

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Puget Sound Energy, Inc
Frederickson Power, L.P.

Docket Nos. EC04-53-000
EC04-53-001

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued April 23, 2004)

1. On January 14, 2004, Puget Sound Energy, Inc. (PSE) and Frederickson Power, L.P. (Frederickson) filed a joint application (Initial Filing) pursuant to section 203 of the Federal Power Act (FPA)¹ requesting Commission authorization for a proposed disposition of jurisdictional facilities associated with the sale of an interest in a generation and transmission facility (Transaction) by Frederickson to PSE. The Commission authorizes the disposition of facilities as consistent with the public interest. This order benefits customers by ensuring that the Transaction will not harm competition in the marketplace.

I. Background

A. Description of the Parties

2. PSE is a public utility and a wholly-owned subsidiary of Puget Energy, Inc., a public utility holding company. PSE provides wholesale and retail electric service and retail gas service to customers in the Puget Sound region of Washington. PSE has market-based rate authority and also provides transmission service under its open access transmission tariff (OATT).

3. Frederickson is an indirect, wholly-owned subsidiary of EPCOR Utilities Inc., and is authorized to make energy sales at market-based rates. Frederickson owns a 249 MW gas-fired combined cycle electric generating facility and associated transmission facilities (Facility) that interconnect with the Bonneville Power Administration (BPA) transmission system. The Facility is in Pierce County, Washington, within BPA's control area.

¹ 16 U.S.C. § 824b (2000).

B. The Transaction

4. PSE would acquire a 49.85 percent undivided ownership interest in the Facility, with Frederickson holding the remaining 50.15 percent. After completion of planned upgrades raising the capacity to 275 MW, PSE will have rights to 137 MW of the Facility's capacity. PSE states that it expects to use this capacity as a base-load resource to meet retail load.

5. The Frederickson acquisition is the culmination of a request for proposal (RFP) process and a timely, state regulatory review process. The RFP process considered long-term power purchase agreements and short-term market purchases, as well as purchases of generation plants, and a combination of these alternatives.

II. Notice and Interventions

6. Notice of the Initial Filing was published in the Federal Register, 69 Fed. Reg. 4,299 (2004), with interventions or comments due on or before February 4, 2004. Cogeneration Coalition of Washington (Cogeneration Coalition) filed a motion to intervene.² On February 27, 2004, Frederickson submitted supplemental information (Supplemental Filing) in response to a Commission Staff data request dated February 12, 2004. Notice of the Supplemental Filing was published in the Federal Register, 69 Fed. Reg. 11,421 (2004), with interventions or comments due on or before March 15, 2004. None was received.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motion to intervene of Cogeneration Coalition serves to make it a party to this proceeding.

B. Section 203 Analysis

8. Section 203(a) of the FPA provides that the Commission must approve a disposition of facilities if it finds that the disposition "will be consistent with the public interest."³ The Commission's analysis under the Merger Policy Statement of whether a

² Cogeneration Coalition does not protest the filing.

³ 16 U.S.C. § 824 (2004).

disposition is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation. As discussed below, we will approve the proposed disposition of jurisdictional facilities as consistent with the public interest.⁴

1. Effect on Competition

a. Applicants' Analysis

9. Applicants state that the Transaction will not significantly increase market concentration in any relevant market and thus will not adversely affect competition. On the basis of the Transaction's relatively small scale, Applicants regard the proposed Transaction as de minimis.⁵ They initially submitted an abbreviated horizontal competitive analysis, principally consisting of a Supply Margin Assessment (SMA).⁶ Based on application of the SMA criteria, Applicants asserted that, both before the acquisition and after the acquisition, PSE would not have market power in its control area or in the Pacific Northwest market area. Applicants noted that the capacity associated

⁴ Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,044 (1996), reconsideration denied, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,111 (2000), order on reh'g, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001).

⁵ Order No. 642 provides that section 203 applicants will not be required to submit the full competitive analysis screen (the delivered price test analysis, among other required information) when the applicants demonstrate that the extent of overlapping operation of the merging entities is de minimis and no intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other. Order No. 642 also provides that the Commission can ensure that abbreviated filing requirements are appropriate by requesting additional information when necessary. Order No. 642 at 31,902.

⁶ AEP Power Marketing Inc., et al., 97 FERC ¶ 61,219 (2001). The Commission recently announced a revised generation market power analysis to be applied to market-based rate applications. See AEP Power Marketing, et al., 107 FERC ¶ 61,018 (April 14, 2004).

with the proposed Transaction is only 0.2 percent of total capacity in the Pacific Northwest and that the Transaction would increase PSE's market share of total resources available to its control area market by only 1.9 percent.

10. According to Applicants, transmission customers, including merchant generators, have multiple choices concerning transmission providers into and through the PSE control area. Applicants also stated that the transmission grid in the Pacific Northwest is characterized by multiple, closely adjoined control areas that are interconnected by multiple transmission paths and that the BPA transmission system parallels, overlays, and interconnects at several points with PSE's transmission system. Applicants indicated that PSE is among several Pacific Northwest utilities that have proposed to form RTO West (recently renamed Grid West). Further, Applicants noted that as a condition of PSE's market-based rate authority, PSE is prohibited from engaging in discriminatory practices with respect to the provision of natural gas service. Based on these circumstances, Applicants contended that the proposed Transaction does not present vertical market power concerns as a result of transmission market power or any ability to otherwise erect barriers to entry in generation.

11. In response to Staff's data request, Applicants provided additional analytical concentration studies. Applicants also provided detailed information concerning the diversity and location of PSE's power supply resources, PSE's operational control of such resources and its reliance on the transmission systems of other providers to deliver owned and purchased power to PSE's control area. Applicants further indicated that PSE's natural gas distribution system does not serve any non-affiliated generators and that PSE holds no ownership interests in any pipelines, although it does hold firm transmission rights on pipelines in Washington.

b. Commission Decision

12. The Commission concludes that in both the PSE control area market and a regional geographic market consisting of PSE and all utilities with which it is interconnected, the proposed Transaction is not likely to harm competition in non-firm energy, short-term capacity or long-term capacity markets. With respect to the regional market, ownership and control of power supply is highly concentrated. However, the main reason is BPA's control of over 60 percent of the region's resources.⁷ PSE itself accounts for just 12 percent of the region's resources. More importantly, its acquisition of 137 MW would have a de minimis effect on market concentration in a market that contains over 30,000 MW of supply and thus would be very unlikely to harm

⁷ Supplemental Filing, Exhibit No. LR-4. The region is defined as PSE and the utilities with which it is interconnected.

competition in a regional, non-firm energy market.⁸ Similarly, the acquisition is not likely to significantly increase concentration in a regional short-term capacity market, since even with the acquisition, PSE's excess capacity would be very small.⁹

13. With respect to the PSE control area market, Applicants presented studies that show a highly concentrated market, which is expected given that PSE owns all of the generation capacity in the control area that is available for wholesale power supply. However, according to Applicants, the studies also show that the proposed Transaction does not increase concentration greater than the thresholds set forth in the Merger Policy Statement.¹⁰ Given the de minimis nature of the Transaction and after considering all of the factors described below,¹¹ the Commission finds that the Transaction will not harm competition in the PSE control area market.

14. Among these factors is the fact that in contrast to many vertically-integrated utilities, much of PSE's resource portfolio is purchased (instead of owned), hydro-electrically-based and dependent on transmission service from others. Purchased capacity as a whole accounts for about 60 percent of PSE's total supply, and PSE is a net buyer of energy in most months. Hydro-electric resources make up 40 percent of PSE's total resources, and hydro-electric purchases alone account for about one-third of PSE's supply. Most of the power purchases and a significant part of the owned resources are tied to resources that are outside of PSE's control area and that have multi-party participation or ownership. Applicants note that much of PSE's hydro-based capacity, including its capacity purchases, comes from "run of river" facilities, with little storage capability, that are coordinated with other hydroelectric projects and that the output of these facilities is often subject to environmental conditions. Also, Applicants state, PSE's contractual rights to dispatch capability of projects with multi-participants often must be coordinated with requests of other participants. Further, PSE must depend on transmission service from BPA and other transmission providers to have the resources

⁸ Absent a delivered price test for the regional market that employs an economic capacity measure, a total capacity measure has been used as a proxy to gauge market presence in non-firm energy markets.

⁹ Initial Filing, Affidavit of Lloyd R. Reed, Exhibit No. LR-3 at 5 and Supplemental Filing, Exhibit No. LR-4.

¹⁰ Supplemental Filing, Exhibit Nos. LR-7, LR-8, LR-11 and LR-12; Merger Policy Statement at 30,134; and Order No. 642 at 31,896, note 62.

¹¹ As described in Order No. 642 (at 31,897), even when concentration thresholds are exceeded, the Commission may consider additional factors to more fully assess whether a transaction is likely to harm competition.

delivered to the control area. The terms of most of these transmission arrangements allow unused transmission capacity to be sold by the transmission provider to others. Collectively, these factors would tend to lessen PSE's ability, or effect thereof, to withhold capacity from the market. If PSE did seek to withhold, other market participants could acquire PSE's unused transmission capacity on a non-firm basis to seek out other sources of non-firm energy. Finally, we note that there are no non-requirements wholesale customers in PSE's control area and thus no customers that could be disadvantaged by higher non-firm prices that might result from PSE withholding.¹² The Commission does not view PSE's acquisition of a relatively small increment of capacity to increase to any significant degree PSE's ability or incentive to exercise horizontal market power in this way.

15. The Commission also concludes that the Transaction does not present vertical market power concerns. With respect to transmission market power, we note that PSE has ownership-type transmission rights to obtain seasonal capacity from Pacific Gas and Electric Company (PG&E) on the Pacific Northwest-Southwest Intertie (Intertie), extra high voltage lines connecting the Pacific Northwest to California and other parts of the WECC (Intertie). However, BPA is the operator of Intertie transmission facilities on the Pacific Northwest side. In addition, BPA owns and operates over 75 percent of the transmission grid in the Pacific Northwest and provides transmission service under an open access transmission tariff.

16. Further, as noted above, there are no non-affiliated wholesale generators and no wholesale customers, other than requirements customers, in the control area market. Thus, there are no wholesale competitors or customers in the control area market whose access to other customers or suppliers could be impaired by discriminatory transmission practices of PSE. Also, all nearby merchant generators are in BPA's control area and are interconnected with BPA's transmission system. Therefore, it is very unlikely that the acquisition of a small amount of capacity will significantly enhance PSE's ability or incentive to use its transmission system to favor sales of its non-firm energy over competitors.

17. Similarly, the Commission concludes that the Transaction is not likely to create or enhance PSE's ability or incentive to exercise vertical market power in delivered gas services so as to harm competition in downstream electric markets. The Transaction will marginally increase PSE's holdings of firm gas transportation rights on pipelines serving

¹² The wholesale load that does exist is in the aggregate less than 2 MW and is solely requirements load that, during the term of the requirements contracts, cannot benefit from access to spot markets.

generators in Washington.¹³ PSE itself does not serve any non-affiliated gas generators. According to PSE, nearby merchant generators have instead directly interconnected with the pipelines and thus have avoided any additional PSE gas distribution charges. Based on these circumstances, the Commission is satisfied that the Transaction is not likely to result in higher delivered gas prices to PSE's competitors.

18. The Commission further concludes that the proposed Transaction will not harm competition in the long-term capacity market. Analysis of the long-term capacity market focuses on barriers to entry by new generators through an applicant's control of key inputs, principally sites for new capacity development and transportation systems for fuel supplies. While, as a result of the Transaction, PSE will be able to construct additional generating units at the Frederickson site, Applicants note that other generating facilities are also under construction or proposed at sites in or near the PSE control area. There is no indication from available information that PSE would be able to prevent entry through ownership and control of sites for new generation capacity. Also, PSE does not own pipelines or interests in pipelines and, thus, will not be able to thwart entry of new competitors in the long-term market.

2. Effect on Rates

19. Applicants state that the Transaction will not cause any changes to PSE's or Frederickson's jurisdictional rates. Frederickson sells a total of 125 MW of energy and associated capacity under long-term contract to public utility districts. Any remaining output is then sold at market-based rates to its power marketing affiliate, EPCOR Merchant and Capital Inc., or to other wholesale customers. With the exception of wholesale service provided to PG&E and Powerex Corp. in accordance with exchange agreements between PSE and each of those companies and to a small group of small requirements customers, PSE makes all of its wholesale energy sales at market-based rates pursuant to its market-based rate tariff and/or the Western Systems Power Pool Agreement. PSE provides service to the small requirements customers at fixed rates, pursuant to a Commission rate schedule, which will not change as a result of the Transaction. In addition, Applicants state that PSE has committed that it will not seek to recover in wholesale rates any of the costs of the Transaction.

20. Given Applicants' commitment that the rates for PSE's cost-based sales to requirements customers will not be affected by the costs of the Transaction, we find that it will not adversely affect rates.

¹³ As a result of the acquisition, PSA will acquire gas transportation rights associated with delivery of gas to the Facility.

3. Effect on Regulation

21. Applicants maintain that the Transaction will not impair the Commission's ability to regulate any company subject to the Commission's jurisdiction. Applicants state that no new registered holding company will be created, and PSE will remain subject to the Commission's regulation. Applicants further argue that the proposed Transaction will have no effect on state commission regulation. They state that the prudence and recovery of the costs of the acquisition is subject to the approval of the Washington Commission.

22. We find that the Transaction will not result in a shift of regulation from the Commission to the Securities and Exchange Commission. No entity has intervened to allege an adverse affect on state regulation. Accordingly, we find the Transaction will not adversely affect Federal or state regulation.

4. Accounting

23. Section 33.5, Proposed Accounting Entries, of the Commission's Regulations requires that section 203 applicants present proposed accounting entries with sufficient detail showing the effect of the transactions. Although information provided by PSE generally complies with this requirement, PSE did not provide such detail as to show an allocation of facilities to be acquired by primary plant account.¹⁴ PSE must account for the Transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts.¹⁵ PSE must also file its proposed accounting within six months of the date the transfer is consummated. The filing must provide a complete explanation of its proposed accounting, and be of such detail as to show the complete transaction and all accounts affected.

The Commission orders:

(A) The Transaction is hereby authorized, upon the terms and conditions and for the purposes set forth in the application;

(B) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission;

(C) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;

¹⁴ 18 C.F.R. § 33.5 (2003).

¹⁵ 18 C.F.R. Part 101 (2003).

(D) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;

(E) PSE is directed to account for the acquisition of ownership interest in the Facility in accordance with Electric Plant Instruction No. 5 and Account 102 of the Uniform System of Accounts and to file its proposed accounting within six months of the date that the Transaction is consummated; and

(F) Applicants shall notify the Commission within 10 days of the date that the Transaction has been consummated.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.