

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Puget Sound Energy, Inc.

Project No. 2493-034

ORDER DENYING REHEARING

(Issued September 1, 2005)

1. On April 7, 2005, the Director, Division of Hydropower Administration and Compliance, issued an order approving a channel conveyance capacity monitoring plan<sup>1</sup> filed by Puget Sound Energy, Inc. (Puget) pursuant to Article 402 of its license for the Snoqualmie Falls Project No. 2493,<sup>2</sup> located on the Snoqualmie River in King County, Washington. The plan provides for monitoring and remedying any project-caused aggradation<sup>3</sup> in the project reservoir.
2. On May 9, 2005, the Snoqualmie Tribe (Tribe) filed a request to intervene and for rehearing of the April 7 Order. The Tribe's request was rejected by notice issued June 15, 2005,<sup>4</sup> on the ground that the Tribe did not have standing to intervene in the proceeding. On July 15, 2005, the Tribe filed a request for rehearing of the rejection notice. For the reasons set out below, we deny the Tribe's rehearing request.

**Discussion**

3. As explained in the Commission's rejection notice, a request for rehearing may be filed only by a party to the proceeding. With regard to post-licensing proceedings, the Commission only entertains motions to intervene where the filing entails a material

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<sup>1</sup> 111 FERC ¶ 62,026 (2005).

<sup>2</sup> 107 FERC ¶ 61,331 (2004).

<sup>3</sup> Aggradation is the raising of the bed of the reservoir by the deposition of sediment.

<sup>4</sup> 111 FERC ¶ 61,393 (2005).

change in the plan of project development or in the terms and conditions of the license, or could adversely affect the rights of a property holder in a manner not contemplated by the license, or is being appealed by an agency or entity specifically given a consultation role with respect to the filing.<sup>5</sup> The Tribe was not named in Article 402 as an entity to be consulted concerning the conveyance capacity monitoring plan.<sup>6</sup> Nor did the plan entail a material change in the plan of project development or affect the rights of property owners in a manner not contemplated by the license.<sup>7</sup>

4. On rehearing, the Tribe acknowledges that it was not included in Article 402 as an entity to be consulted, but argues that the Commission nevertheless was required, pursuant to both its trust obligation to the Tribe and a presidential memorandum issued on April 29, 1994,<sup>8</sup> to consult with the Tribe before taking action on the channel conveyance capacity monitoring plan.

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<sup>5</sup> See *Puget Sound Energy, Inc.*, 112 FERC ¶ 61,116 (2005); *City of Tacoma, Washington*, 109 FERC ¶ 61,318 at 62,519 (2004); *City of Tacoma*, 89 FERC ¶ 61,058 at 61,193 (1999); and *Pacific Gas and Electric Company*, 40 FERC ¶ 61,035 at 61, 099 (1987).

<sup>6</sup> The article required consultation with the U.S. Army Corps of Engineers, King County, Washington Department of Ecology, and the City of Snoqualmie. The licensee consulted with these entities and incorporated their comments in its plan. 111 FERC ¶ 62,026.

<sup>7</sup> In keeping with the terms of Article 402, the approved plan sets out provisions for monitoring and remedying any project-caused aggradation in the project reservoir, as well as for coordination with the Corps.

<sup>8</sup> Memorandum on Government-to-Government Relations with Native American Tribal Governments, 3 C.F.R. 1007 (April 29, 1994). The memorandum provides that agencies of the executive branch shall: (1) operate within a government-to-government relationship with federally recognized Indian tribes; (2) consult, to the greatest extent practicable and permitted by law, with Indian tribal governments before taking actions that affect federally recognized Indian tribes; and (3) assess the impact of agency activities on tribal trust resources and assure that tribal interests are considered before the activities are undertaken. As we have stated previously, the presidential memorandum applies by its terms to executive and independent regulatory agencies. It also states that it is not intended to create any legally enforceable rights. Therefore, it does not require us to make any changes to our practice concerning post-licensing intervention. *City of Tacoma, Washington*, 89 FERC ¶ 61,275 at 61,800 n.8 (1999).

5. To the extent that the Tribe believes it should have been an entity to be consulted on the channel conveyance capacity plan, the time for it to raise that issue would have been on rehearing of the licensing order.<sup>9</sup> Indeed, the tribe did on rehearing argue that it should have been made an entity to be consulted with respect to aesthetic resources and land conveyances.<sup>10</sup> It did not make a similar argument with respect to the channel conveyance capacity plan. Thus, its argument in this post-license proceeding is an impermissible collateral attack upon the license, and we deny it on that ground.

The Commission orders:

The request of the Snoqualmie Tribe for rehearing of the Commission's June 15, 2005 notice rejecting the Snoqualmie Tribe's request for rehearing is denied.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>9</sup> See order granting late intervention and on rehearing, issued July 25, 2005, in *Puget Sound Energy, Inc.*, 112 FERC ¶ 61,116 at P 7, n. 7 (2005). In that order, the Commission explained:

The action to which government-to-government consultation applies is the issuance of the license. Once that consultation is concluded and the license is issued, the terms of the license govern the project's operations. Where a Tribe has not been included as a party to be consulted under a particular license article, and where matters involved are not specifically related to tribal issues, we are not required to consult.

<sup>10</sup> 110 FERC ¶ 61,200 at P 15.