distribution facilities installed by or for the Company under this schedule, including replacement of such facilities, if necessary so long as such replacement is not inconsistent with this schedule or a contract governing such facilities. Other than as provided in Section 1.B., below, the Company shall not own or shall have no responsibility to operate, maintain, repair or replace any electric distribution facilities that were not installed by or for the Company under this schedule." *See* Gorman, MPG-1T at 13: 26-28 and at 14: 1-7. *See also* Schedule 85, Line Extensions and Service Lines (Continued), Additional Terms of Service, Section 1.A.

¹⁰ Nightingale, Exh. No. DN-4T at 3: 5-7. *See also*, Brief on Behalf of Commission Staff, pp. 16 -17, ¶¶ 40-41.

¹¹ Schedule 85 became effective on June 6, 1991. *See* Logan, Exh. No. LFL-1T at 4: 11-15. The original GTE agreement pre-dated the now-effective Schedule 85 by approximately 20 years.

¹² *Initial Order*, pp. 8-9, ¶ 21.

11 While Judge Kopta's reasoning turns on a separate clause within subsection 1.A., Staff supports his analysis and believes it to be consistent with Staff's interpretation of the tariff. Under either reading, the Petitioners' reliance on Schedule 85 cannot be reconciled with the tariff's clear language.

12 In sum, Judge Kopta's ruling on the application of Schedule 85 to the facts presented is reasonable. The record evidence presented by Staff and PSE on this issue is consistent with the result dictated by Order 03.

C. PSE's Schedule 80 Also Supports the Result Dictated by Order 03

13 Schedule 80 governs the Company's provision of electric service to its customers. Importantly, Section 9 of Schedule 80 does not require PSE to provide service to a customer "if to do so would be economically unfeasible."¹³ The record evidence contains ample and substantial evidence that the cost to construct a new service line for the Petitioners far exceeds the expected revenues generated by the Petitioners' use of the line.¹⁴ As shown by Mr. Ball's economic analysis, the Petitioners' usage and rates are only forecasted to generate \$296,598 in revenue over the 35-year life of the project.¹⁵ Over this same period, the regulated costs associated with the project are forecasted to be \$6,781,319.¹⁶

14 The un rebutted evidence presented by Mr. Ball points to but one conclusion - construction of a new line under the circumstances presented by the Petitioners would not be economically feasible. As this conclusion is clearly demonstrated, the plain language of

¹³ The economic feasibility language expressed in Section 9 of Schedule 80 entitled "Refusal of Service" states, in whole: "The Company shall not be required to provide service if to do so would be economically unfeasible." See, Nightingale, Exh. No. DN-1T at 9: 4-6. See also Logan, Exh. No. LFL-7 at 1, last sentence in paragraph 9 therein.

¹⁴ Initial Order, ¶¶ 32, 49 and 50.

¹⁵ Ball, Exh. No. JLB-1Tr at 6: 7-8. The expected useful life of the project is 35 years, based on PSE's response to Staff's data request No. 009. See footnote 2 therein.

¹⁶ See BR1-Ball Exh. JLB 2Cr-CONFIDENTIAL Updated for DR 039,

Section 9 of Schedule 80 would effectively relieve PSE of any obligation to pay for a new line to serve the Petitioners.

15 Staff also testified to the sound policy reasons supporting the economic feasibility requirement set forth in Schedule 80. In his testimony, Mr. Ball explained that without this test ratepayers could be required to “pay inequitably high rates” caused by another ratepayer whose costs are driven by unique circumstances and are “extraordinarily greater than other ratepayers of the same schedule.”¹⁷ He also opined that PSE should not be required to provide service to a remote customer at a “large additional expense ... [to] other similarly situated customers.”¹⁸ He reasoned that regulation should promote the adoption of sound business practices by the Company and service should only be provided when economically feasible to do so¹⁹

16 To this point, Mr. Ball’s testimony included a calculation of the percentage of costs to be contributed by the Petitioners over the project’s useful life. He concluded that nearly \$6.5 million (or 95.6%) of the project’s expected \$6.8 million in costs would be borne by the remaining customers taking service under Schedule 24.²⁰

17 Mr. Ball analysis highlights why an economic feasibility test such as that expressed in Schedule 80 operates to protect both a company and its ratepayers. His analysis further justifies the result ordered by Judge Kopta.

IV. CONCLUSION

18 The results dictated by Order 03 reflect a reasonable interpretation of PSE’s Schedule 80 and Schedule 85. The record contains ample evidence demonstrating the unique

¹⁷ Ball, Exh. No. JLB-1T at 4: 4-7.

¹⁸ *Id.* at 4: 21-23.

¹⁹ *Id.* at 4: 14-16 and 5: 1-4.


²⁰ Ball, Exh. No. JLB-2Cr (Revised June 8, 2015) at 1: 8-11 and at 6: 13-16, citing to Figures 1 and 2 at 7.

nature and history of the Maloney Line and the high cost of its replacement. The record also demonstrates how the result sought by the Petitioners ignores the impact of its requested relief on the customers of Schedule 24. Staff believes this impact to be both unfair and unreasonable. In the end, Order 03 reaches a result consistent with the advocacy of Staff and PSE. The result reached by Judge Kopta is fair and equitable to all parties and should be upheld by the Commission.

DATED this 18th day of September 2015.

Respectfully submitted,

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