

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

**REPLY BY RIGHT IN SUPPORT
OF 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(5)(a), 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”) submit the following reply by right to the new challenge to Order 03 (“Initial Order”) raised by Puget Sound Energy (“PSE”)¹ in its answer to Petitioners’ Petition for Administrative Review. While the Initial Order erred in concluding that Petitioners must pay all construction costs for the replacement of the Maloney Ridge Line in excess of \$335,000, the Initial Order did not err, as PSE suggests, in refusing to rely on PSE’s economic feasibility argument.

II. BACKGROUND

2. Petitioners have sought 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 determination, 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.
3. On August 18, 2015, Administrative Law Judge Kopta issued the Initial Order, granting Petitioners’ petition in part and denying it in part. On September 8, 2015, Petitioners filed a

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

Petition for Administrative Review, contending that the Initial Order erred 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.

4. On September 18, 2015, PSE filed its answer, both responding to the arguments raised in the Petition for Administrative Review and also asserting a new challenge to the Initial Order. Specifically, PSE asserts that the ALJ erred in refusing to rely on the economic feasibility provision of PSE’s general tariff, Schedule 80.²
5. Under WAC 480-07-825(5)(a), a “party has the right to reply to new challenges to the [initial order] that are raised” by the answering party. In this reply by right, Petitioners respectfully request that the Commission continue to reject PSE’s arguments that the Commission should rely on the economic feasibility provision of Schedule 80.

III. ARGUMENT

A. The Initial Order Correctly Refused to Rely on the Economic Feasibility Provision in Schedule 80.

6. As discussed in the Petition for Administrative Review, Schedule 85 of PSE’s Electric Tariff G, which governs line extensions and service lines, as a matter of law provides that PSE is responsible for the line, including replacement costs. Accordingly, the Initial Order erred by concluding that Schedule 85 is not dispositive and instead resorting to a “fact-specific analysis” with respect to replacement costs. PSE agrees with Petitioners that the Initial Order erred in applying the “fact-

² PSE’s Answer to Petition for Administrative Review (“PSE Answer”) ¶ 16.

specific analysis,” but argues that Schedule 80—and not Schedule 85—is dispositive.³ PSE contends that Schedule 80 allows for refusal of service when a project is economically unfeasible.⁴ PSE argues that the replacement of the Maloney Ridge Line is not economically feasible, and on this basis, PSE is not responsible for replacement costs.

7. Contrary to PSE’s claims, the Initial Order correctly determined that “PSE cannot rely on Schedule 80 alone to support its position that Petitioners must pay to replace the Maloney Ridge Line.”⁵ As noted in the Initial Order, PSE’s “economic unfeasibility” provision in Schedule 80 is inconsistent with Commission rules and the Commission has already determined that the concept of “economic unfeasibility” is ambiguous and too vague to be useful. Furthermore, even if that provision in Schedule 85 were enforceable, it applies only to new customers. It does not apply to Petitioners, who have been taking service from the line for more than 40 years.
8. The Initial Order concluded that inclusion of the economic unfeasibility provision in Schedule 80 predated the Commission’s repeal of 480-100-056 (Refusal of Service), and adoption of the current rule, WAC 480-120-123 (Discontinuance of Service). The Initial Order concludes that in promulgating the current rule, “the Commission expressly declined to include language from the prior rule that permitted a utility to refuse new or additional service if providing that service would be ‘economically unfeasible.’”⁶ In addition, the current rule, WAC 480-100-123, governing the

³ PSE Answer ¶ 12.

⁴ Schedule 80, General Rules and Provisions, Section 9, states in relevant part: “The Company shall not be required to provide service if to do so would be economically unfeasible.” Initial Order ¶ 15.

⁵ Initial Order ¶ 18.

⁶ *Id.* ¶ 16 (citing *In re Adopting and Repealing Rules in Chapter 480-100 WAC Relating to Rules Establishing Requirements for Electric Companies*, Docket UE-990473, General Order No. R-495 ¶ 26 (Dec. 3, 2001)).

discontinuance of service, does not authorize a company to terminate service on the basis of economic unfeasibility.⁷

9. PSE’s purported refusal of service based on economic unfeasibility in Schedule 80 exceeds its authority authorized by Washington law.⁸ Thus, the Initial Order was correct to criticize the continuing vitality of this provision “in light of its inconsistency with applicable rules.”⁹ In its answer, PSE failed to address—let alone reconcile—this inconsistency.
10. The Initial Order also concluded that the concept of “economic unfeasibility” is overly broad and ambiguous, and that the Commission eliminated the term from the refusal of service rule, at least in part, because the language was “too general and vague to be useful.”¹⁰ The Initial Order concludes that because the concept is unlimited, “economic feasibility” could be used to deny or terminate service to any individual customer if the revenues PSE received did not exceed calculations of the costs PSE incurred to serve that particular customer.¹¹ The Initial Order explained that such a result would be fundamentally inconsistent with the regulatory principle of averaging costs and demand among customer classes when establishing rates that apply to that class.¹²
11. In its answer, PSE summarily states—without any citation to specific provisions in the record—that “[t]he record supports a finding that the Maloney Ridge Line is economically unfeasible.”¹³ As Petitioners explained in their Post Hearing brief, the record clearly supports a finding that the

⁷ *Id.*

⁸ *See* WAC 480-100-123.

⁹ *Id.* ¶ 16.

¹⁰ *Id.* ¶ 17.

¹¹ *Id.*

¹² *Id.*

¹³ PSE Answer ¶ 16.

replacement of the Maloney Ridge Line is in fact economically feasible. At a minimum, the fact that different parties arrive at a different conclusion demonstrates the vague and ambiguous nature of the economic feasibility standard.

12. Even if the “economic feasibility” provision in Schedule 80 were enforceable, it pertains to only *new* customers seeking to connect to PSE or applicants seeking additional service. This provision does not apply to existing customers, like Petitioners, who have been receiving service on the line for decades. Allowing PSE to consider the economic feasibility section of a line replacement for *current* customers would treat Petitioners differently from other current PSE customers, in violation of Washington law.¹⁴

13. Under cross examination, Staff witness Nightingale addressed the tariff provisions and stated that he did not believe the economic feasibility test applied to existing customers—only to new customers:

Q. Can Puget refuse service to current customers if it is not economically feasible?

A. The economic feasibility I believe applies only to new customers, but I don’t know for sure about that.¹⁵

14. The repeal of WAC 480-100-056 and adoption of WAC 480-100-123 also indicate that the economic feasibility provision applied only to new and additional service:

The Commission observes that existing language in the rule permits a utility to *refuse new or additional service* if “such service will adversely affect service being rendered to other customers” or if to provide service would be “economically unfeasible.” These terms are too general and vague to be useful. Commission resolution of

¹⁴ See RCW 80.28.100.

¹⁵ Nightingale, TR. 83:4-9.

obligation to serve issues is likely to be based on fact-specific analysis.

...The Commission has removed the original subsection (3) language that permitted a utility to *refuse new or additional service* if “such service will adversely affect service being rendered to other customers” or if to provide service would be “economically unfeasible.”¹⁶

15. Because Petitioners are existing customers who do not seek additional service from PSE (only replacement of the same service), the Initial Order was correct in refusing to rely on PSE’s “economy unfeasibility” provision in Schedule 80.

IV. CONCLUSION

16. Petitioners respectfully request that the Commission reject PSE’s new challenge to the Initial Order and find that: (a) the Maloney Ridge Line is part of PSE’s distribution system; (b) Schedule 85 imposes the cost responsibility of replacement of the line on PSE; (c) there is no reason to apply a fact-specific analysis to this matter because it may be resolved as a matter of law; and (4) the Initial Order correctly refused to apply the economic feasibility provision of PSE’s Schedule 80.

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DATED in Portland, Oregon, this 25th day of September, 2015.

¹⁶ *In re Adopting and Repealing Rules in Chapter 480-100 WAC Relating to Rules Establishing Requirements for Electric Companies*, Docket UE-990473, General Order No. R-495 ¶¶ 25-26 (Dec. 3, 2001).

Respectfully submitted,

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CERTIFICATE OF SERVICE

UE-141335

I HEREBY CERTIFY that I have this day served the foregoing Petitioners' Post-Hearing Brief 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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