128 FERC ¶ 61,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Puget Sound Energy, Inc. Docket No. ER09-1348-000

ORDER ACCEPTING AND SUSPENDING PROPOSED INTERCONNECTION FACILITIES AGREEMENT AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 31, 2009)

1. On June 24, 2009, Puget Sound Energy, Inc., (Puget) filed an unexecuted Large Generator Interconnection Agreement[1] (Vantage LGIA) between Puget and Vantage Wind Energy LLC (Vantage). In this order, the Commission accepts the proposed Vantage LGIA for filing, and suspends it to be effective September 1, 2009, subject to refund. The Commission also establishes hearing and settlement judge procedures.

I. Background

2. The Vantage LGIA provides for the interconnection of Vantage's proposed Vantage Wind Power Project (Vantage Project) to Puget's transmission system. The Vantage Project will consist of 69 1.5 MW wind turbines with a total installed nameplate capacity of 103.5 MW. The Vantage LGIA specifies the terms and conditions of Puget's interconnection service and the engineering, design, construction, installation, ownership, operation, and maintenance responsibilities of the parties.

3. Puget and Vantage disagree about whether the facilities subject to the Vantage LGIA are network facilities or interconnection facilities based on the parties' negotiating history and Commission precedent. Puget states that under the large generator interconnection agreement dated October 5, 2005, between the Energy Resources Group of Puget and Puget Transmission (Wild Horse LGIA), the existing 8.44 mile-long 230kV line between Wild Horse substation and Wind Ridge substation (Wild Horse-Wind Ridge) was constructed by Puget for the sole purpose of physically and electrically interconnecting the Wild Horse wind facility to Puget's transmission system. Puget states that the Poison Spring-Wind Ridge 230 kV line facilities are a portion of these

[1] FERC Service Agreement No. 459, Original Sheet Nos. 1-107.

facilities, and that the Poison Spring-Wind Ridge 230 kV line facilities are Puget's as either an interconnection customer or a transmission provider under the Wild Horse large generator interconnection agreement. In contrast, Vantage states that Puget misidentifies the point of interconnection in the Vantage LGIA, classifying the interconnection facilities as transmission provider's interconnection facilities rather than network upgrades, thereby allocating a greater portion of construction costs to Vantage and denying it the opportunity to receive transmission revenue credits under Puget's tariff.

4. The Vantage LGIA describes the point of interconnection (POI) for the Vantage Project as being on Puget's side of the last structure before the Poison Spring – Wind Spring 230 kV line segment connects to the Wind Ridge Substation. Puget identifies the facilities covered by the Vantage LGIA as the Poison Spring switching station and an approximately 4.41 mile-long 230 kV line segment from the Poison Spring switching station to the Wind Ridge substation (Poison Spring-Wind Ridge) of the existing 8.44 mile-long 230 kV line between Wild Horse-Wind Ridge.

II. Notice of Filing and Responsive Pleadings

5. Notice of Puget's filing was published in the *Federal Register*, 74 Fed. Reg. 32,139 (2009), with interventions and protests due on or before July 15, 2009.

6. On July 15, 2009, Vantage filed a motion to intervene and protest. In such motion, Vantage requests confidential treatment of Vantage's exhibits C, D, E, F, H, I, and J under 18 C.F.R. §§ 388.112 and 388.113. Vantage states that such exhibits contain confidential or critical energy infrastructure information, including design information about proposed energy infrastructure involving the production and transmission of energy. On August 10, 2009, Puget filed a motion for leave to reply and reply to Vantage's protest. On August 14, 2009, Vantage filed a motion to reject Puget's reply, and in the alternative, a motion for leave to answer Puget's reply.[2]

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 (2009), the timely, unopposed motion to intervene serves to make Vantage a party to this proceeding**.**

[2] Vantage states that Puget also requested confidential treatment of Puget exhibits C, D, H, I, and J. *Id*. at 2, n. 4.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless ordered by the decisional authority. The Commission will accept the Puget and Vantage answers because they have provided information that assisted us in our decision making process.

B. Characterization of the Facilities as Either Network Facilities or Interconnection Facilities

1. History of the Negotiations

9. Puget states that Vantage made a total of three separate interconnection requests to Puget regarding the interconnection of the Vantage Project, having made the first such request on November 16, 2005. Puget admits that the interconnection studies it provided to Vantage during the three year time period inaccurately described the transmission facilities subject to the Vantage LGIA as network upgrades rather than transmission provider interconnection facilities. However, Puget points out that only after it corrected the misidentification of the facilities in draft large generator interconnection agreements did Vantage question the classification of the facilities as transmission provider interconnection facilities.[3] In addition, Puget explains in its reply that Vantage requested that Puget file the unexecuted Vantage LGIA because of Vantage's objection to the classification of the Poison Substation and the Wind Ridge line as transmission provider's interconnection facilities rather than network upgrades.[4]

10. Puget argues that it did not, as Vantage asserts, unilaterally move the Vantage Project's POI to allow Puget to re-classify the facilities as interconnection facilities.[5] Puget argues that both Puget and Vantage have understood from the beginning that the Vantage facilities would interconnect with Puget's facilities at a point on the Wild Horse-Wind Ridge line, and that the Vantage Project would interconnect with the network transmission service at the Wind Ridge substation.[6] In addition, Puget states that there are no potential future uses of the Wild Horse-Wind Ridge line other than to physically

[3] Puget Reply at 3.

[4] Puget Reply at 11and 12, and Vantage Protest at 15.

[5] Puget Reply at 12.

[6] *Id*. at 15.

and electrically interconnect the Wild Horse generating facility and any other generating facility that may share the use of the Wild-Horse-Wind Ridge line.[7]

11. Finally, Puget states that its identification of the facilities as transmission provider interconnection facilities in the Vantage LGIA and its identification of the Wind Ridge substation as the POI in the Vantage LGIA is not misleading. Rather, Puget asserts that it actually corrected the mis-identification of some facilities in the facilities studies and correctly classified them as interconnection facilities in the draft large generator interconnection agreements it provided to Vantage.[8]

12. Vantage counters that Puget's unilateral change in the Vantage Project's POI and its reclassification of the facilities from network upgrade to transmission provider's interconnection facilities contravenes not only Puget's standard large generator interconnection agreement set forth in its tariff, but also principles of equity and fair dealing.[9] Vantage states that it relied on Puget's studies and statements and that Puget did not inform Vantage of its intent to move the POI and to reclassify the facilities. Vantage contends that if Puget had earlier told Vantage or otherwise indicated that the facilities would be classified as transmission provider's interconnection facilities, Vantage would have pursued an alternative POI option. In its answer to Puget's reply, Vantage argues that it had no reason to know that Puget would reclassify the facilities as interconnection facilities.[10]

13. Vantage also asserts that Puget's last minute and unexpected reversal in classifying the facilities does not comport with Commission precedent or the study provision of Puget's tariff. Moreover, Vantage argues that Puget's reclassification has effectively deprived Vantage of its choice of interconnection point and recalibrated Vantage's ultimate cost responsibility. Vantage explains that the Large Generator Interconnection Procedures (LGIP) in Puget's tariff provides that during the interconnection study process, the interconnection customer and Puget may identify changes to the planned interconnection that could improve the balance of costs and benefits. To the extent those changes are reasonably acceptable to Puget and the interconnection customer, the LGIP provisions allow Puget to modify the POI or

[7] *Id*. at 13.

[8] *Id*. at 16.

[9] Vantage Protest at 37-39.

[10] Vantage Answer to Puget Reply at 9.

connection configuration while keeping the customer in the same queue position.[11] According to Vantage, section 4.4.3 of the Vantage LGIP provides that the POI may be moved if: (1) the parties agree to the change before a system impact study agreement is signed,[12] or (2) the feasibility study or system impact study uncovers a problem and either the interconnection customer or Puget suggests a substitute interconnection point that the other party accepts.[13] Vantage argues that the Vantage LGIP does not permit Puget to amend a completed facilities study based on a change of heart, rather than any change in the transmission system, four months after issuing its final report.[14] In addition, Vantage states that by waiting until the interconnection agreement negotiations were completed to make changes to the facilities studies, Puget deprived Vantage of the protection afforded by section 8.3 of Puget's LGIP, which provides a number of protections to interconnection customers, including the opportunity to comment on the report and to review supporting documentation.[15]

2. Interconnection Precedent

14. Puget states that even if the Poison Spring-Wind Ridge 230 kV line facilities are not defined as interconnection facilities under the Wild Horse LGIA, Commission precedent regarding the allocation of costs for interconnection facilities and network upgrades is instructive in establishing that the Poison Spring-Wind Ridge 230 kV line facilities are transmission provider interconnection facilities and not network facilities. Puget contends that the Commission employs a simple test for distinguishing interconnection facilities from network upgrades; namely, network upgrades include only facilities at or beyond the point where the interconnection customer's generating facility interconnects to the transmission provider's transmission system.[16] In circumstances in

[11] Vantage Protest at 22.

[12] *Id*. at 23.

[13] *Id*. at 23.

[14] *Id*. at 15 and 24.

[15] *Id*. at 24.

[16] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Reg. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (continued)

which the results of the "at or beyond" test are not definitive, the Commission has applied the *Mansfield*[17] factors to determine whether a facility is part of an integrated grid and therefore subject to rolled–in pricing.[18]

15. Puget states that under both the "at or beyond" test and the *Mansfield* factors, the Poison Spring-Wind Ridge 230kV line facilities should be classified as transmission provider interconnection facilities, rather than network facilities. Puget explains that the Poison Spring-Wind Ridge 230 kV line facilities are not "at or beyond" the POI between the Wild Horse wind facility and Puget's transmission system. Puget also asserts that the Poison Spring-Wind Ridge 230kV line facilities satisfy each of the *Mansfield* factors, because the facilities: are radial, uni-directional facilities that provide minimal, if any, benefit to the transmission grid; do not enable the transmission provider to provide service to itself or other transmission customers; are not relied upon for coordinated operation of the grid; and due to their radial nature, would not affect the transmission system if an outage were to occur on such facilities. [19]

16. Vantage also disagrees with Puget's claims that the facilities would not qualify as network upgrades under the alternate test for integration applying the *Mansfield* factors. Vantage argues that the facilities are 230 kV looped facilities that are capable of bi-directional flow. Vantage further states that, while the facilities are currently connected only to the Vantage Project and Puget's Wild Horse wind farm, which has been designated as a network resource, in categorizing facilities, the Commission also looks to potential future uses. Vantage points out that by the time the Vantage Project and the Wild Horse expansion are completed, the Poison-Ridge line will convey 376.5 MW of wind generation capacity to Puget's transmission grid with the potential for additional

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(2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

[17] *Mansfield Municipal Electric Department and North Attleborough Electric Department v. New England Power Company*, 97 FERC ¶ 61,134 (2001), *order on reh'g*, 98 FERC ¶ 61,115 (2002) (*Mansfield*).

[18] *Southern California Edison Company*, 117 FERC ¶ 61,103 at P 71-72 (2006).

[19] Puget Transmittal Letter at 6.

capacity.[20] In addition, Vantage argues that the Poison substation is being constructed for a future transmission line.[21]

17. Vantage requests that the Commission hold Puget to its original classification of the facilities as network upgrades and order that Vantage receive transmission credits for the costs it will incur on the Poison substation and not require payment for the existing Poison-Wind Ridge Line. Vantage states that if the Commission determines that Puget's actions did not violate the letter of its LGIP and tariff, the Commission should exercise its remedial authority and order the same relief on the basis of equity and fair dealing.

C. Hearing and Settlement Judge Procedures

18. The Vantage LGIA raises issues of material fact that cannot be resolved based on the record before the Commission,[22] and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

19. The Commission's preliminary analysis indicates that the Vantage LGIA has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, the Commission will accept the Vantage LGIA for filing, and suspend it to be effective September 1, 2009, subject to refund. In addition, as discussed below, the Commission will set for hearing and settlement judge procedures the remaining unresolved issues between Puget and Vantage.

20. While the Commission is setting these unresolved issues for a trial-type evidentiary hearing, the Commission encourages the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, the Commission 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.[23] If the parties desire, they may, by mutual agreement, request a

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[20] Vantage Protest at 19-20.

[21] Vantage Answer to Puget Reply at 9.

[22] Indeed, the parties both filed affidavits with statements of fact that are material to resolution of their dispute, which cannot be reconciled without further testimony and information.

[23] 18 C.F.R. § 385.603 (2009).

specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[24] The settlement judge shall report to the Chief Judge and the Commission within 30 days of the appointment of the settlement judge, 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.

The Commission orders:

(A) The Vantage LGIA is accepted for filing and suspended, to become effective September 1, 2009, 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 Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the issues raised in this proceeding, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all 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 days of the date of this order.

(D) Within 30 days of the appointment of the settlement judge, 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

[24] 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).

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 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 administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such 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.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.