

MEMORANDUM

November 14, 2015

TO: Chairman Danner
Commissioner Jones
Commissioner Rendahl
Steve King
Mark Vasconi
Greg Kopta (w/attachments)
Sally Brown (w/attachments)
Tom Schooley
Deborah Reynolds

FROM: Lisa Wyse, Records Center



SUBJECT: King County and BNSF Railway Company v. Washington Utilities
and Transportation Commission, a Washington state agency
(UE-141335)
Petition for Judicial Review of Agency Action
Thurston County Case No. 15-2-02191-34

A Petition for Judicial Review of Agency Action, has been filed in Thurston County Superior Court on November 12, 2015, by Kari Vander Stoep, K&L Gates LLP, representing Petitioner listed above. The petition was received by the Commission on November 12, 2015.

Please contact the Records Center if you would like copies of the attachments.

1 **FILED**

2 **NOV 12 2015**

3 Superior Court
4 Linda Myhre E. How
Thurston County Clerk

5
6
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

8 IN AND FOR THE COUNTY OF THURSTON

9 KING COUNTY and BNSF RAILWAY
10 COMPANY,

11 Petitioners,

12 v.

13 WASHINGTON UTILITIES AND
14 TRANSPORTATION COMMISSION, a
Washington state agency,

15 Respondent.

No. **15-2-02191-34**

SUMMONS (20 days)

16 TO THE RESPONDENT WASHINGTON UTILITIES AND TRANSPORTATION
17 COMMISSION:

18 A lawsuit has been started against you in the above-entitled court by King County
19 and BNSF Railway Company ("Petitioners"). Petitioners' claim is stated in the Petition
20 for Judicial Review of Agency Action (the "Petition"), a copy of which is served upon
21 you with this Summons.

22 In order to defend against this lawsuit, you must respond to the Petition by stating
23 your defense in writing, and serve a copy upon the undersigned attorney for the Petitioners
24 within twenty (20) days after the service of this summons, excluding the day of service, or
25

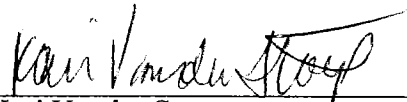
1 a default judgment may be entered against you without notice. A default judgment is one
2 where Petitioners are entitled to what they ask for because you have not responded. If you
3 serve a notice of appearance on the undersigned attorney, you are entitled to notice before
4 a default judgment may be entered.

5
6 If you wish to seek the advice of an attorney in this matter, you should do so
7 promptly so that your written response, if any, may be served on time.

8 **This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules**
9 **of the State of Washington.**

10
11 DATED this 12th day of November, 2015.

12
13 K&L GATES LLP

14 By 
15 Kari Vander Stoep, WSBA # 35923
16 Elizabeth Thomas, WSBA # 11544
17 Alanna Peterson, WSBA # 46502
18 Attorneys for Petitioners
19 King County and BNSF Railway
20 Company

FILED

NOV 12 2015

Superior Court
Linda Myhre Ertow
Thurston County Clerk

CASE TYPE 2

Thurston COUNTY SUPERIOR COURT

CASE INFORMATION COVER SHEET

Case Number 15-2-02191-34 Case Title King County and BNSF v. WUTC
Attorney Name Kari Vander Stoep Bar Membership Number WSBA # 35923

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting needed judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

APPEAL/REVIEW

- Administrative Law Review (ALR 2)
- Appeal of a Department of Licensing Revocation (DOL 2)
- Civil, Non-Traffic (LCA 2)
- Civil, Traffic (LCI 2)

CONTRACT/COMMERCIAL

- Breach of Contract (COM 2)
- Commercial Contract (COM 2)
- Commercial Non-Contract (COL 2)
- Third Party Collection (COL 2)

PROTECTION ORDER

- Civil Harassment (HAR 2)
- Domestic Violence (DVP 2)
- Foreign Protection Order (FPO 2)
- Sexual Assault Protection (SXP 2)
- Stalking (STK 2)
- Vulnerable Adult Protection (VAP 2)

JUDGMENT

- Abstract Only (ABJ 2)
- Foreign Judgment (FJU 2)
- Judgment, Another County (ABJ 2)
- Judgment, Another State (FJU 2)
- Tax Warrant (TAX 2)
- Transcript of Judgment (TRJ 2)

OTHER COMPLAINT/PETITION

- Action to Compel/Confirm Private Binding Arbitration (MSC 2)
- Change of Name (CHN 2)
- Deposit of Surplus Funds (MSC 2)
- Emancipation of Minor (EOM 2)
- Injunction (INJ 2)
- Interpleader (MSC 2)
- Malicious Harassment (MHA 2)
- Minor Settlement (No guardianship) (MST 2)
- Petition for Civil Commitment (Sexual Predator)(PCC 2)
- Property Damage-Gangs (PRG 2)
- Public Records Act (PRA 2)

- Restoration of Firearms Rights (RFR2)
- Relief from Duty to Register (RDR2)
- School District - Required Action Plan (SDR 2)
- Seizure of Property from Commission of Crime (SPC 2)
- Seizure of Property Resulting from a Crime (SPR 2)
- Subpoenas (MSC 2)

PROPERTY RIGHTS

- Condemnation (CON 2)
- Foreclosure (FOR 2)
- Land Use Petition (LUP 2)
- Property Fairness (PFA 2)
- Quiet Title (QTI 2)
- Unlawful Detainer (UND 2)

TORT, MEDICAL MALPRACTICE

- Hospital (MED 2)
- Medical Doctor (MED 2)
- Other Health Care Professional (MED 2)

TORT, MOTOR VEHICLE

- Death (TMV 2)
- Non-Death Injuries (TMV 2)
- Property Damage Only (TMV 2)
- Victims of Motor Vehicle Theft (VVT 2)

TORT, NON-MOTOR VEHICLE

- Asbestos (PIN 2)
- Other Malpractice (MAL 2)
- Personal Injury (PIN 2)
- Products Liability (TTO 2)
- Property Damage (PRP 2)
- Wrongful Death (WDE 2)

WRIT

- Habeas Corpus (WHC 2)
- Mandamus (WRM 2)
- Restitution (WRR 2)
- Review (WRV 2)
- Miscellaneous Writs (WMW 2)

IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE DESCRIBE THE CAUSE OF ACTION BELOW.

Please Note: Public information in court files and pleadings may be posted on a public Web site.

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY	
	Plaintiff/Petitioner,
vs.	
	Defendant/Respondent.

FILED

NOV 12 2015

Superior Court
Linda Myhre Enlow
Thurston County Clerk

NO. 15-2-02191-34

NOTICE OF ASSIGNMENT and (NTAS)
NOTICE OF TRIAL SCHEDULING DATE

TO: THURSTON COUNTY CLERK
ATTORNEYS/LITIGANTS

PLEASE TAKE NOTICE:

1. This case is assigned to: **The Honorable Mary Sue Wilson**
2. The trial scheduling date for this case is: **March 11, 2016.**

Do not come to court on the trial scheduling date. Do not call or e-mail the court.
Instead, file a scheduling questionnaire and serve it on the other parties. The questionnaire is attached to this notice. Review Local Court Rule 40 for more information about scheduling.

3. **Plaintiff/Petitioner:** You must serve both this notice and a blank scheduling questionnaire by 5 p.m. on February 26, 2016. If there is no proof of service, the court will not issue a case schedule order. Your deadline for filing and serving a completed scheduling questionnaire is March 04, 2016 at 5 p.m.
4. **All Other Parties:** You must file and serve a completed trial setting questionnaire by March 09, 2016 at noon. Joint submissions by both parties are also accepted on this date.
5. Failure to timely submit a scheduling questionnaire shall not be grounds to delay issuing a case schedule order, and it shall not be grounds to continue the trial unless good cause is demonstrated.
6. The court will not issue a case schedule order unless the case is ready to be scheduled. "Readiness" for scheduling is explained in Local Court Rule 40, which is available on the court's web site and law libraries.
7. Parties can obtain an earlier trial scheduling date by filing and serving a notice of issue form.

Dated this 12th day of November, 2015.

Thurston County Superior Court
2000 Lakeridge Drive SW, Building Two
Olympia, Washington 98502
(360) 786-5430

NOTICE OF ASSIGNMENT and
NOTICE OF SCHEDULING CONFERENCE

FILED

NOV 12 2015

Superior Court
Linda Myhre Enlow
Thurston County Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

15-2-02191-34

KING COUNTY and BNSF RAILWAY
COMPANY,

Petitioners,

No.

PETITION FOR JUDICIAL REVIEW
OF AGENCY ACTION

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION, a
Washington state agency,

Respondent.

Petitioners King County and BNSF Railway Company ("BNSF") petition this Court for judicial review of the Washington Utilities and Transportation Commission's ("WUTC") Orders 03 and 04, Docket UE-141335.

Petitioners allege as follows:

INTRODUCTION

1. Puget Sound Energy ("PSE") provides electricity services to customers in Western Washington, including Petitioners. Petitioners and PSE agree that PSE is responsible for the costs associated with the construction, operation, maintenance, and

1 replacement of the components of its electricity distribution system. Unless PSE and the
2 affected customers expressly contract otherwise, the cost of repairing or replacing a
3 component of that system is borne by PSE and absorbed into the general rates it charges
4 all customers.

5 2. In 1971, PSE constructed the Maloney Ridge Line (the "Line"), an 8.5-
6 mile underground cable in the Mt. Baker-Snoqualmie National Forest, to extend the reach
7 of its existing distribution system. Beginning in 1994, Petitioners contracted with PSE to
8 receive electricity services through the Maloney Ridge Line to facilitate the provision of
9 essential emergency communications, law enforcement, and 911 services to the public.
10 Although the relationship between Petitioners and PSE is generally governed by PSE's
11 general tariff provisions, they entered into agreements modifying those tariff provisions to
12 allocate the cost of operating and maintaining the Line to Petitioners, not PSE. The
13 agreements do not address the replacement of the Line.

14 3. For two decades, Petitioners have absorbed the cost of capital
15 improvements to unrelated components of PSE's distribution system by paying PSE's
16 tariffed rates. The 40-year-old Maloney Ridge Line has deteriorated beyond repair and
17 must now be replaced to maintain the integrity of the service PSE provides to Petitioners
18 and other customers. Although the Petitioners and PSE agree that it would cost
19 approximately \$5.3 million to replace the Line, they now disagree who should pay for it.

20 4. Petitioners sought a declaratory ruling from the WUTC declaring the
21 Petitioners' and PSE's rights and obligations regarding the replacement of the Line.
22 Contrary to the plain language of PSE's tariffs and the agreements between the Petitioners
23 and PSE, the WUTC declared that, although PSE is responsible for replacing the Line,
24 Petitioners must bear any replacement costs exceeding \$335,000. Petitioners respectfully
25 request that this Court enter an order (1) reversing the WUTC's decision to impose

1 replacement costs in excess of \$335,000 on Petitioners; and (2) holding that PSE, upon
2 request from Petitioners, must replace the Line, including paying all construction costs, as
3 with other capital improvements to its electricity distribution system.

4 **PARTIES**

5 5. **King County.** King County is a municipal corporation in the state of
6 Washington. King County's mailing address is 500 Fourth Ave., 9th Floor, Seattle, WA
7 98104-2316.

8 6. **BNSF.** BNSF is a Delaware corporation with its principal place of
9 business in Fort Worth, Texas. BNSF owns and operates a national freight railroad
10 network. BNSF's mailing address is 505 Union Avenue Southeast, Suite 120, Olympia,
11 WA 98501.

12 7. Petitioners are represented by Kari Vander Stoep, Liz Thomas, and Alanna
13 Peterson of K&L Gates LLP, 925 Fourth Avenue, Suite 2900, Seattle, WA 98104, and
14 Anh Nguyen, King County Office of Prosecuting Attorney, 500 Fourth Avenue, Fl. 9,
15 Seattle, WA 98104.

16 8. **WUTC.** WUTC is an agency of the State of Washington established
17 pursuant to chapter 80.01 RCW and charged by the legislature with the authority to
18 regulate in the public interest the rates, services, facilities, and practices of businesses in
19 the state supplying utility service to the public for compensation. The WUTC's mailing
20 address is 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504.

21 9. **Additional Parties to WUTC Proceeding.** Frontier Communications
22 Northwest, Inc. ("Frontier"), Verizon Wireless, New Cingular Wireless PCS, LLC
23 ("AT&T"), and PSE also participated in the WUTC proceeding. The addresses for these
24
25

1 parties are included on the certificate of service filed with this Petition for Judicial Review
2 of Agency Action.

3 **AGENCY ACTION AT ISSUE**

4 10. On August 18, 2015, the WUTC entered Order 03 in Docket UE-141335,
5 *Initial Order Granting Petition in Part and Denying Petition in Part*. On October 13,
6 2015, the WUTC entered Order 04, *Order Denying Petition for Administrative Review*.
7 Orders 03 and 04 are attached as Exhibits 1 and 2, respectively, and are collectively
8 referred to as "Orders."
9

10 **JURISDICTION AND VENUE**

11 11. **Jurisdiction.** The Court has jurisdiction over this petition pursuant to the
12 state Administrative Procedure Act ("APA"), RCW 34.05.510 *et seq.*

13 12. **Venue.** Venue is proper in Thurston County pursuant to RCW
14 34.05.514(1)(a).

15 13. **Exhaustion of Administrative Remedies.** On September 8, 2015,
16 Petitioners submitted a Petition for Administrative Review of Initial Order (Order 03)
17 pursuant to RCW 34.05.464 and WAC 480-07-825. In Order 04, the WUTC denied the
18 Petition for Administrative Review on October 13, 2015. Petitioners file this Petition for
19 Judicial Review within the time limits of RCW 34.05.542(2). As required by RCW
20 34.05.534, Petitioners have exhausted their administrative remedies.

21 14. **Standing.** Petitioners are aggrieved and adversely affected by the
22 WUTC's action. Petitioners are substantially prejudiced by the Orders' conclusion that
23 Petitioners are responsible for all costs in excess of \$335,000 of replacing the Maloney
24 Ridge Line, an estimated \$5.3 million project. Petitioners' interests were among those
25

1 that the WUTC was required to consider. A judgment in favor of Petitioners would
2 eliminate or redress the prejudice caused by the WUTC's action.

3 **FACTS DEMONSTRATING PETITIONERS ARE ENTITLED TO REVIEW**

4 **A. PSE's Electricity Distribution System**

5 1. PSE provides electric and natural gas energy services to a diverse network
6 of customers, including homes, businesses, and governmental entities in rural and remote
7 areas throughout Kitsap, Skagit, Thurston, and Whatcom counties and parts of Island,
8 King, Pierce, and Kittitas counties.

9 2. To serve those electric customers, PSE operates a power distribution
10 system that includes transmission, distribution, overhead, and underground lines that
11 extend for tens of thousands of miles. PSE periodically constructs new lines to "extend its
12 facilities to make services available" to new customers. WAC 480-100-033.

13 3. PSE's filed tariffs establish "all rules and regulations relating to rates,
14 charges or service." RCW 80.28.050. PSE's general terms and conditions of electric
15 service are set forth in Schedule 80 of PSE's Electric Tariff G ("Schedule 80"). Schedule
16 80 provides that "[s]ervice shall be supplied only under and pursuant to these General
17 Rules and Provisions, and any modifications or additions thereto lawfully made."

18 4. PSE's rates for service to non-residential customers are governed by Tariff
19 Schedule 24. Rates vary depending on the cost of delivery, the price of energy, and
20 overall operating and capital costs. PSE's cost to provide distribution service to a
21 particular customer varies widely depending on the customer's location. Despite that
22 difference, all PSE customers are subject to the same tariffed distribution rates. When
23
24
25

1 PSE repairs or replaces a component of its system, rates for all customers, not just those
2 directly affected by the repair or replacement, are modified to absorb the cost.

3 5. Schedule 85 of PSE's Electric Tariff G ("Schedule 85") governs line
4 extensions. Schedule 85 "sets forth the circumstances, terms and conditions under which
5 the Company is responsible for the ownership, installation, maintenance, repair or
6 replacement of electric distribution facilities" Schedule 85 also provides that PSE
7 will "own, operate, maintain and repair all electric distribution facilities installed by or for
8 [PSE] under this schedule, including replacement of such facilities if necessary so long as
9 such replacement is not inconsistent with this schedule or a contract governing such
10 facilities."
11

12 6. PSE may enter into special contracts with individual customers to deviate
13 from the default tariff provisions. WAC 480-80-143.
14

15 **B. The Maloney Ridge Line**

16 7. In 1971, PSE's predecessor, the Puget Sound Power and Light Company
17 (collectively, "PSE") agreed to extend its service in the Mt. Baker-Snoqualmie National
18 Forest by constructing an 8.5-mile underground electric distribution cable, the Maloney
19 Ridge Line, to serve the needs of the General Telephone Company of the Northwest, Inc.
20 ("GTE").
21

22 8. PSE and GTE entered into a contract providing for the construction and
23 operation of the Line (the "GTE Agreement"). The GTE Agreement stated that PSE was
24 "willing to extend" its service to GTE. Specifically, PSE agreed to "furnish and install
25 [the line] from [PSE's] Existing Facilities (presently terminating at Pole No. 15,

1 approximately seven miles from the Microwave Station) along Foss River Road to
2 Maloney Lookout Road and along Maloney Lookout Road to a transformer located at the
3 Microwave Station.” The GTE Agreement provided that the “Distribution System shall
4 be and remain the sole and exclusive property of [PSE].”

5
6 9. PSE “reserve[d] the right [for PSE] to serve customers in addition to [GTE]
7 from the Distribution System.” The GTE Agreement specified that, if PSE added new
8 customers during the first five years of service, PSE would have to refund a portion of the
9 construction costs to GTE through a contribution from each new customer. But after the
10 first five years of service, PSE could add new customers at any time without a refund to
11 GTE.

12 **C. PSE’s Provision of Electricity Services to Petitioners**

13
14 10. Twenty years after the construction of the Maloney Ridge Line, PSE
15 contracted to provide electricity services to Petitioners through the Maloney Ridge Line.
16 Petitioners required this electricity service to provide essential services and support
17 including King County taxpayer funded emergency communications, law enforcement,
18 and 911 services, to the public.

19
20 11. PSE entered into agreements with Petitioners (the “Service Agreements”)
21 to “establish the terms and conditions under which additional customers will be connected
22 to the System.” The Service Agreements define the “System” as “a single phase primary
23 voltage electric distribution system.”

24
25 12. Similar to the GTE Agreement, the Service Agreements provide that the
“[t]he Distribution System shall be and remain the sole and exclusive property of [PSE]”

1 and reserve PSE's right to add additional customers to the line. The Service Agreements
2 also state that PSE constructed the Maloney Ridge Line "pursuant to" Schedule 85.

3 13. Schedules 80 and 85 are the primary tariffs governing the Maloney Ridge
4 Line. Like all other non-residential customers, Petitioners pay for the service pursuant to
5 Tariff Schedule 24. Those rates reflect operation, maintenance, and replacement costs for
6 PSE's entire distribution system, not just the Maloney Ridge Line. PSE did not collect
7 any contribution costs from Petitioners for the original construction of the Maloney Ridge
8 Line.
9

10 14. The Service Agreements revise the default tariff provisions by transferring
11 responsibility for repair and maintenance costs to Petitioners. The Service Agreements
12 are silent as to replacement costs. The Service Agreements provide that any conflicts
13 between the Service Agreements and Schedule 85 must be resolved in favor of Schedule
14 85.
15

16 15. The Service Agreements expressly supersede the GTE Agreement.

17 16. Over the last twenty years, the Maloney Ridge Line has deteriorated
18 significantly. Petitioners have spent millions of dollars to repair and maintain it. Annual
19 repair costs now exceed \$200,000.
20

21 17. Petitioners and PSE now agree that the 40-year-old Maloney Ridge Line
22 has deteriorated beyond repair and must be replaced. They anticipate that it will cost
23 approximately \$5.3 million to replace it.
24
25

1 18. On August 21, 2013, PSE informed Petitioners that electricity service
2 would eventually cease due to the deterioration of the Line. PSE denied any responsibility
3 for replacing the Line unless Petitioners bore the full cost of replacement.

4 **D. The WUTC Proceedings**

5 19. On June 25, 2014, Petitioners¹ filed with the WUTC a Petition for a
6 Declaratory Order seeking a determination that (1) PSE is obligated to replace the
7 Maloney Ridge Line, and (2) PSE must recover the costs of replacement through its
8 general Schedule 24 rates, not from Petitioners.

9 20. The WUTC converted the proceeding to an adjudication, including factual
10 discovery and the submission of testimony. The WUTC held an evidentiary hearing on
11 May 27, 2015, and the Petitioners and PSE filed post-hearing briefs on June 30, 2015.

12 21. On August 18, 2015, Administrative Law Judge Gregory Kopta (the
13 “ALJ”) entered Order 03, Initial Order, granting in part and denying in part Petitioners’
14 Petition for Declaratory Order. Order 03 declares that PSE, upon request from Petitioners,
15 must replace the Maloney Ridge Line. But Order 03 also concludes that PSE is only
16 obligated to finance the replacement to the extent it is “economic” for PSE. Accordingly,
17 Order 03 concludes that Petitioners must pay all construction costs in excess of \$335,000.

18 22. On September 8, 2015, Petitioners filed a Petition for Administrative
19 Review of Initial Order (Order 03). On October 13, 2015, the WUTC issued Order 04,
20
21
22
23
24

25 ¹ Although Frontier, Verizon, and AT&T were also parties to the administrative proceedings below, Frontier, Verizon and AT&T are not parties to this petition.

1 Order Denying Petition for Administrative Review. Order 04 adopted in full the Findings
2 and Conclusions of Order 03.

3 23. Petitioners have filed this lawsuit to challenge Orders 03 and 04 as
4 erroneous interpretations of law, unsupported by substantial evidence, and arbitrary and
5 capricious.
6

7 **REASONS RELIEF SHOULD BE GRANTED**

8 24. Orders contain errors of law – RCW 34.05.570(3)(d). The Orders contain
9 the following errors of law:

10 (a) The WUTC erred by concluding that requiring Petitioners to pay
11 the cost to replace the Maloney Ridge Line in excess of \$335,000 was not a violation of
12 RCW 80.28.100.

13 (b) The WUTC erred by concluding that the Maloney Ridge Line is not
14 part of PSE's distribution system.

15 (c) The WUTC erred by concluding that the tariffs and Service
16 Agreements do not require PSE to bear the full cost of replacing the Maloney Ridge Line.

17 (d) The WUTC erred by disregarding the tariffs and Service
18 Agreements that govern the relationship between the Petitioners and PSE and instead
19 undertaking a fact-specific analysis to determine who should be responsible for the costs
20 of replacing the Maloney Ridge Line.
21

22 25. Orders not supported by substantial evidence – RCW 34.05.570(3)(e). The
23 Orders' conclusions on the following issues were not supported by substantial evidence:
24
25

1 (a) Whether requiring Petitioners to pay the cost to replace the
2 Maloney Ridge Line in excess of \$335,000 was a violation of RCW 80.28.100.

3 (b) Whether the Maloney Ridge Line is part of PSE's distribution
4 system.

5 (c) Whether the tariffs and Service Agreements require PSE to pay the
6 costs to replace the Maloney Ridge Line.

7 (d) Whether, under a fact-specific analysis, Petitioners must pay the
8 costs in excess of \$335,000 to replace the Maloney Ridge Line.

9
10 26. Orders are arbitrary and capricious – RCW 34.05.570(3)(i). The Orders'
11 conclusions on the following issues were arbitrary and capricious:

12 (a) Requiring Petitioners to pay the cost to replace the Maloney Ridge
13 Line in excess of \$335,000 is not a violation of RCW 80.28.100.

14 (b) The tariffs and Service Agreements do not require PSE to bear the
15 full cost of replacing the Maloney Ridge Line.

16 (c) The tariffs and Service Agreements do not resolve who should pay
17 for the replacement of the Maloney Ridge Line, and instead, the WUTC must undertake a
18 fact-specific analysis to determine who should be responsible for the costs of replacing the
19 Line.

20 (d) A fact-specific analysis requires Petitioners to pay the costs of
21 replacing the Maloney Ridge Line in excess of \$335,000.

22 (e) The Maloney Ridge Line is not part of PSE's distribution system.
23
24
25

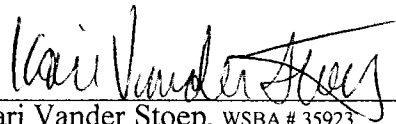
1 **REQUEST FOR RELIEF**

2 Petitioners respectfully request that the Court grant the following relief:

- 3 A. Enter an Order reversing the WUTC's decision to impose replacement
4 costs in excess of \$335,000 on Petitioners;
5
6 B. Enter an Order concluding that PSE, upon request from Petitioners, must
7 replace the Maloney Ridge Line, including paying all construction
8 costs; and
9
10 C. Grant such other relief as this Court determines is just and reasonable.

11 DATED this 12th day of November, 2015.

12 K&L GATES LLP

13 By 
14 Kari Vander Stoep, WSBA # 35923
15 Elizabeth Thomas, WSBA # 11544
16 Alanna Peterson, WSBA # 46502
17 Attorneys for Petitioners
18 King County and BNSF Railway
19 Company

20 King County Office of Prosecuting
21 Attorney

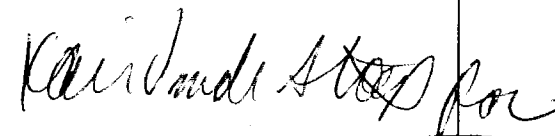
22 By 
23 Anh Nguyen, WSBA # 34108
24 Attorney for Petitioner King County
25

EXHIBIT 1

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	
	)	DOCKET UE-141335
KING COUNTY, WASHINGTON,)	
BNSF RAILWAY, FRONTIER)	
COMMUNICATIONS NORTHWEST	)	ORDER 03
INC., VERIZON WIRELESS, and NEW)	
CINGULAR WIRELESS PCS, LLC,)	
	)	INITIAL ORDER GRANTING
For an Order Requiring Puget Sound	)	PETITION IN PART AND
Energy to Fund Replacement of Electric	)	DENYING PETITION IN PART
Facilities)	
.....)	

BACKGROUND

- 1 On June 26, 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) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for Declaratory Order “to address the degradation of service each of them receive from Puget Sound Energy (PSE) due to the physical deterioration of the 40-year-old underground cable (the ‘Maloney Ridge Line’) by which electric service is provided.” Petitioners request a Commission determination that PSE is obligated to replace that line and recover the resulting costs through the company’s electric rates, rather than directly from Petitioners.¹

- 2 Petitioners, PSE, and the Commission’s regulatory staff (Staff) filed testimony in support of their respective positions pursuant to the procedural schedule established in Order 01, Prehearing Conference Order. On May 27, 2015, the Commission conducted an evidentiary hearing on that testimony. Petitioners presented the joint testimony of Anthony Minor, Gregory L. Britz, George Baker Thomson, Jr., Michael Mathisen, and Jennifer Firestone (collectively Joint Witnesses) and Michael P. Gorman. PSE presented the testimony of Jason M. Sanders, Lynn F. Logen, Katherine J. Barnard, and Jennifer

¹ The parties requested during the prehearing conference that the Commission convert the declaratory order proceeding to an adjudication pursuant to WAC 480-07-930(4). The Commission agreed that an adjudication is the appropriate procedure for developing the factual record necessary to rule on the petition and granted the request.

Boyer. Commission staff (Staff) presented the testimony of Jason L. Ball and David Nightingale. The parties filed post-hearing briefs on June 30, 2015.

3 The parties do not dispute the basic facts. The Maloney Ridge Line is an 8.5 mile underground electric distribution cable in the Snoqualmie National Forest. PSE constructed the line for General Telephone Company of the Northwest, Inc. (GTE) pursuant to a 1971 agreement between the companies. The agreement required GTE to pay all construction costs for the line, as well as all ongoing operating expenses. PSE subsequently connected three additional entities, each of which executed a service agreement to pay for the line's operating costs. Petitioners comprise the four entities that currently obtain service over that line.

4 The Maloney Ridge Line is nearing the end of its useful life. The cable has experienced increasingly frequent failures, and annual repair costs now exceed \$200,000. All parties agree that the continuing pattern of piecemeal repairs is not sustainable. The cost to replace the line in its entirety would be approximately \$5.3 million.

5 Petitioners take the position that PSE should be required to replace the line and to be responsible for the construction costs on the following grounds:

- PSE must provide all of its customers with safe and reliable service on a non-discriminatory basis. PSE can satisfy that obligation here only by replacing the line and recovering those costs in the same way PSE recovers the costs of other system replacements.
- PSE's Electric Tariff G Schedule 85 (Schedule 85) provides that PSE is responsible for both the repair and replacement of line extensions. The service agreements with PSE modify certain tariff provisions but do not alter PSE's obligation with respect to replacement costs. Those agreements require Petitioners only to pay for "operating costs," which do not include replacement.
- The provision in PSE's Electric Tariff G Schedule 80 (Schedule 80) that PSE is not required to provide service if to do so would be economically unfeasible applies only to new or additional service requests, not to existing customers.
- Even if PSE may consider economic feasibility in these circumstances, the Commission should make that assessment based on the impact on PSE's retail

rates and whether replacement of the line is in the public interest and produces public benefits. The rate impact on other business customers that take service from PSE under its Electric Tariff G Schedule 24 (Schedule 24) is a *de minimus* 0.2 percent increase, which is more than justified by the public benefit of providing electric service to Petitioners to enable them to provide emergency, law enforcement, and other essential services. PSE, moreover, does not conduct an economic feasibility for replacement of all distribution lines, and the service agreements provide no basis for treating Petitioners differently.

- Other provisions of Schedule 80 are inapplicable to replacement of the Maloney Ridge Line. Petitioners are not seeking any change in the service they receive or any enhancement to its reliability beyond the level PSE must provide all customers and that PSE had provided in the past.
- The Maloney Ridge Line is part of PSE's electrical distribution system, and PSE should replace that line under the same terms the Company replaces any other portion of that system.

6 PSE contends that multiple options exist for Petitioners to obtain electric service, and if they want to have PSE replace the Maloney Ridge Line, they are responsible for all of the costs to do so on the following grounds:

- The service agreements between PSE and each of the Petitioners requires Petitioners to pay all operating costs, which implicitly includes replacement of the line.
- Replacement of the line is not economically feasible, and both Schedule 80 and Schedule 85 state that PSE has no obligation to provide service if it is economically unfeasible. The limitation is not limited to new or additional service requests but applies to all customers.
- The Commission consistently requires cost causers to pay the costs they cause. Petitioners are the cost causers of replacement of the line and as such are responsible for paying those costs.

- Petitioners are an entity that has requested PSE to rebuild the line, which is a change to enhance reliability, and Schedule 80 requires the requester to pay the costs of any such change.
- Analysis of the factors the Commission used to evaluate a petition for waiver a telecommunications company's obligation to extend service demonstrates that Petitioners' request to have PSE pay the costs of replacing the Maloney Ridge Line is unreasonable and should be denied.
- The Maloney Ridge Line is outside of PSE's general distribution system, so Petitioners are not similarly situated to other Schedule 24 customers. Those other customers should not be required to subsidize an extension beyond PSE's distribution system.

7 Staff supports the Company's position on the following grounds:

- Staff's analysis confirms that replacement of the Maloney Ridge Line is not economically feasible. Schedule 80 does not require PSE to provide service that is economically unfeasible, and that restriction is not limited to new or additional service.
- Principles of equity and fairness dictate that Petitioners pay the costs to replace the line, rather than requiring other Schedule 24 customers to subsidize the high costs to serve only Petitioners.
- The "replacement" language in Schedule 85 applies only to line extensions constructed under that tariff, and PSE constructed and maintains the Maloney Ridge Line pursuant to individual service agreements with each Petitioner.
- The Commission has previously refused to require a company to construct line extensions to serve a small number of customers when the costs would be extraordinarily high.

8 Tommy A. Brooks and Chad M. Stokes, Cable Huston, LLP, Portland, Oregon, represent King County, BNSF, Frontier, and Verizon. Cindy Manheim, General Attorney, AT&T, Redmond, Washington, represents AT&T. Donna L. Barnett, Perkins Coie, LLP,

Bellevue, Washington, represents PSE. Patrick J. Oshie, Assistant Attorney General, Olympia, Washington, represents Staff.

DISCUSSION

9 The parties offer several grounds on which they contend the Commission should adopt their respective positions, most of which are not persuasive. The applicable statute, the service agreements between PSE and Petitioners, and the Company's tariffs do not resolve the issue of who should pay the costs to replace the Maloney Ridge Line as a matter of law. The Commission, therefore, makes its determination based on a fact-specific analysis of the circumstances of this case. Based on that analysis, we conclude that the Petitioners should be responsible for the costs at issue.

Statute

10 RCW 80.28.100 requires electric companies to charge the same rates to all similarly situated customers. The Petitioners contend that PSE is discriminating against them in violation of this statute by insisting that they pay to replace the Maloney Ridge Line. According to Petitioners, the original service agreement between PSE and GTE mandated that GTE pay the costs to construct the line, and Petitioners agreed in subsequent service agreements only to pay for repair and maintenance in addition to their electric service rates. Petitioners argue that PSE is "changing the deal" and unilaterally requiring them to pay costs to replace the line when the Company does not impose the same requirement on other Schedule 24 customers.

11 The statute requires PSE to charge the same rates for "a like or contemporaneous service . . . under the same or substantially similar circumstances or conditions." Petitioners offered no evidence that PSE serves any other customers on a mountain in a national forest or in any other remote location, much less that PSE treats those customers any differently than Petitioners with respect to the costs to replace the line extension used to provide electric service to them. Absent such evidence, we cannot conclude that PSE is violating RCW 80.28.100.

Service Agreements

12 The service agreements Petitioners have with PSE do not address which party must pay the costs to replace the line. Those agreements provide only that Petitioners must pay all

“operating costs,” which are defined to “include any repair and maintenance costs incurred by [PSE] pursuant to Section 3 above, and the costs in connection with securing or maintaining operating rights.”² Section 3 of the agreements defines repair and maintenance to include “the furnishing of all necessary labor, materials, and equipment to keep the System in good operating condition.”³ The agreements thus do not expressly provide that operating costs include replacement of the line.

13 Nor do we infer such an obligation in those contracts. Replacement, by its nature, is distinct from operating, repairing, or maintaining an existing line. PSE tariff provisions recognize this distinction and specify facility replacement when the Company intends to include it.⁴ In the absence of an express requirement that the Petitioners pay to replace the line, we do not interpret the agreements to include such an obligation.

14 We similarly do not construe the service agreements to require PSE to replace the line, as Petitioners contend. The agreements govern the Maloney Ridge Line, but they state that “[e]lectrical service provided by [PSE] to [Petitioners] shall be governed by the terms and provisions of [PSE’s] Electric Tariff G.”⁵ Thus 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.

PSE Tariff

15 PSE’s tariff also is not dispositive of whether PSE must pay to replace the Maloney Ridge Line. PSE and Staff rely on Schedule 80, General Rules and Provisions, Section 9, which states in relevant part, “The Company shall not be required to provide service if to do so would be economically unfeasible.”⁶ We have two concerns with this provision.

² Logen, Exh. LFL-4 at 2, 5, 8 & 11.

³ *Id.* at 1, 4, 7 & 10. The “System” is the Maloney Ridge Line. *Id.*

⁴ *See, e.g.*, Logen, Exh. LFL-7 at 15, Section 1.A. (“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.”) (emphasis added).

⁵ Logen, Exh. LFL-4 at 1, 4, 7 & 10.

⁶ Logen, Exh. LFL-7 at 1.

- 16 First, inclusion of this sentence in the tariff predates the Commission's repeal of WAC 480-100-056, Refusal of service, and adoption of the current rule governing that subject, WAC 480-120-123. In promulgating the revised rule, the Commission expressly declined to include the language from the prior rule that permitted a utility to refuse new or additional service if providing that service would be "economically unfeasible."⁷ Nor does the Commission rule governing discontinuance of service, WAC 480-100-128, authorize a company to terminate service if that service is "economically unfeasible." We question the continuing vitality of the provision in PSE's tariff that allows the Company to refuse to provide service that is "economically unfeasible" in light of its inconsistency with applicable Commission rules.
- 17 Second, the concept of "economic unfeasibility" is overly broad and ambiguous. The Commission eliminated this term from the refusal of service rule, at least in part, because the language is "too general and vague to be useful."⁸ Taken to its extreme, a test of economic feasibility could be used to deny or terminate service to any individual customer if the revenues PSE receives do not exceed the Company's calculations of the costs it incurs to serve that particular customer. Such a result is fundamentally inconsistent with the regulatory principle of averaging costs and demand among customer classes when establishing the rates that apply to that class. PSE cannot refuse service to an individual customer solely because the costs to serve, or the revenues the Company receives from, that customer vary from the class average.
- 18 The lawfulness of PSE's tariff provision, however, is not before us, so we must harmonize Schedule 80 to the extent possible with Commission rules and orders. In doing so, we adhere to the statement in the order adopting WAC 480-100-123 that "Commission resolution of obligation to serve issues is likely to be based on fact-specific analysis."⁹ Consistent with the tariff, the Commission will consider whether providing service to the Petitioners is "economically unfeasible" as an important factor in that analysis, but as Commission rules contemplate, economic feasibility is not the sole determinant of the extent to which PSE must provide that service. Accordingly, PSE

⁷ *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).

⁸ *Id.* ¶ 25. The tariff provision is also overbroad. The Petitioners argue that it applies only to new service, but the language itself is not so limited.

⁹ *Id.* ¶ 25.

cannot rely on Schedule 80 alone to support its position that Petitioners must pay to replace the Maloney Ridge Line.

- 19 Schedule 85 similarly fails to resolve this issue. That schedule “sets forth the circumstances, terms and conditions under which the Company is responsible for the ownership, installation, maintenance, repair or replacement of electric distribution facilities.”¹⁰ The tariff, however, does not specify who is responsible for facility replacement costs. Schedule 85 requires the customer to pay construction costs for *new* facilities but does not expressly impose that obligation on replacement facilities. Technically, perhaps, replacement facilities are “new,” but the tariff provisions contemplate that new facilities will be used to provide new service to new customers. Those are not the circumstances presented here, and we do not construe these provisions to apply to replacement of facilities used to serve existing customers when the service will remain the same.¹¹
- 20 We also do not agree with Petitioners’ interpretation of Schedule 85. Petitioners quote the tariff provision stating that PSE “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.”¹² Petitioners contend that PSE specifies in the tariff when the customer must pay replacement costs, but PSE has identified no provision that expressly requires the Petitioners to pay those costs. Accordingly, the Petitioners conclude, the tariff requires PSE to be responsible for those costs.
- 21 The language the Petitioners quote is from subsection 1.A. of the Additional Terms of Service section of Schedule 85, under the subheading “OWNERSHIP OF FACILITIES.” The placement of this language indicates that PSE’s undertaking to own, operate, maintain, repair, and replace facilities is in the context of ownership and control of those facilities. This subsection does not mention payment responsibility, and we do not

¹⁰ Logen, Exh. LFL-7 at 4.

¹¹ We do not accept PSE’s argument that Petitioners are seeking a change to their existing service to a service of higher quality. Petitioners request only the same quality service they historically received before the line began to deteriorate. Such a request seeks to *restore* service quality, not to alter or enhance it. The service remains the same.

¹² Logen, Exh. LFL-7 at 15.

interpret that silence to reflect PSE's intent to pay all costs associated with these activities.

- 22 Nor does our interpretation change when we consider other provisions in Schedule 85 that specify customers' obligation to pay to replace facilities. The Petitioners cite subsection 1.B. of the Additional Terms of Service section, which provides that the owner of a mobile home park or multi-family residential structure owns, operates, and pays all costs for installation, repair, and replacement of underground service lines.¹³ That language indicates that in all circumstances, the property owner pays the costs associated with those facilities.
- 23 PSE, however, treats cost recovery for electric distribution facilities differently depending on whether those facilities are constructed within or outside of the Company's distribution system.¹⁴ The tariff does not specify whether PSE or the customer is responsible for the costs to replace electric distribution facilities because that will be determined based on the circumstances of each case. PSE's tariff thus does not resolve the issue before us.

Fact-Specific Analysis

- 24 The Commission, therefore, undertakes a fact-specific analysis to determine who should be responsible for the costs to replace the Maloney Ridge Line. PSE advocates that we rely on the Commission's decision in a case involving a request for telecommunications service from a handful of customers who lived several miles from the existing network.¹⁵ The Commission in that order found appropriate the company's petition for waiver of the line extension rule after "taking into consideration and carefully balancing all relevant factors."¹⁶ PSE proposes that the Commission analyze the same factors and reach the same conclusion.

¹³ *Id.*

¹⁴ Nightingale, TR 95:18 – 96:9.

¹⁵ *In re Petition of Verizon Northwest Inc.*, Docket UT-011439, Twelfth Supp. Order (April 2003) (*Verizon*).

¹⁶ *Id.* ¶ 69.

25 The *Verizon* order is illustrative of the appropriate fact-based analysis, but the order has limited applicability. The factors the Commission considered were specific to the applicable rule, industry, and facts in that case, which vary significantly from those at issue here. Those factors, the Commission explained, are

non-exclusive and non-mandatory. It is a list of factors likely to be at issue in a line extension, but not all of these factors will be significant in every case, and there may be other factors, not listed, that will be relevant in a particular case. 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.¹⁷

Accordingly, we will use the analytical framework the Commission employed in *Verizon* as applied to the facts and circumstances of Petitioners’ request for replacement of the Maloney Ridge Line.

26 The most salient factors in this case are the nature of the facilities, the economics of replacing the line, and the customer impact. Analysis of those facts supports the conclusion that Petitioners should bear all costs to replace the line that exceed the investment amounts PSE would recover through the rates it will receive for providing service over that line.

27 *Nature of facilities.* PSE originally constructed the Maloney Ridge Line on behalf of GTE, which paid the entire construction costs. Petitioners contend that, once constructed, the line became part of PSE’s distribution system and should be replaced under the same terms and conditions the Company replaces other parts of that system. We disagree.

28 PSE has consistently treated the Maloney Ridge Line as an adjunct to, rather than a part of, its distribution system. The Company required GTE to pay not only all costs to construct the line but all ongoing repair and maintenance expenses as well – terms that do not apply to customers the Company serves using only its distribution system. The other Petitioners signed contracts to take service over that line under the same terms. As the contracts require, PSE has billed those customers separately for repair and maintenance costs. At no time did PSE formally or informally incorporate the line into the system it

¹⁷ *Id.* ¶ 17.

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.

- 29 Petitioners nevertheless claim that the rates they pay include recovery of the Company's network investment, repair, and maintenance costs, which necessarily includes the Maloney Ridge Line used to provide the service for which they pay. Their conclusion does not follow from their premise. PSE's rates recover more network and other costs to provide service to Petitioners than those associated with that line.¹⁸ The actual costs to provide service to each customer in a class will vary, but all of those customers pay the same rates. Those rates are calculated to ensure that PSE recovers the costs to build and maintain its entire distribution system. That is the nature of regulatory cost recovery, not an indication that PSE considers a line extension to be part of that system. PSE's distribution system, therefore, does not include the Maloney Ridge Line.
- 30 *Economics.* The parties' disparate approaches to "economic feasibility" highlight the ambiguity and limited utility of that term. PSE and Staff maintain that the costs to replace the line vastly exceed the amount the Company would recover in the rates it charges Petitioners, even under the most wildly optimistic projections. Petitioners, on the other hand, argue that PSE could recover those costs from all Schedule 24 customers with only a *de minimus* 0.2 percent rate increase. Each approach is a legitimate means of determining economic feasibility, but we find that PSE and Staff have proposed the more appropriate economic analysis.
- 31 As we observe above, the Commission establishes PSE's rates for service based on the average costs the Company incurs to provide that service to a customer within a particular class. Such averaging, however, requires that a reasonable relationship exist between costs and rates. If the Company's costs to serve a particular customer vary too much from the class average, equitable cost sharing among similarly situated customers becomes unreasonable cross-subsidy. The costs to replace the Maloney Ridge Line represent just such a variation.
- 32 PSE estimates those costs would total \$5.3 million, of which the Company could expect to recover approximately \$335,000 through the rates it charges the four customers that obtain service using that line. Requiring other customers to pay the almost \$5 million difference for facilities they do not use is not reasonable. Petitioners' argument that each

¹⁸ Logen, Exh. LFL-9T at 4.

ratepayer would be responsible only for a small fraction of the total cost misses the point. Customers who do not cause costs should not be responsible for paying them, even if it is only a few cents. Those few cents, moreover, could become several dollars if PSE were required to recover the costs to construct all line extensions from all of the Company's customers. The Commission chooses not to travel down that road.

33 *Customer impact.* Petitioners assert that they depend on the Maloney Ridge Line for electric service that enables them to provide 911 and other public safety services and that there is a strong public interest in ensuring these services remain available. The Commission agrees. No one questions the importance of the services Petitioners provide. PSE is willing to replace the Maloney Ridge Line and to continue to provide electric service to Petitioners. The issue, however, is whether the public interest demands that PSE ratepayers, rather than Petitioners' customers and taxpayers, should pay for that replacement. We do not believe it does.

34 The importance of electric service to a customer (or to the customer's customers) is not a basis on which the Commission will determine who pays for that service or the facilities used to deliver it. Every PSE customer depends on electricity, and we are not willing to place a higher societal value on one customer's usage over another in this context. PSE serves other entities that provide vital public services, and each of those customers pays the costs the Company incurs to provide that customer's electric service. We will not relieve Petitioners of that same responsibility.

Commission Determination

35 The weight of the relevant facts supports PSE's and Staff's position that Petitioners should pay the costs to replace the Maloney Ridge Line. The line is, and always has been, dedicated to Petitioners' use, yet the costs to replace it far exceed the amounts the Company can reasonably expect to recover from Petitioners in rates. The public interest in ensuring the availability of 911 and other vital public services does not justify shifting costs from Petitioners to PSE's other ratepayers.

36 Petitioners, however, should not be required to pay more than the costs they cause. Schedule 85 requires applicants for new installations to pay 100 percent of the construction costs less a margin allowance.¹⁹ A margin allowance is designed to ensure

¹⁹ Logen, Exh. LFL-9T at 12:8-9.

“that customers in effect don’t double-pay for their distribution services.”²⁰ PSE calculates the amount Petitioners would receive in margin allowance for replacing the Maloney Ridge Line as “less than approximately \$20,000.”²¹ At the same time, the Company calculates that “for replacement of the Maloney Ridge line to be considered economic, the Maloney Ridge customers would have to pay all costs in excess of \$335,000, approximately \$5 million, and continue with the current arrangement for payment of O&M costs.”²²

37 The margin allowance in Schedule 85 is for new installations and thus by its terms is inapplicable to replacement of the Maloney Ridge Line. Nor will we extend that margin allowance to the replacement installation here. A margin allowance of less than \$20,000 would fall far short of ensuring that Petitioners do not “double-pay” PSE’s network costs when the Company has calculated it will recover \$335,000 of its costs for the line through the rates Petitioners will pay over the anticipated useful life of that facility. The Company should undertake replacement of the line to the full extent it would be economic to do so. If Petitioners elect that option, therefore, they must pay all costs to replace the line in excess of \$335,000, as well as all operating and maintenance costs under the same terms and conditions in the existing service agreements.

FINDINGS AND CONCLUSIONS

- 38 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including investor-owned electric companies.
- 39 (2) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 40 (3) The Maloney Ridge Line is an 8.5 mile underground electric distribution cable in the Snoqualmie National Forest that PSE constructed for GTE pursuant to a 1971 service agreement between the companies. The agreement required GTE to pay all construction costs for the line, as well as all ongoing operating expenses.

²⁰ Logen, TR 48:24-25.

²¹ Logen, Exh. LFL-9T at 12:14.

²² Exh. BR-2 at 2.

- 41 (4) PSE connected three additional entities to the line, each of which executed a service agreement to pay for the line's operating costs. Petitioners comprise the four entities that currently obtain service from PSE using that line.
- 42 (5) The Maloney Ridge Line has experienced increasingly frequent failures in recent years, and annual repair costs now exceed \$200,000. The cost to replace the line in its entirety would be approximately \$5.3 million.
- 43 (6) The service agreements between PSE and each of the Petitioners do not require Petitioners to pay the costs to replace the line.
- 44 (7) The service agreements do not require PSE to replace the line.
- 45 (8) Schedules 80 and 85 do not require either the Company or Petitioners to pay the costs to replace the line.
- 46 (9) The Commission undertakes a fact-specific analysis to determine who should be responsible for the costs to replace the Maloney Ridge Line.
- 47 (10) The Maloney Ridge Line is dedicated to serving Petitioners and is an adjunct to, not part of, PSE's distribution system.
- 48 (11) Economic feasibility is an important factor in the Commission's fact-specific analysis, but whether the service PSE provides to Petitioners is economically unfeasible is not the sole basis for determining who should be responsible for the costs to replace the line.
- 49 (12) The costs to replace the line vastly exceed the amount the Company would recover in the rates it charges Petitioners.
- 50 (13) Other Schedule 24 customers should not pay to replace facilities dedicated to serving Petitioners, even if each of those customers would only experience a 0.2 percent increase in their current rates.

- 51 (14) The public interest in ensuring the availability of the 911 and other public safety services Petitioners provide does not require PSE ratepayers, rather than Petitioners' customers or taxpayers, to pay to replace the Maloney Ridge Line.
- 52 (15) PSE should not be required to pay the entire costs to replace the line but should be authorized to require Petitioners to pay only the costs in excess of the amount at which the service the Company provides using that line would be economic.
- 53 (16) If Petitioners elect to have PSE replace the Maloney Ridge Line, PSE should be authorized to require Petitioners to pay all costs in excess of \$335,000, as well as pay for all operating and maintenance expenses under the terms and conditions in the existing service agreements.

ORDER

THE COMMISSION ORDERS That

- 54 (1) Puget Sound Energy, upon request from King County, Washington, BNSF Railway, Frontier Communications Northwest Inc., Verizon Wireless, and New Cingular Wireless PCS, LLC, must replace the Maloney Ridge line extension currently used to provide electric service to those customers on the following conditions:
- (a) King County, Washington, BNSF Railway, Frontier Communications Northwest Inc., Verizon Wireless, and New Cingular Wireless PCS, LLC, must pay all construction costs of the line in excess of \$335,000; and
 - (b) King County, Washington, BNSF Railway, Frontier Communications Northwest Inc., Verizon Wireless, and New Cingular Wireless PCS, LLC, must pay for all operating and maintenance expenses for the line under the terms and conditions in the existing service agreements between each of those entities and Puget Sound Energy.

- 55 (2) The Commission otherwise denies the petition of King County, Washington, BNSF Railway, Frontier Communications Northwest Inc., Verizon Wireless, and New Cingular Wireless PCS, LLC.

Dated at Olympia, Washington, and effective August 18, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge

NOTICE TO THE PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this initial order, and you would like the order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (3) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(4) states that any party may file an answer (Answer) to a Petition within 10 days after service of the petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

You must serve on each party of record one copy of any Petition or Answer filed with the Commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and three copies of your petition or answer by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

EXHIBIT 2

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET UE-141335
)	
KING COUNTY, WASHINGTON, BNSF)	
RAILWAY, FRONTIER)	
COMMUNICATIONS NORTHWEST	)	ORDER 04
INC., VERIZON WIRELESS, and NEW)	
CINGULAR WIRELESS PCS, LLC,)	
)	
For an Order Requiring Puget Sound	)	ORDER DENYING PETITION
Energy to Fund Replacement of Electric	)	FOR ADMINSTRATIVE
Facilities	)	REVIEW
.....)	

SUMMARY

- 1 **PROCEEDINGS.** On June 26, 2014, King County, Washington, BNSF Railway, Frontier Communications Northwest Inc., Verizon Wireless, and New Cingular Wireless PCS, LLC (collectively Petitioners), filed with the Washington Utilities and Transportation Commission (Commission) a Petition for Declaratory Order “to address the degradation of service each of them receive from Puget Sound Energy (PSE) due to the physical deterioration of the 40-year-old underground cable (the ‘Maloney Ridge Line’) by which electric service is provided.” Petitioners requested a Commission determination that PSE is obligated to replace the line and recover the resulting costs through the company’s Electric Tariff G Schedule 24 electric rates, rather than directly from Petitioners.
- 2 On August 27, 2014, the Commission held a prehearing conference and subsequently entered Order 01 Prehearing Conference Order. The Commission converted this proceeding to an adjudication pursuant to WAC 480-07-930(4) and established a procedural schedule that would allow for development of the factual record necessary to rule on the issues raised by Petitioners. Petitioners, PSE, and Commission Staff filed testimony in support of their respective positions pursuant to the procedural schedule and the Commission conducted an evidentiary hearing on May 27, 2015. The parties filed post-hearing briefs on June 30, 2015.
- 3 Administrative Law Judge Gregory J. Kopta entered an Initial Order, Order 03, on August 18, 2015, granting in part, and denying in part the relief sought by Petitioners. Order 03 would require PSE to replace the Maloney Ridge Line, but would require Petitioners to pay the costs of replacement that exceed \$335,000 and to pay for all operating and maintenance expenses for the line under the terms and conditions in the existing service agreements

between each of the petitioners and PSE. Order 03 otherwise denies the Petition for Declaratory Order.

4 Dissatisfied with the Initial Order's determination that they must pay the costs of replacing the Maloney Ridge Line, Petitioners seek administrative review under RCW 34.05.464 and WAC 480-07-825. We deny their Petition for Administrative Review (Petition) for the reasons discussed below.

5 **PARTY REPRESENTATIVES.** Tommy A. Brooks and Chad M. Stokes, Cable Huston, LLP, Portland, Oregon, represent King County, BNSF, Frontier, and Verizon. Cindy Manheim, General Attorney, AT&T, Redmond, Washington, represents New Cingular Wireless. Donna L. Barnett, Perkins Coie, LLP, Bellevue, Washington, represents PSE. Patrick J. Oshie, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Staff).

MEMORANDUM

1. Background

6 The parties' arguments below, and now on review, are largely matters of policy and law. Indeed, Order 03 relies on underlying facts that are not disputed.¹

7 The Maloney Ridge Line is an 8.5 mile underground electric distribution cable in the Snoqualmie National Forest. PSE constructed the line for General Telephone Company of the Northwest, Inc. (GTE) pursuant to a 1971 contractual agreement between the companies. The agreement required GTE to pay all construction costs for the line and all operation and maintenance expenses associated with it. Neither the construction costs nor any part of the operation and maintenance expenses associated with the Maloney Ridge Line have ever been included for recovery in PSE's general rates. PSE subsequently connected three additional entities, each of which executed a service agreement requiring them to pay a share of the line's ongoing operation and maintenance expenses. These four customers have been and remain exclusively responsible for the costs of the Maloney Ridge Line. In addition, these customers pay for the electrical power they consume under general rate Schedule 24.² Schedule 24 rates include an allocated part of the fixed and variable costs of PSE's general distribution system and commodity costs (*i.e.*, power costs).

¹ Order 03 ¶ 3.

² PSE's original agreement with GTE provides that GTE would pay rates under "Schedule 30, Tariff I, as it may be amended." Exh. No. LFL-3 ¶ 8.

8 The Maloney Ridge Line may be nearing the end of its useful life. The cable has experienced increasingly frequent failures, and annual repair costs now exceed \$200,000. All parties agree that the continuing pattern of piecemeal repairs is not sustainable.³ The cost to replace the line in its entirety would be approximately \$5.3 million.

9 Petitioners argue that PSE is obligated to replace the line and recover the resulting costs through the company's Electric Tariff G Schedule 24 electric rates, rather than directly from Petitioners. PSE argues that the Maloney Ridge Line is not part of its general distribution system and that it is relieved of any responsibility to pay the costs of replacing the line by the "economic unfeasibility" provisions of its tariff. PSE disputes that there is any other applicable language in PSE's tariffs that requires it to pay the costs to replace the Maloney Ridge Line.

2. Petition for Administrative Review

10 Petitioners argue in their Petition for Administrative Review that 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.

A. Is the Maloney Ridge Line part of PSE's distribution system?

11 Petitioners cite testimony by PSE's witness, Mr. Logen, and Staff's witness, Mr. Nightingale, that support the determination in Order 03 that the Maloney Ridge Line was constructed, operated, and maintained under a private contract, continues to operate and be maintained under private contracts, and, therefore, is not part of PSE's general distribution system.⁴ Mr. Nightingale's testimony is perfectly clear and to the point:

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

³ According to PSE, however, there are options in addition to replacement, but Petitioners have rejected these alternatives. See PSE Post-hearing Brief at 5, 20.

⁴ Petition ¶ 6 (quoting Logen, TR. 46:1-47:5) and ¶ 7 (quoting Nightingale, TR. 95:18-96:10).

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 maintenance and operation of that line. That's outside the normal distribution system.⁵

12 Petitioners argue that there is no additional evidence in the record on this issue, that "Staff and PSE reach the wrong conclusion" and, therefore, the conclusion "is not legally or factually supported."⁶ We disagree. The testimony is clear and supported by documentary evidence in the record. Petitioners' criticisms cite neither evidence nor legal authority that undermines the credibility of these witnesses or the substance of their testimony.

13 Moreover, contrary to Petitioners' claim, there is additional, consistent evidence in the hearing record on this point.⁷ Finally, we independently find considerable additional support for the analysis and determination of this issue in Order 03 in our review of the pre-filed testimony and exhibits.⁸

14 Petitioners do not meaningfully dispute the facts to which Messrs. Logen and Nightingale, and Ms. Barnard testified at hearing, and ignore the broader body of evidence, also undisputed substantively, that supports the following discussion in Order 03:

PSE has consistently treated the Maloney Ridge Line as an adjunct to, rather than a part of, its distribution system. The Company required GTE to pay not only all costs to construct the line but all ongoing repair and maintenance expenses as well – terms that do not apply to customers the Company serves using only its distribution system. The other Petitioners signed contracts to take service over that line under the same terms. As the contracts require, PSE

⁵ Petition ¶ 22 (citing Nightingale, TR. 95:18-96:8).

⁶ *Id.* ¶ 6-8.

⁷ *See, e.g.*, Logen, TR. 29:1-15; Barnard, TR. 61:1-63:19; Nightingale, TR. 72:22-73:18.

⁸ *See generally* Nightingale, Exh. No. DN-1T and Logen, Exh. No. LFL-1T; *See also* Barnard, Exh. No. KJB-1T at 1:18 - 2:20. These pre-filed testimonies are supported by documentary evidence. The record includes more than 50 exhibits.

has billed those customers separately for repair and maintenance costs. 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.⁹

15 Taking a slightly different perspective on this question, PSE's recovery over many years of 100 percent of the costs of the Maloney Ridge Line under contracts with Petitioners means that none of costs have been included in Schedule 24 rates or in the rates of any other PSE tariff schedule. Thus, while the line may physically be part of PSE's distribution system in engineering terms, it has never been part of PSE's distribution system in financial terms and no part of its costs are recovered in Schedule 24 rates, or any other tariffed rate. The physical attachment of the Maloney Ridge Line to PSE's general distribution system is beside the point insofar as the question before us is concerned. The point salient to our analysis here is that the Maloney Ridge Line has never been and is not now part of PSE's general distribution system, the costs of which are recovered in tariffed rates.¹⁰ Indeed, a central purpose in building and operating the Maloney Ridge Line under service agreements was to relieve the broader body of PSE customers from having to bear any of the costs of the Maloney Ridge Line. The Maloney Ridge Line costs intentionally have been kept separate from the costs of PSE's general distribution system that are allocated among customer classes and recovered in general rates such as those assessed under Schedule 24.

16 Petitioners are seeking for the first time in this case to obtain service on the Maloney Ridge Line not on the basis of their service agreements, but as customers being served on the Company's general distribution system under PSE's tariffs of general applicability and, in particular, Schedule 24. Were the Commission to adopt Petitioners' position that they are entitled to such service on a going forward basis, the Commission would either have to approve recovery of the capital costs of installing a new, replacement line on Maloney Ridge from all Schedule 24 customers, or find such an expenditure imprudent and disallow the costs, requiring it to be absorbed by PSE's shareholders. Neither of these outcomes is legally permissible because either result would lead to rates under Schedule 24 that would fail to meet the fair, just, reasonable, and sufficient standard.

17 In sum, Petitioners' argument that the Maloney Ridge Line is part of PSE's general distribution system is legally and factually incorrect insofar as relevant to the question before

⁹ Order 3 ¶ 28.

¹⁰ We note that Petitioners pay Schedule 24 rates, which include an allocated part of PSE's general distribution system costs, because that system is used to bring energy to the Maloney Ridge Line.

us. In addition, Petitioners fail to meet the basic requirements of WAC 480-07-825(3) that require “[p]etitions for review of initial orders [to] be specific.”¹¹ Assertions in the Petition before us that are unsupported by specific references to the record or to legal authority provide no basis for reversing the Initial Order on the points contested. Given that there is substantial competent evidence in the record supporting the Initial Order’s determination that “[the Maloney Ridge] line has always been a separate facility dedicated to Petitioners, not a part of PSE’s distribution system,”¹² including the very evidence Petitioners cite, there also is no reason to remand Order 03 on this question for the development of yet additional evidence. We sustain Order 03 on this point. Maloney Ridge is not a part of PSE’s distribution system insofar as the determination of responsibility for the costs of its replacement is concerned, or for any other purpose.

B. Do PSE’s tariffs obligate the Company to bear the costs of replacing the line?

18 Petitioners argued below that PSE should be required to replace the Maloney Ridge Line and to be responsible for the construction costs. They rely in part on their interpretations of language in PSE’s Electric Tariff G, Schedules 80 (General Terms and Conditions) and 85 (Line Extensions). PSE and Staff relied principally on the argument that it is not economically feasible to replace the line and that if they want PSE to replace the Maloney Ridge Line, then Petitioners are responsible for all of the costs under the terms of Schedule

¹¹ WAC 480-07-825(3) provides:

Petitions for administrative review must clearly identify the nature of each challenge to the initial order, the evidence, law, rule or other authority that the petitioner relies upon to support the challenge, and state the remedy that the petitioner seeks. Petitions for review of initial orders must be specific. The petitioner must separately state and number every contention. A petition that challenges a finding of fact must cite the pertinent page or part of the record or must otherwise state the evidence it relies on to support its petition, and should include a recommended finding of fact. A petition that challenges a conclusion of law must cite the appropriate statute, rule, or case involved and should include a recommended conclusion of law. A petition that challenges the summary or discussion portion of an initial order must include a statement showing the legal or factual justification for the challenge, and a statement of how the asserted defect affects the findings of fact, the conclusions of law, and the ultimate decision.

¹² Order 03 ¶ 28.

80, paragraph 9, which provides in relevant part that: “The Company shall not be required to provide service if to do so would be economically unfeasible.”¹³

- 19 Order 03 determines that the quoted provision from Schedules 80 is “not dispositive of whether PSE must pay to replace the Maloney Ridge Line.”¹⁴ This determination rests in part on “concerns” about “the continuing vitality of the provision in PSE’s tariff that allows the Company to refuse to provide service that is ‘economically unfeasible’ in light of its inconsistency with applicable Commission rules.”¹⁵ Order 03 also finds that “the concept of ‘economic unfeasibility’ is overly broad and ambiguous.”¹⁶
- 20 Turning to the arguments that are grounded in Schedule 85, Order 03 observes that “the tariff . . . does not specify who is responsible for facility replacement costs.”¹⁷ Order 03 rejects the argument that replacement facilities are “new” within the meaning of PSE’s tariff, which would mean the customers requesting line extension would be required to pay, as Schedule 85 provides. This analysis in Order 03 is not challenged so we do not address it further.
- 21 Order 03 also rejects Petitioners’ interpretation of Schedule 85. Petitioners rely on the “Ownership of Facilities” provision in Schedule 85, which provides that PSE:

¹³ Logen, Exh. LFL-7 at 1. PSE and Staff rely in addition on paragraph 34 of Schedule 80 that provides:

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.

¹⁴ Order 03 ¶ 15.

¹⁵ *Id.* ¶ 16. The Commission rules to which Order 03 refers, or predecessor rules, were not inconsistent with the tariff at the time PSE entered into the original contract with GTE to build the Maloney Ridge Line or at the times a replacement contract and new contracts with the additional petitioners were executed. The inconsistency to which Order 03 refers results from the removal of the “economically unfeasible” language from the Commission’s Refusal of Service rule with the repeal of WAC 480-100-056 and its replacement with WAC 480-120-123 in 2001. *See 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).

¹⁶ *Id.* ¶ 17.

¹⁷ *Id.* ¶ 19.

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.¹⁸

As Order 03 correctly observes, “this subsection does not mention payment responsibility” and it would be inappropriate to “interpret that silence to reflect PSE’s intent to pay all costs associated with these activities.”¹⁹ Considering that PSE “treats cost recovery for electric distribution facilities differently depending on whether those facilities are constructed within or outside of the Company’s distribution system,” Order 03 determines that responsibility for the costs to replace electric distribution facilities must be “determined based on the circumstances of each case.”²⁰

22 This is consistent with the resolution in Order 03 of the concerns the order identifies in connection with the economic unfeasibility provision in PSE’s tariff. Observing that the lawfulness of PSE’s tariff provision is not an issue in this case, Order 03 resolves these concerns by “[harmonizing] Schedule 80 to the extent possible with Commission rules and orders.”²¹ Thus, considering language in the order adopting the current Refusal of Service rule that “Commission resolution of obligation to serve issues is likely to be based on fact-specific analysis,”²² Order 03 considers “whether providing service to the Petitioners is ‘economically unfeasible’ as an important factor in that analysis, but . . . not the sole determinant of the extent to which PSE must provide that service.”²³

23 Order 03 accordingly undertakes a fact-based inquiry, focusing on “[t]he most salient factors in this case. These are: the nature of the facilities, the economics of replacing the line, and the customer impact.”²⁴ Analyzing these three factors, Order 03 finds that:

- PSE constructed the Maloney Ridge Line for GTE (now Frontier) under contract and GTE paid the full costs of construction, and ongoing repair and

¹⁸ Logen, Exh. No. LFL-7 at 15.

¹⁹ Order 03 ¶ 21.

²⁰ *Id.* ¶ 23 (internal citation omitted).

²¹ *Id.* ¶ 18.

²² *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 (Dec. 3, 2001).

²³ Order 03 ¶ 18.

²⁴ *Id.* ¶ 26.

maintenance expenses the responsibility for which is now shared with four other customers.²⁵ “PSE has consistently treated the Maloney Ridge Line as an adjunct to, rather than a part of, its distribution system. The line has always been a separate facility dedicated to Petitioners, not a part of PSE’s distribution system.”²⁶

- The costs to replace the line vastly exceed the amount the Company would recover in the rates it charges Petitioners and it would cause an inequitable and unreasonable cross-subsidy to require other customers under Schedule 24 to pay \$5 million or more for facilities that will serve only the few customers taking service on the Maloney Ridge Line. “Customers who do not cause costs should not be responsible for paying them.”²⁷
- The fact that electricity delivered via the Maloney Ridge Line enables Petitioners to provide 911 and other public safety services does not relieve them of the responsibility to pay the costs the Company incurs to provide electric service. “The importance of electric service to a customer (or to the customer’s customers) is not a basis on which the Commission will determine who pays for that service or the facilities used to deliver it.”²⁸

24 In light of these findings, Order 03 determines that:

The Company should undertake replacement of the line to the full extent it would be economic to do so. If Petitioners elect that option, therefore, they must pay all costs to replace the line in excess of \$335,000, as well as all operating and maintenance costs under the same terms and conditions in the existing service agreements.²⁹

²⁵ Petitioners pay in addition to these costs rates for service under Schedule 24 that include an allocated part of the costs of PSE’s general distribution system. The general distribution system provides service to the Maloney Ridge customers, but the Maloney Ridge Line does not provide service to any customers other than the Petitioners. The costs of the general distribution system accordingly have never included the costs of the Maloney Ridge Line.

²⁶ Order 03 ¶ 28.

²⁷ *Id.* ¶ 32.

²⁸ *Id.* ¶ 34.

²⁹ *Id.* ¶ 37.

3. Decision

25 We find merit in the analyses in Order 03 concerning the applicability and meaning of PSE's Tariff G Schedules 80 and 85. We agree that the tariff alone is not dispositive of the question of who must pay if the Maloney Ridge Line is replaced. We share the two concerns discussed in Order 03 in relation to Schedule 80, General Rules and Provisions, Section 9, which states in relevant part, "The Company shall not be required to provide service if to do so would be economically unfeasible."³⁰ However, as Order 03 observes: "The lawfulness of PSE's tariff provision . . . is not before us."³¹ Therefore, the economic feasibility standard remains a part of PSE's tariff.³² Order 03 recognizes this point to the extent of finding that one important factor in the "fact-specific analysis" it undertakes is, indeed, the question of economic feasibility. We have already discussed above how Order 03 analyzes this factor, along with others, to reach its conclusion that PSE has no obligation to pay the costs to replace the Maloney Ridge Line.

26 The Maloney Ridge facilities are dedicated to the use of the few customers who have a continuing obligation to pay their costs. The general body of Schedule 24 customers have never been responsible for paying any of the capital investment or the ongoing operations and maintenance expenses associated with the Maloney Ridge Line. Petitioners suggest no good reason that this should change with the replacement of the deteriorated line with a new one. Nothing has changed in the relationship of these dedicated facilities that are not part of the Company's general distribution system to the other customers who take service under Schedule 24. Schedule 24 customers other than the Maloney Ridge customers have never and will not in the future realize any benefit from the existence of the line beyond the small amount of general distribution system costs that the Petitioners have always paid, and will continue to pay. The general body of Schedule 24 customers does not cause any of the Maloney Ridge costs and should, therefore, bear none of those costs.

ORDER

THE COMMISSION ORDERS That:

- 27 (1) 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) is DENIED.

³⁰ Logen, Exh. LFL-7 at 1.

³¹ Order 03 ¶ 18.

³² *Gen. Tel. Co. of N.W., Inc. v. City of Bothell, et al.*, 105 Wash. 2d 579, 585 (1986).

- 28 (2) The Findings and Conclusions in Order 03 ¶¶ 38-53 are adopted and incorporated into this Order by reference here as if set forth in full.
- 29 (3) Puget Sound Energy, upon request from King County, Washington, BNSF Railway, Frontier Communications Northwest Inc., Verizon Wireless, and New Cingular Wireless PCS, LLC, must replace the Maloney Ridge line extension currently used to provide electric service to those customers on the following conditions:
- (a) King County, Washington, BNSF Railway, Frontier Communications Northwest Inc., Verizon Wireless, and New Cingular Wireless PCS, LLC, must pay all construction costs of the line in excess of \$335,000.
 - (b) King County, Washington, BNSF Railway, Frontier Communications Northwest Inc., Verizon Wireless, and New Cingular Wireless PCS, LLC, must pay for all operating and maintenance expenses for the line under the terms and conditions in the existing service agreements between each of those entities and Puget Sound Energy.
- 30 (4) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective October 13, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

FILED

FILED

NOV 12 2015

Superior Court
Linda Myhre Enlow
Thurston County Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

KING COUNTY and BNSF RAILWAY
COMPANY,

No. 15-2-02191-34

Petitioners,

DECLARATION OF SERVICE

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION, a
Washington state agency,

Respondent.

I, Carol Erbeck, under penalty of perjury of the laws of the State of Washington,
declare as follows:

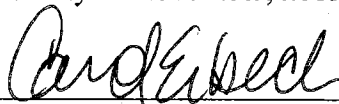
1. I am and at all times hereinafter mentioned was a citizen of the United
States, a resident of the State of Washington, over the age of 21 years, and competent to
be a witness in the above action, and not a party thereto.

2. On the 12th day of November, 2015, I delivered true and correct copies of
the Petition for Judicial Review of Agency Action and Summons by delivering via legal
messenger or by depositing in the U.S. mail, first class, postage prepaid, addressed as
follows:

1	Thurston County Superior Court 2000 Lakeridge Drive SW, Bldg 2 Olympia, WA 98502	<input checked="" type="checkbox"/> Legal Messenger <input type="checkbox"/> U.S. Mail, first-class postage prepaid
2		
3	Steven King Executive Director/Secretary Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. SW Olympia, WA 98504	<input checked="" type="checkbox"/> Legal Messenger <input type="checkbox"/> U.S. Mail, first-class postage prepaid
4		
5		
6		
7	Robert W. Ferguson Attorney General Office of Attorney General 1125 Washington St. SE P.O. Box 40100 Olympia, WA 98504-0100	<input checked="" type="checkbox"/> Legal Messenger <input type="checkbox"/> U.S. Mail, first-class postage prepaid
8		
9		
10	Patrick Oshie Assistant Attorney General WUTC P.O. Box 40128 Olympia, WA 98504-0128	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
11		
12		
13	Donna Barnett Sheree Carson Perkins Coie LLP The PSE Building 10885 N.E. Fourth Street, Suite 700 Bellevue, WA 98004	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
14		
15		
16		
17	Marla D. Mellies Chief Administrative Officer Puget Sound Energy, Inc. 10885 NE Fourth Street Bellevue, WA 98009-9734	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
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20	Kenneth Johnson Puget Sound Energy, Inc. P.O. Box 97034 Bellevue, WA 98009-9734	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
21		
22	George Baker Thomson Frontier Communications Northwest 1800 41st Street, Suite N-100 Everett, WA 98203	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
23		
24		
25		

1	Sean Pohlman AT&T	<input type="checkbox"/> Legal Messenger
2	P.O. Box 97061	<input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
3	Redmond, WA 98073	
4	Cynthia Manheim AT&T Services, Inc.	<input type="checkbox"/> Legal Messenger
5	16331 NE 72nd Way	<input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
6	P.O. Box 97061	
7	Redmond, WA 98073-9761	
8	Anthony Minor King County Radio Communications Svcs.	<input type="checkbox"/> Legal Messenger
9	855 S 192nd Street, Suite 1000	<input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
10	SeaTac, WA 98148	
11	Michael Mathisen Verizon Wireless	<input type="checkbox"/> Legal Messenger
12	5430 NE 122nd Avenue	<input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
13	Portland, OR 97230	
14	John Cameron Davis Wright Tremaine	<input type="checkbox"/> Legal Messenger
15	1300 SW Fifth Avenue, Suite 2300	<input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
16	Portland, OR 97201	
17	Gregory Britz BNSF Railway Co.	<input type="checkbox"/> Legal Messenger
18	2400 Western Center Blvd	<input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
19	Fort Worth, TX 76131	
20	LaRhonda Brown-Barrett BNSF Railway Co.	<input type="checkbox"/> Legal Messenger
21	2400 Western Center Blvd	<input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
22	Fort Worth, TX 76131	
23	Anh Nguyen King County Office of Prosecuting Attorney	<input type="checkbox"/> Legal Messenger
24	500 Fourth Avenue, Fl 9	<input checked="" type="checkbox"/> U.S. Mail, first-class postage prepaid
25	Seattle, WA 98104	

SIGNED at Seattle, Washington this 12th day of November, 2015.



 Carol Erbeck
 Legal Secretary