

121 FERC ¶ 61,230
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Puget Sound Energy, Inc.

Docket No. ER08-28-000

ORDER ON PROPOSED TARIFF REVISIONS

(Issued December 4, 2007)

1. On October 5, 2007, Puget Sound Energy, Inc. (Puget) submitted a filing under section 205 of the Federal Power Act (FPA)¹ proposing deviations from certain provisions of the *pro forma* Open Access Transmission Tariff (OATT) as set forth in Order No. 890.² In this order, we accept in part and reject in part Puget's proposed revisions to its OATT to become effective October 5, 2007.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register*

¹ 16 U.S.C. § 824d (2000).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) (Order No. 890).

(i.e., July 13, 2007), FPA section 206³ compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.⁴

4. In addition, after submission of their FPA section 206 compliance filings, non-ISO/RTO transmission providers may submit FPA section 205 filings proposing rates for the services provided for in their tariffs, as well as non-rate terms and conditions that differ from those set forth in Order No. 890 if those provisions are “consistent with or superior to” the *pro forma* OATT.⁵

II. Notice and Responsive Pleadings

5. Notice of Puget’s filing was published in the *Federal Register*, 72 Fed. Reg. 58,839 (2007), with interventions and protests due on or before October 26, 2007. Powerex Corp. (Powerex) filed a timely motion to intervene and comments. Powerex opposes certain of Puget’s proposed tariff revisions and requests that the Commission direct Puget to modify certain provisions. Accordingly, we will treat Powerex’s comments as a protest.

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motion to intervene serve to make the entity that filed it a party to this proceeding.

B. Substantive Matters

7. As discussed below, we accept and reject certain tariff revisions proposed in Puget’s filing and direct Puget to submit a compliance filing within 30 days of the date of issuance of this order.

³ 16 U.S.C. § 824e (2000).

⁴ The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135.

1. Clarification of Simultaneous Submission Window

a. Puget's Proposal

8. Puget proposes to revise sections 13.2 and 14.2 of its OATT to specify the window of time associated with simultaneously submitted transmission service requests. Puget states that its revisions clarify that its existing simultaneous submission window begins immediately following the earliest time for submittal of such requests. Proposed section 13.2 (redlined) provides as follows:⁶

For any requests for Firm Transmission Service for which the Transmission Provider's business practices establish the earliest time such requests are permitted to be submitted, any requests for such service submitted within thea five (5) minute window immediately following such earliest time shall be deemed to have been submitted simultaneously during such window.

b. Commission Determination

9. We accept Puget's proposed revisions to sections 13.2 and 14.2 of its OATT. We find that the addition of the word "immediately" clarifies Puget's simultaneous submission window provision and find Puget's proposed revisions to be consistent with or superior to the *pro forma* OATT.

2. Unreserved Use Penalties

a. Puget's Proposal

10. Puget proposes to revise sections 13.7(c) and 14.5 of its OATT to add a provision for unreserved use penalties. Puget proposes to add the following to section 13.7(c):⁷

In the event that a Transmission Customer exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery or uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved, the Transmission Customer shall pay a Unreserved Use Penalty charge equal to the sum of

⁶ Section 14.2, applicable to non-firm transmission service, contains similar language.

⁷ Section 14.5, applicable to non-firm transmission service, contains similar language. Specifically, section 14.5 provides that the charge for the unreserved use of non-firm transmission service will be equal to twice the applicable rate(s) for non-firm point-to-point transmission service plus the applicable rate(s) for any ancillary services.

- (i) a charge for the unreserved service equal to twice the applicable rate(s) for Firm Point-to-Point Transmission Service (exclusive of any Ancillary Services rate(s)) and
- (ii) a charge equal to the applicable rate(s) for any Ancillary Services (exclusive of charges pursuant to Schedules 4, 4R and 9) associated with such unreserved service and which is provided by Transmission Provider but for which Transmission Customer does not otherwise pay under the Tariff.

For unreserved use within a single day, the penalty charge shall be based on the daily rate. For unreserved use in two or more days in a calendar week, the penalty charge shall be based on the weekly rate. For multiple instances of unreserved use in more than one calendar week in a calendar month, the penalty charge shall be based on the monthly rate.

11. In addition, Puget proposes to add a new section 1.54 to its OATT which defines the term “unreserved use penalty” and which states that Puget’s historical “Overrun System Use Charge,” contained in the form of service agreement for firm point-to-point transmission service in Puget’s OATT, will not be assessed.

b. Commission Determination

12. The Commission finds Puget's proposal to charge a customer for unreserved use of transmission in certain instances at an unreserved use penalty based upon the non-firm point-to-point rate to be inconsistent with Order No. 890. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.⁸ In addition, we stated that the unreserved use penalty rate may not be greater than twice the firm point-to-point rate for the period of unreserved use and that the transmission customer must face a penalty in excess of the firm point-to-point transmission service charge it avoids through unreserved use of transmission service or the transmission customer will have no incentive to reserve the appropriate amount of service.⁹

13. Here, Puget’s proposal to base the unreserved use penalty for certain instances of unreserved use on the non-firm point-to-point rate is inconsistent with our finding that the transmission customer will have no incentive to reserve the appropriate amount of service if the unreserved use penalty is not in excess of the firm point-to-point transmission

⁸ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 848.

⁹ *Id.* at P 848.

service charge. Furthermore, it is unclear how Puget would apply its proposed unreserved use penalty in the event a customer is taking both firm and non-firm point-to-point service at the same points of receipt and delivery, *i.e.*, would Puget apply the firm or non-firm based unreserved use penalty. Accordingly, we reject, without prejudice to refiling, Puget's proposed unreserved use penalty provision in section 14.5 as inconsistent with Order No. 890.

3. Distribution of Unreserved Use Penalties

a. Puget's Proposal

14. Puget proposes a new section 15.8 to provide a mechanism for distributing unreserved use penalties. Proposed section 15.8 provides as follows:

For any month for which Transmission Provider assesses any Unreserved Use Penalty under section 13.7(c) or section 14.5 of this Tariff, Transmission Provider shall credit to Qualified Transmission Customers for such month an amount equal to fifty percent (50%) of the amount of such Unreserved Use Penalty (exclusive of any such amount arising from any charge for Ancillary Services). For each such month, the amount of such credit shall be allocated among Qualified Transmission Customers for such month in proportion to their respective Qualified Transmission Loads for such month.

15. Puget's definition of "Qualified Transmission Customer," includes customers who have not been assessed any unreserved use penalties for the month and are customers of long-term firm point-to-point transmission service or network transmission, or the transmission provider on behalf of its native load customers. In addition, Puget defines "Qualified Transmission Load," to include the following: (1) for each long-term firm point-to-point transmission service customer, its reserved capacity for transmission service; (2) for each network customer, its monthly network load in such month computed in accordance with section 34.2 of the Tariff; or (3) for the transmission provider on behalf of its native load customers, the hourly load in such month of its native load customers coincident with the transmission provider's monthly transmission system peak for such month.

b. Protest

16. Powerex states that Puget's proposal in section 15.8 and its definition of "Qualified Transmission Customer" limit the distribution of unreserved use penalty revenues to network and long-term point-to-point transmission customers and to Puget itself when it is serving native load. Powerex states that under the Commission's penalty crediting policy, Puget should provide credits to all non-offending customers, including short-term firm and non-firm point-to-point transmission customers as specified in Order No. 890. Powerex states that the Commission should direct Puget to modify its crediting

provisions in section 15.8 and its definition of “Qualified Transmission Customer” to establish crediting for all non-offending customers consistent with Order No. 890, or explain why its proposed tariff language is consistent with or superior to the Order 890 *pro forma* penalty crediting policy.

c. Commission Determination

17. For the reasons stated below, we reject Puget’s proposed provision for the distribution of unreserved use penalties.

18. In Order No. 890, consistent with our conclusion regarding imbalance penalties, we concluded that transmission providers should be required to distribute all unreserved use penalties they collect.¹⁰ We also stated that we will allow the transmission provider to retain the base firm point-to-point transmission service charge, but require it to distribute any revenue collected above the base firm point-to-point transmission service charge.¹¹ Accordingly, to the extent that Puget’s proposed unreserved use penalties are equal to twice the firm point-to-point rates for the applicable period of service, Puget’s proposal to distribute 50 percent of the unreserved use penalties it collects (and retain 50 percent of those penalties—*i.e.*, the base firm point-to-point transmission service charge) would be consistent with Order No. 890. However, as we have found above, Puget has not proposed to base all of its unreserved use penalties on firm point-to-point transmission service rates. Furthermore, we find Puget’s definition of “Qualified Transmission Customer” to be inconsistent with Order No. 890, as discussed below.

19. With regard to which customers are eligible to receive penalty revenues, in Order No. 890 we found that *all* point-to-point and network transmission customers, including the transmission provider’s native load, will be eligible to receive a portion of the penalty revenues distributed by the transmission provider.¹² In reaching that determination, we specifically rejected a proposal to exclude short-term firm and non-firm transmission customers from receiving unreserved use penalty revenues. Contrary to the directive in Order No. 890 that all non-offending point-to-point and network customers should be eligible to receive unreserved use penalty revenues, Puget’s proposal would limit the

¹⁰ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at 859.

¹¹ Order No. 890, FERC Stats. & Regs. 31,241 at 863; See *Midwest Indep. Trans. Sys. Oper., Inc.*, 103 FERC ¶ 61,282, at P 23 (clarifying that the penalty charge for unauthorized use is the standard rate that would otherwise apply if sufficient capacity had been reserved, plus a penalty of 100 percent of the standard rate); *Allegheny Power System, Inc.*, 80 FERC ¶ 61,143 at 61,545-46 (1997), *order on reh’g* 85 FERC ¶ 61,235 (1998) (same).

¹² *Id.* at 862.

distribution of unreserved use penalty revenues to network and long-term point-to-point transmission customers. Under Puget's proposal, non-offending short-term firm and non-firm customers would be denied receiving any unreserved use penalty revenues. Accordingly, we find Puget's proposed unreserved use penalty provision to be inconsistent with Order No. 890 and direct Puget to file, within 30 days of the date of this order, a compliance filing to make its unreserved use penalty provision consistent with Order No. 890.

4. Applicability of Certain Ancillary Services

a. Puget's Proposal

20. Puget states that it is revising its OATT to clarify that Puget must offer to provide (or arrange with the local control area operator) certain ancillary services to any transmission customer serving load outside of Puget's control area from a generator located within Puget's control area. Specifically, Puget proposes to revise section 3 of its OATT to add the following:

In addition, the Transmission Provider is required to offer to provide (or offer to arrange with the local Control Area operator as discussed below) the following Ancillary Services to the Transmission Customer serving load not within the Transmission Provider's Control Area from a generator located within the Transmission Provider's Control Area (i) Operating Reserve - Spinning, (ii) Operating Reserve - Supplemental, and (iii) Generator Imbalance. The Transmission Customer serving load not within the Transmission Provider's Control Area from a generator located within Transmission Provider's Control Area is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply. The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired the Ancillary Services from another source.

21. Puget also states that it is revising Schedule 5 (Operating Reserve – Spinning) and Schedule 6 (Operating Reserve – Supplemental) to clarify that Puget must offer these services when the transmission service is used to serve load not within the Puget control area from a generator located within Puget's control area.

22. Puget states that its proposal is consistent with current practice in the Pacific Northwest under which Operating Reserves – Spinning and Operating Reserves – Supplemental are carried by the control area in which the generator is located.¹³

¹³ See Puget Filing at 6 (referring to section 3 of the Bonneville Power Administration's (BPA) OATT).

b. Protest

23. Powerex states that Puget's proposed revision to section 3 of its OATT is inconsistent with the Commission's treatment of ancillary services under Order No. 888¹⁴ and Order No. 890. Powerex argues that the *pro forma* OATT only requires transmission customers to demonstrate that they have procured ancillary services before declining a transmission provider's offer of ancillary services if the customers are serving load within the transmission's provider's control area. In addition, Powerex argues that Puget has not offered any explanation why its proposal is consistent with or superior to the Commission's approach in Order No. 888 and Order No. 890. Powerex requests that the Commission direct Puget to remove the proposed language from section 3 of its OATT or explain how its proposal is consistent with or superior to Commission policy.

c. Commission Determination

24. We will reject Puget's proposed revisions to section 3 and Schedules 5 and 6 as inconsistent with the *pro forma* OATT. Under section 3 of the *pro forma* OATT, the transmission provider is required to offer to provide (or offer to arrange with the local control area operator) certain ancillary services to the transmission customer serving load *within* the transmission provider's control area.¹⁵ In addition, the transmission customer serving load within the transmission provider's control area is required to acquire these ancillary services, whether from the transmission provider, from a third party, or by self-supply.¹⁶ However, the *pro forma* OATT does not require the transmission provider to offer these ancillary services to customers serving load outside of its control area. Nor does the *pro forma* OATT require the transmission customer serving load outside of the transmission provider's control area to demonstrate that it has acquired ancillary services from another source before it may decline a transmission provider's offer of ancillary services. We find that Puget has failed to explain how its proposed tariff revisions are consistent with or superior to the *pro forma* tariff. Moreover, besides referencing section

¹⁴ *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 (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).

¹⁵ *See* Order No. 890 *pro forma* OATT, section 3 (emphasis added).

¹⁶ *Id.*

3 of the BPA's OATT, Puget does not explain how its proposal is consistent with the current practice in the Pacific Northwest. Accordingly, the Commission rejects Puget's proposed revisions to section 3 and Schedules 5 and 6 of its OATT.

The Commission orders:

(A) Puget's proposed tariff sheet revisions are hereby accepted in part and rejected in part, effective October 5, 2007, as discussed in the body of this order.

(B) Puget is hereby directed to submit a filing, within 30 days of the date of issuance of this order, to comply with the directives in this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.