

116 FERC ¶ 61,066
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. 2493-053

ORDER DISMISSING FILING AS DEFICIENT

(Issued July 20, 2006)

1. On June 1, 2006, Commission staff issued an order approving an aesthetic resources plan filed by Puget Sound Energy, Inc. (Puget) pursuant to article 420 of its license for the Snoqualmie Falls Project No. 2493, located on the Snoqualmie River in King County, Washington.¹ On June 29, 2006, the Snoqualmie Indian Tribe (Tribe) filed a timely motion to intervene,² along with a request for rehearing of the order.

2. The Tribe's rehearing request is deficient because it fails to include a Statement of Issues, as required by Order No. 663,³ which became effective September 23, 2005. Order No. 663, *inter alia*, amended Rule 713 of the Commission's Rules of Practice and Procedure to require that a rehearing request must include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on

¹ 115 FERC ¶ 62,244.

² Because the motion to intervene was timely and unopposed, the Tribe became a party 15 days after the motion was filed. *See* 18 C.F.R. § 385.214(c) (2006).

³ *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 70 *Fed. Reg.* 55,723 (September 23, 2005), *FERC Statutes and Regulations* ¶ 31,193 (2005) (to be codified at 18 C.F.R. §§ 385.203(a)(7) and 385.713(c)(2)). Order 663-A, effective March 23, 2006, amends Order 663 to limit its applicability to rehearing requests. *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663-A, 71 *Fed. Reg.* 14,640 (March 23, 2006), *FERC Statutes and Regulations* ¶ (2006) (to be codified at 18 C.F.R. §§ 385.203(a)(7) and 385.713(c)(2)).

which the participant is relying.⁴ Under Rule 713, any issue not so listed will be deemed waived. In addition to not having the required Statement of Issues section, the Tribe's pleading does not clearly specify each issue and does not include Commission and court precedent on which it relies. Accordingly, we will dismiss the Tribe's rehearing request.⁵

3. In any event, the issues raised by the Tribe have no merit. First, the Tribe notes that article 420 of the license required Puget to consult with the Tribe concerning the aesthetic resources plan,⁶ and it argues that Puget failed to do so. Specifically, the Tribe refers to an agreement between Puget and the Tribe to compensate the Tribe for its consultation, suggests that Puget did not honor the agreement,⁷ and maintains that that failure is contrary to article 420's consultation requirement. However, article 420 contains no requirement concerning payments to the Tribe for its consultation. In fact, the Tribe was afforded the same opportunities to consult as other entities specified in the article. As noted in the June 1 Order, the Tribe was invited to attend stakeholder meetings and, although it did not choose to attend the meetings, it did subsequently comment on the plan.⁸

⁴ As explained in Order 663, the purpose of this requirement is to benefit all participants in a proceeding by ensuring that the filer, the Commission, and all other participants understand the issues raised by the filer, and to enable the Commission to respond to these issues. Having a clearly articulated Statement of Issues ensures that issues are properly raised before the Commission and avoids the waste of time and resources involved in litigating appeals regarding which the courts of appeals lack jurisdiction because the issues on appeal were not clearly identified before the Commission. *See* Order No. 663 at P 3-4.

⁵ *Compare American Municipal Power-Ohio v. PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,019 (2006) (order dismissing a complaint because it lacked a Statement of Issues).

⁶ The Tribe was added as an entity to be consulted under article 420 in *Puget Sound Energy, Inc.*, 110 FERC ¶ 61,200 (2005).

⁷ The Tribe cites language in the June 1 Order noting that although Puget acknowledged the Tribe's comment concerning the compensation agreement, Puget maintained that consultation negotiations are beyond the scope of the plan.

⁸ *See* 115 FERC at 64,999-8.

4. The Tribe maintains that, as part of a government-to-government relationship, the Commission had an obligation to consult with the Tribe concerning the aesthetic resources plan. However, to the extent that such consultation is required, it would be during the licensing process.⁹ Once the license is issued, its terms govern the project's operations. There is typically no provision for further consultation between the Commission and third parties, including tribes, but rather for the licensee to engage in whatever consultation is required by the license, as with article 420 here.

5. Likewise, the Tribe's argument that the Commission violated the National Environmental Policy Act¹⁰ by failing to address the cumulative impacts of the aesthetic resources plan with other impacts of the Snoqualmie Falls license and a Corps of Engineers project is inapposite. Relevant cumulative impacts of the project were addressed in the proceeding in which the new license was issued. The requirements of article 420 concerning the aesthetic resources plan simply implement the terms of that new license.

6. Finally, the Tribe argues that the presence of a cultural monitor should be required during soil disturbing activities, and that any activities conducted under the aesthetic resources plan that have a potential to disturb soil be included in a "temporary" erosion and sediment control plan. The project's cultural resources management plan already provides for the requested monitor.¹¹ Furthermore, there is no temporary erosion and sediment control plan. Rather, license article 403 requires Puget to file with the Commission, for approval, an erosion and sediment control plan 90 days before the start of any land-disturbing activity.¹² This would include any soil-disturbing activities contemplated pursuant to the aesthetic resources plan.

⁹ We have previously discussed the extensive nature of the Tribe's participation in the licensing process and our consideration of its views. *See Puget Sound Energy, Inc.*, 110 FERC ¶ 61,200 at P 11-17 (2003).

¹⁰ 42 U.S.C. § 4321, *et seq.*

¹¹ *See* Cultural Resources Management Plan for Snoqualmie Falls Project No. 2493, issued February 26, 1996, at p. 55.

¹² *See* 107 FERC ¶ 61,331 at 62,530 (2004).

The Commission orders:

The Snoqualmie Indian Tribe's request for rehearing filed in this proceeding on June 29, 2006, is dismissed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.