

138 FERC ¶ 61,236
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Puget Sound Energy, Inc.

Docket Nos. ER12-778-000
EL12-46-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATES, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES, AND
INSTITUTING SECTION 206 PROCEEDING

(Issued March 30, 2012)

1. On January 6, 2012, Puget Sound Energy, Inc. (Puget) filed revisions to its Open Access Transmission Tariff (OATT) under section 205 of the Federal Power Act (FPA)¹ to: (1) implement cost-based formula rates for network integration transmission service, point-to-point (PTP) transmission service, and Schedule 1 (scheduling, system control, and dispatch service); (2) reflect the reclassification of 115 kV facilities from wholesale distribution to transmission, and to incorporate the costs of such facilities into a single transmission rate; and (3) update its rates for ancillary services in Schedules 5 and 6.² As discussed below, we will accept Puget's filing, suspend part of it for a five-month period and part of it for a nominal period, subject to refund, and establish hearing and settlement procedures. Also, because Puget is proposing a transmission rate decrease for transmission over its high voltage direct assignment facilities—Colstrip and Southern Intertie—and a further decrease may be warranted, we will institute an investigation pursuant to section 206 of the Federal Power Act (FPA)³ in Docket No. EL12-46-000 to determine whether Puget's proposed rate decreases are just and reasonable.

¹ 16 U.S.C. § 824d (2006).

² Puget Transmittal Letter at 1.

³ 16 U.S.C. § 824e (2006).

I. Background

2. Puget is a wholly-owned subsidiary of Puget Energy, Inc., a holding company.⁴ Puget states that it provides retail electric and natural gas service in a service territory of approximately 6,000 square miles in the Puget Sound region of the state of Washington.

3. Puget states that its transmission system consists of three interconnected but geographically separate areas (Washington Area, Colstrip, and Southern Intertie) subject to the Commission's jurisdiction under section 201 of the FPA. Puget refers to its transmission facilities in Washington, interconnected directly to Puget's distribution system and situated throughout its retail service territory, as the Washington Area facilities. Puget states that Colstrip consists of its part ownership in transmission facilities necessary to connect the Colstrip generation plant in Montana with the Bonneville Power Administration's (Bonneville) transmission grid and, through that grid, with Puget's Washington Area transmission and distribution system. Finally, Puget states that the Southern Intertie consists of its part ownership in the Southern Intertie transmission facilities that connect the Pacific Northwest transmission grid with the California transmission grid.⁵

4. Puget explains that its last transmission rate case was filed in 1997, which resulted in an uncontested "black box" settlement establishing an \$81 million transmission revenue requirement.⁶

II. Puget's Filing

A. Summary

5. Puget states that its filing has two primary objectives, first, to update its transmission rates to reflect increased investment since its last transmission rate case and implement a transmission formula rate, and second, to reclassify its wholesale distribution facilities as transmission facilities and charge a single, aggregated transmission rate for the use of Puget's system. Puget also proposes to (1) implement a rate formula for Schedule 1, Scheduling System Control and Dispatch Service, and (2) update stated rates for Schedules 5 and 6, Spinning and Supplemental Reserves.⁷

⁴ Puget Transmittal Letter at 3.

⁵ *Id.* at 3-4.

⁶ *Id.* at 4. *See Puget Sound Energy, Inc.*, 97 FERC ¶ 61,309 (2001).

⁷ *Id.* at 5.

6. Puget's filing includes six separate proposed rates supported by three separate cost of service studies. First, for transmission service, Puget's corresponding cost of service study establishes a new transmission network revenue requirement, Attachment H, and allocates costs to three separate transmission rates under Schedule 7, firm PTP transmission service, Schedule 8, non-firm PTP transmission service over Puget's Washington Area transmission facilities, and Schedule 10, high voltage direct assignment facilities—Colstrip and Southern Intertie transmission lines—for service over the Colstrip and Southern Intertie areas. For the Washington Area, Puget proposes a rate increase under Schedules 7 and 8 from \$.904 kw/month for high voltage and \$.230 kw/month for low voltage to a combined rate of \$1.51 kw/month.⁸ For transmission over the Colstrip and Southern Intertie areas, Puget proposes a rate decrease from \$1.86 kw/month to \$1.06 kw/month for the Colstrip area and from \$2.78 to \$1.53 kw/month for the Southern Intertie area.⁹

7. Puget also submitted a separate cost of service study for operating reserves offered under Schedule 5, Spinning Reserve Service and Schedule 6, Supplemental Reserve Service, and another separate cost of service study for Schedule 1, Scheduling, System Control, and Dispatch Service.

8. Puget requests an effective date of April 1, 2012, for the proposed OATT revisions. Puget's proposed OATT revisions and rate proposals are described more fully below.

B. Formula Rate for Network and PTP Service

9. Puget asserts that it has made significant investments in its transmission system over the past 15 years, and that such investment is not recovered through its existing transmission rates. Puget proposes to replace its currently-effective stated transmission rates with a formula rate.¹⁰ Under the proposed formula rate, network and PTP rates will be adjusted annually, using Puget's annual transmission revenue requirement for the Washington Area facilities, Colstrip, and Southern Intertie each year, as well as actual cost inputs from Puget's FERC Form No. 1 data and attached formula worksheets, as

⁸ Exhibit PSE-302, Statement BG-BH- 2010. Test Year Puget Sound Energy Revenue Data to Reflect Changed Rates and Present Rates for the Washington Area.

⁹ *Id.* Test Year Puget Sound Energy Revenue Data to Reflect Changed Rates and Present Rates for Colstrip and Southern Intertie Areas. Schedule 10 is for firm and non-firm PTP service over the Colstrip and Southern Intertie transmission lines.

¹⁰ Puget Transmittal Letter at 6.

well as projected transmission plant additions. The rates will be updated based on formula rate implementation protocols including, among other things, the annual true-up process, annual customer review and protest procedures, and resolution procedures for other stakeholder challenges.¹¹

C. Implementation and True-Up Protocols

10. Puget explains that it will true up its formula rates for network and PTP service each June 1, beginning in 2013, with data from its most recently-filed FERC Form No. 1 and projections of Puget's capital additions.¹² On or before each June 1, Puget will file a copy of the annual update with the Commission and post it on Puget's website. Customers and others will have 105 days thereafter to issue information requests to the company, and 135 days after the annual update to submit preliminary challenges. Finally, customers may also submit challenges to the Commission within 195 days of the annual update, regardless of whether they have submitted preliminary challenges to Puget.¹³

D. Projected Revenue Credits and Firm Capacity Reservations During Initial Rate Period

11. Puget proposes to use projected 2012 revenue credits and firm capacity reservations, rather than actual 2010 data for the initial rate period. Puget asserts that the projections are necessary to "reflect a known and measurable change in the scheduling practices of Puget's merchant affiliate, Puget Sound Energy Marketing, [Puget Marketing] during 2012, and thereby avoid the application of a substantial surcharge (and the resulting rate shock) during the 2013 annual update."¹⁴

E. Return on Equity

12. Puget proposes a 10.66 percent base return on equity (ROE). Puget explains that a 10.66 percent ROE falls between the 9.25 percent and 13.51 percent zone of reasonableness using the Commission's discounted cash flow approach to a national electric utility proxy group of risk-comparable electric utilities.¹⁵ Puget refers to its

¹¹ *Id.*

¹² *Id.* at 6-7.

¹³ *Id.* at 7.

¹⁴ *Id.*

¹⁵ *Id.*

testimony that explains that a 10.66 percent ROE is the median of values identified within the proxy group, and also states that the ROE will not change as a result of the annual update process, absent a new section FPA section 205 filing.¹⁶

F. Billing

13. Puget proposes to revise Schedules 7 and 8 (for firm and non-firm PTP transmission service) to reflect its proposed revised formula rates. Puget states that the Schedules will be determined in accordance with annual updates to its net annual transmission revenue requirement and posted on its open access same-time information system (OASIS). Similarly, Puget proposes to modify sections 34.1 and 34.2 and attachment H of its OATT to reflect that a network transmission service customer's monthly demand charge will be calculated by applying its monthly network load to the monthly transmission formula rate.¹⁷ Finally, Puget adds that its proposed revisions to Schedule 10 for direct assignment facilities will be determined pursuant to the formula and posted on Puget's OASIS.¹⁸

G. Reclassification of Wholesale Distribution Facilities

14. Puget asks the Commission to reclassify its wholesale distribution facilities, generally those Washington Area facilities rated at 115 kV and above, as transmission facilities.¹⁹ Puget contends that such reclassification is consistent with the seven-factor test and requisite demonstration approved by the Washington Utilities and Transportation Commission (WUTC) on December 14, 2011.²⁰ In addition, Puget states that reclassification of its facilities and the consequent ability to charge a single transmission

¹⁶ *Id.* at 9.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 10.

²⁰ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at P 31,171 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

rate for all of its transmission facilities rated 100 kV and above is consistent with the North American Electric Reliability Corporation's (NERC) definition of the Bulk Electric System and the practice of other utilities in the Pacific Northwest.²¹ Puget argues that changes in the use and operation of its transmission system, together with NERC's mandatory reliability standards, show that Puget's 115 kV facilities are being operated as transmission facilities.²² Finally, Puget explains that the reclassification of all of Puget's Washington Area 115 kV and higher facilities, allowing it to charge a single rate for PTP and network service, will streamline the company's OATT administration and billing procedures.²³

15. Puget proposes to revise its OATT to reflect the reclassification of 115kV facilities. Puget states that it is the only Pacific Northwest utility that charges its OATT customers disaggregated rates for transmission and wholesale distribution services. The proposed revisions would allow Puget to have a single revenue requirement and single rate for its Washington Area facilities, consistent with the practice of other utilities in the region, according to Puget.²⁴ In addition, Puget seeks to revise its OATT to provide for a single, combined real power loss factor for the single proposed rate.²⁵

H. Schedule 1-Scheduling, System Control, and Dispatch Services

16. At present, Puget states that it charges a stated rate for Scheduling and System Control and Dispatch Services under Schedule 1. Puget proposes to implement a formula rate mechanism for Schedule 1 that is updated annually using the same protocols as those it proposes for its formula rates.²⁶ This rate will be derived based on costs booked to account No. 561 and subaccounts 561.1 through 561.5.

I. Schedules 5 and 6-Spinning and Supplemental Reserves

17. Puget's transmission customers currently pay an Operating Reserve – Spinning Reserve charge under Puget's Schedule 5 of \$6.68/kW-month and an Operating Reserve

²¹ Puget Transmittal Letter at 10.

²² *Id.* at 11.

²³ *Id.* at 12.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 12-13.

– Supplemental Reserve charge of \$1.90/kW-month under Puget’s Schedule 6. Puget proposes to update the stated rates for Schedules 5 and 6 based on the current weighted average fixed costs of the units providing Spinning and Supplemental Reserves. Puget adds that its cost study supports a rate of \$12.35/kW-month for Spinning Reserves and a rate of \$11.46/kW-month for Supplemental Reserves. Puget does not propose to change the existing 3.13 percent purchase obligation for such Spinning and Supplemental Reserves.²⁷

III. Notice of Filing and Responsive Pleadings

18. Notice of Puget’s filing was published in the *Federal Register*, 77 Fed. Reg. 2518 (2012), with interventions and protests due on or before January 27, 2012. Snohomish County Public Utility District No. 1, Tenaska Washington Partners, L.P., the Public Power Council, Industrial Customers of Northwest Utilities (ICNU), Bonneville, Powerex Corp. (Powerex), and Vantage Wind Energy LLC (Vantage), filed timely motions to intervene, protests, and comments. PacifiCorp, Portland General Electric Co. (PGE), and Idaho Power Company filed late motions to intervene.

19. On February 13, 2012, Puget filed an answer to the protests and comments. On February 24, 2012, Vantage filed an answer to Puget’s answer. On March 1, 2012, Puget filed an answer to Vantage’s answer.

A. Formula Rate for Network and PTP Service

20. Bonneville argues that implementing Puget’s rate proposal would result in a rate increase of over 100 percent for Bonneville, which should be mitigated considerably. Bonneville asserts that Puget should be required to provide a detailed accounting of past and future investments that Puget claims drive the need for the rate increase and a formula rate.²⁸ Bonneville argues that there are several costs included in the first year proposed rates that are not reconciled to Puget’s FERC Form No. 1 and are not adequately explained in the filing.²⁹

21. Vantage argues that Puget’s proposal is unduly discriminatory because Vantage would be charged for the rolled-in costs of all of Puget’s 115 kV facilities and 230 kV

²⁷ *Id.* at 13.

²⁸ Bonneville Protest at 3-4.

²⁹ *Id.* at 9.

facilities in Washington, even though Puget's service to Vantage is provided over a single 20-mile, 230 kV transmission line.³⁰

22. ICNU requests that the Commission issue an order that: (1) allows parties to conduct discovery on the prudence of transmission investment, the cost basis for network and ancillary service rates, Puget's anticipated double recovery of state and Commission-jurisdictional charges corresponding to reclassified facilities, the proposed ROE, and the propriety of future cost recovery through the proposed formula rate; and (2) sets the factual matters in Puget's filing for settlement discussions and hearing.³¹

B. Return on Equity

23. ICNU states that Puget's requested 10.66 percent ROE is inconsistent with Puget's 10.10 percent ROE allowed by the WUTC in 2010, and that the ROE cannot be challenged or revised pursuant to the annual review process associated with Puget's proposed formula rate.³² ICNU requests that the Commission take the full, allowable five-month suspension period to determine an appropriate ROE.³³

24. Vantage and Bonneville also claim that Puget's proposed ROE may be excessive. Vantage asserts that the ROE does not reflect the current depressed economy and low interest rates. According to its preliminary assessment, Vantage asserts that the ROE should not be higher than nine percent. Bonneville adds that, as a wholly-owned subsidiary of Puget Energy, Inc., Puget presents less risk than other companies comprising the study group because Puget has direct access to capital from a parent company that the other companies in the study group do not. Bonneville argues that using a study group with a number of companies that pose a greater risk than Puget results in an ROE that is too high.³⁴

25. Powerex observes that Puget's proposal to shift to a formula rate appears to reduce Puget's overall risk by allowing it to recover costs in a timely manner. Furthermore, Powerex argues that Puget's risk is likely also reduced by a recent shift to five-year transmission contracts in the transmission industry. Powerex states that it is unclear

³⁰ Vantage Protest at 2-3.

³¹ ICNU Protest at 5.

³² *Id.* at 8.

³³ *Id.*

³⁴ Bonneville Protest at 4-5.

whether these reduced risks are factored into the proposed return on equity and, if not, a reduction in the ROE may be required.³⁵

26. In its answer, Puget states that protesters provide no substantive analysis for changing Puget's requested ROE. Puget argues that Vantage provides no support for its preliminary assessment of a nine percent ROE and that, with regard to Bonneville's assertions, the companies used in Puget's discounted cash flow (DCF) analysis are comparable to Puget because they are also holding companies that have the same relationship to their operating company subsidiaries as Puget Energy, Inc. has to Puget.³⁶

27. In addressing ICNU's concerns, Puget states that the Commission uses a different rate-setting methodology than the WUTC for the determination of ROE, which yields a higher ROE.³⁷

28. In response to Powerex's arguments regarding reduced risk associated with formula rates, Puget asserts that penalizing a transmission provider that switches from stated rates to formula rates with a lower ROE is contrary to the Commission's policy of encouraging the adoption of formula rates.³⁸

C. Reclassification of Wholesale Distribution Facilities

29. ICNU argues that Puget's failure to propose a mechanism to prevent double recovery associated with the reclassification of high voltage distribution facilities as transmission facilities in the 2011 Washington general rate case³⁹ record is sufficient reason for the Commission to order a full five-month suspension period.⁴⁰ ICNU states that in the 2011 proceeding, Puget merely suggested it intended to propose customer

³⁵ Powerex Protest at 12-13.

³⁶ Puget February 13 Answer at 15-16.

³⁷ Puget February 13 Answer at 17.

³⁸ Puget February 13 Answer at 15 (citing *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118, at P 32 (2005); *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,182 (2005)).

³⁹ *WUTC v. PSE*, WUTC Docket Nos. UE-111048/UG-111049, Exhibit No. JAP-24CT at 44.

⁴⁰ ICNU Protest at 7.

refunds in the event of double charges instead of proposing a specific rate adjustment mechanism.⁴¹

30. Bonneville states that it does not oppose the reclassification of Puget's 115 kV facilities; however, Bonneville states that Puget also proposes to include certain 55 kV facilities in its reclassification proposal, and that Puget fails to support its position that the 55kV facilities should be treated as transmission facilities. Bonneville asserts that, based on Puget's claim that it plans to upgrade the 55 kV facilities to 115 kV in the near future, Puget should not be allowed to include them in its transmission rates until they are upgraded to 115 kV.⁴²

31. Powerex argues that Puget's claim that only a few large industrial customers will be affected by the reclassification of high voltage distribution systems to those rated at 115kV and above may be incorrect. Powerex offers that other customers may be affected and that Puget should be required to clarify the identity of such customers.⁴³

32. In its answer, Puget states that the 55 kV facilities are currently included in its Commission-approved wholesale distribution rate, and that the Commission does not require facilities that are rated below 100 kV to be classified as distribution. Puget adds that the actual function served by the facilities controls their classification.⁴⁴

33. With respect to ICNU's arguments regarding double recovery, Puget states that there will be no double recovery of costs associated with 115 kV facilities through retail rates. Puget argues that this issue is being addressed in a pending state rate case before the WUTC and that if refunds are required, they will be ordered in that case. Puget argues that issues concerning retail rates and any related retail crediting mechanisms are outside the scope of this proceeding.⁴⁵

D. Service to Vantage

34. Vantage argues that Puget has not justified its request to adopt a single charge for use of Puget's 115 kV and 230 kV facilities. Vantage contends that it only uses Puget's

⁴¹ *Id.*

⁴² Bonneville Protest at 5.

⁴³ Powerex Protest at 13-14.

⁴⁴ Puget February 13 Answer at 9.

⁴⁵ *Id.* at 10.

230 kV facilities to deliver energy to Public Utility District No. 2 of Grant County, Washington (Grant PUD) and that it is unable to use Puget's lower-voltage facilities to do so. Therefore, Vantage states that requiring it to pay a transmission rate that rolls in the cost of 115 kV lines violates the fundamental tenet of cost recovery that ratepayers should only bear the costs of facilities that are "used and useful" in providing service to them.⁴⁶ Vantage argues that assuming that all other elements of Puget's rate proposal were reasonable (which it argues are not), continuation of a 230 kV rate likely would result in an annual increase to Vantage of about \$23,600 or 38 percent, rather than an annual increase of \$1.4 million or 556 percent increase if forced to pay for 115 kV facilities that Vantage cannot use.⁴⁷ Similarly, Vantage states that to the extent that the facilities associated with the Wind Ridge Line may be geographically and operationally independent from Puget's Washington Area facilities, a segmented rate like the rates Puget charges under its OATT Schedule 10 may be more appropriate than what Puget proposes.⁴⁸

35. In its answer, Puget states that the WUTC approved Puget's requested reclassification of facilities and that Vantage and others had no reason to expect that bifurcated rates would continue in perpetuity.⁴⁹ Puget explains that while it may have made sense for it to have bifurcated rates 10 years ago, changes in the use of Puget's system by third parties and the recent emphasis on NERC reliability requirements have increased the use of Puget's 115 kV facilities so that they are now used on an integrated basis with higher voltage facilities.⁵⁰

36. Puget also states that the Wind Ridge Line is appropriately rolled in with Puget's Washington Area facilities and should not be directly assigned to Vantage and Puget's Wild Horse plant. Puget states that the Wind Ridge Line is not a radial line and that, unlike Puget's capacity on the Colstrip and Southern Intertie lines, which are outside of Puget's balancing authority area and not directly connected to Puget's Washington Area

⁴⁶ Vantage Protest at 8-9.

⁴⁷ *Id.* at 9.

⁴⁸ Vantage Protest at 10.

⁴⁹ Puget February 13 Answer at 5.

⁵⁰ *Id.*

facilities, the Wind Ridge Line is physically integrated and therefore networked with the remainder of Puget's Washington Area facilities.⁵¹

37. In its Answer, Vantage states that Puget's reliance on the WUTC's reclassification ruling is inappropriate because the WUTC did not have sufficient information to consider the impact of the reclassification on Vantage and similarly situated customers.⁵² In addition, Vantage states that even if the WUTC would have had sufficient information to consider adverse impacts on Vantage, its determination is irrelevant in the context of a FERC transmission ratemaking proceeding.

38. Vantage dismisses Puget's argument that because the Wind Ridge Line is in close geographical proximity to Puget's Washington Area facilities it is "physically integrated and therefore networked" with Puget's 115 kV facilities. Vantage states that such a simple explanation for integration is inconsistent with the operation of Puget's system.⁵³ Vantage states that the Wind Ridge Line operates as a radial line, where power flows only in one direction, and whose sole use is to deliver power generated at Wild Horse and the Vantage facilities to Grant PUD. Based on the Commission's factors to determine whether a facility is integrated with the rest of the network, as clarified in *Mansfield*, it would be just and reasonable to limit Puget to charging a segmented rate over the Wind Ridge Line.⁵⁴ Therefore, Vantage argues that Puget has provided no grounds for recovering a rolled-in rate from Vantage based on the costs of Puget's entire Washington Area system.

E. Schedules 5 and 6-Spinning and Supplemental Reserves

39. ICNU argues that Puget's proposed ancillary service rates are above Puget's actual costs of providing services and may not be just and reasonable.⁵⁵

40. Vantage states that Puget failed to provide data to demonstrate that retention of a 3.13 percent purchase obligation for both types of reserves is reasonable. Vantage notes that the majority of the pool of resources used by Puget to develop the proposed reserve

⁵¹ *Id.* at 8.

⁵² Vantage Answer at 6.

⁵³ *Id.* at 10.

⁵⁴ Vantage Answer at 11. *Mansfield Mun. Elec. Dept. v. New England Power Co.*, 97 FERC ¶ 61,134, *reh'g denied*, 98 FERC ¶ 61,115 (2002).

⁵⁵ ICNU Protest at 11.

rates is the same resources that Puget claimed in Docket No. ER11-3735-000 would provide regulation and frequency response service under Schedules 3 and 13. Vantage cautions the Commission that given Puget's request to increase the costs recovered from these same facilities for regulation service, it is likely that Puget will over recover for these facilities if granted its request in this proceeding.⁵⁶

41. Vantage argues that Puget's answer fails to support its request to increase by 85 percent its rates for Spinning Reserves and by 500 percent its Supplemental Reserves under OATT Schedules 5 and 6.⁵⁷

IV. Discussion

A. Procedural Matters

42. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Puget and Vantage's answers because they have provided information that assisted us in our decision-making process.

43. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant PacifiCorp, PGE, and Idaho Power Company's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Suspension, Hearing, and Settlement Judge Procedures

44. Puget's proposal raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. At the hearing, the presiding judge shall consider the justness and reasonableness of all issues arising out of Puget's proposed revisions to its OATT. Therefore, we will accept Puget's proposed rates for filing, suspend rates in Schedules 1 and 10 for a nominal period, effective April 1, 2012, suspend the network revenue requirement in Attachment H and the rates in Schedules 5, 6, 7, and 8 for a five-month period, subject to refund, and set the entire matter for hearing and settlement judge procedures.

⁵⁶ Vantage Protest at 11.

⁵⁷ Vantage Answer at 16.

45. Our preliminary analysis indicates that some of Puget's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In *West Texas Utilities Co.*,⁵⁸ the Commission explained that when our preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission will generally impose a five-month suspension. In the instant proceeding, we find that the proposed rates for Spinning Reserve Service and Supplemental Reserve Service under Schedules 5 and 6 of Puget's OATT as well as the proposed network revenue requirement and proposed point-to-point firm and non-firm point-to-point transmission service rates for the Washington Area facilities under Schedules 6, 7 and 8 may be substantially excessive. Therefore, we will accept Puget's proposed rates for filing, suspend rates under Attachment H and Schedules 5, 6, 7, and 8 for five months, subject to refund, and set them for hearing and settlement judge procedures.

46. In *West Texas*, we explained that when our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension.⁵⁹ Here, our examination indicates Puget's proposed Scheduling and Dispatch Service rates under Schedule 1 and its proposed rate decreases for transmission rates for the Colstrip and Southern Intertie transmission lines under Schedule 10 may not yield substantially excessive revenues. Therefore, we will accept Puget's proposed rates for filing, suspend rates under Schedules 1 and 10 for a nominal period, effective April 1, 2012, subject to refund, and set them for hearing and settlement judge procedures.

47. In addition, because Puget is proposing a rate decrease to its transmission rates over the Colstrip and Southern Intertie transmission facilities in its proposed Schedule 10, and a further decrease may be warranted, we are instituting a section 206 investigation in Docket No. EL12-46-000 with respect to the justness and reasonableness of Puget's proposed rate decreases. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, as amended by section 1285 of the Energy Policy Act of 2005,⁶⁰ requires that the Commission establish a refund effective date that is no earlier than publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after

⁵⁸ 18 FERC ¶ 61,189 (1982) (*West Texas*).

⁵⁹ *Id.* at 61,374.

⁶⁰ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-81 (2005).

the publication date. We establish a refund effective date to be the earliest date possible in order to provide maximum protection to customers, i.e., the date the notice of the initiation of the investigation in Docket No. EL12-46-000 is published in the *Federal Register*.

48. Section 206(b) of the FPA also requires that if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, whichever is earlier, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. To implement that requirement, we will direct the presiding administrative law judge (judge) to provide a report to the Commission no later than 15 days in advance of the refund date in the event the judge has not by that date: (1) certified to the Commission a settlement which, if accepted, would dispose of the proceeding; or (2) issued an initial decision. The judge's report, if required, shall advise the Commission of the status of the investigation and provide an estimate of the expected date of certification or a settlement or issuance of an initial decision.

49. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶¹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁶²

50. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

⁶¹ 18 C.F.R. § 385.603 (2011).

⁶² If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

The Commission orders:

(A) Puget's proposed revisions to its transmission open access tariff are hereby accepted for filing and rates under Schedules 1 and 10 are suspended for a nominal period, to become effective April 1, 2012, and rates under Attachment H and Schedules 5, 6, 7, and 8 for five months, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) – (E) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within 30 days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of section 206 proceedings in Docket No. EL12-46-000.

(G) The refund effective date established pursuant to section 206(b) of the Federal Power Act will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (F) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.