

144 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 31, 2013

In Reply Refer To:
Puget Sound Energy, Inc.
Docket No. ER13-1634-000

Van Ness Feldman, LLP
1050 Thomas Jefferson Street, N.W.
Washington, DC 20007

Attention: Evan C. Reese, III

Dear Mr. Reese:

1. On June 4, 2013, Puget Sound Energy, Inc. (Puget) submitted two firm point-to-point transmission service agreements (Service Agreements) between Puget and Morgan Stanley Capital Group, Inc. (Morgan Stanley).¹ Each of the agreements provides Morgan Stanley transmission service for 50 megawatts (MW) of capacity, with a five-year term, from August 1, 2015 to August 1, 2020.² Puget filed the Service Agreements as non-conforming agreements because each contains a conditional curtailment option.³

2. Puget states that the conditional curtailment option arises because transmission capacity on the path requested by Morgan Stanley is fully subscribed, and therefore unavailable to Morgan Stanley, during the months of June through September each year, due to an existing seasonal exchange agreement that has grandfathered priority rights to the capacity under a longstanding agreement.⁴ Puget further states that the seasonal exchange customer has the authority and corresponding priority rights to schedule service on that path every hour during the four-month period.⁵ Puget states that, in the event that

¹ Service Agreement Nos. 669 and 670. June 4, 2013 Puget Transmittal at 1.

² *Id.* at 1-2.

³ According to Puget, Morgan Stanley chose this approach as an alternative to the construction of upgrades to the Puget transmission system. *Id.* at 1.

⁴ *Id.* at 2.

⁵ *Id.* at 2-3.

the seasonal exchange customer schedules service for an amount less than its capacity entitlement for any hour during this period, Puget makes available, on a non-firm basis, the amount of any non-scheduled service subject to curtailment in any subsequent hour and in accordance with the terms of its Tariff.⁶ Puget states that, in addition, it will curtail conditional firm service on a *pro rata* basis.⁷ Puget requests an effective date of August 3, 2013 for both Service Agreements.⁸

3. Notice of Puget's filing was published in the *Federal Register*, 78 Fed. Reg. 35,621 (2013), with interventions and protests due on or before June 25, 2013. On June 25, 2013, Powerex Corporation (Powerex) filed a timely motion to intervene and comments. On July 3, 2013, Morgan Stanley filed an out-of-time motion to intervene that includes an answer to Powerex.

4. In its comments, Powerex explains that it filed a request for clarification of the Commission's May 20 Order in Docket Nos. ER13-1146-000 and ER13-1193-000,⁹ which, according to Powerex, pronounced that all conditional firm service must be subject to *pro rata* curtailment during conditional periods. Powerex contends that the Commission's finding may overrule Puget's published business practices which provide that Puget would curtail conditional firm service on a last-in, first-out basis.¹⁰ Powerex states that, in its request for clarification, it informed the Commission that giving immediate effect to such a pronouncement would result in significant harm to Powerex, and requested the Commission clarify that the May 20 Order's impact be applied prospectively, i.e., to contracts entered into after May 20, 2013.¹¹ Finally, Powerex requests that the Commission accept the Service Agreements subject to any order the Commission issues in Docket Nos. ER13-1146-000 and ER13-1193-000.¹² Alternatively, Powerex requests that the Commission consolidate this proceeding with

⁶ See Agreement No. 669, Specifications For Long-Term Firm Point-To-Point Transmission Service, at section 6, and Agreement No. 670, Specifications For Long-Term Firm Point-To-Point Transmission Service, at section 6.

⁷ Puget Transmittal at n.7.

⁸ *Id.* at 3.

⁹ *Puget Sound Energy, Inc.*, 143 FERC ¶ 61,157 (2013) (May 20 Order).

¹⁰ Powerex Comments at 4.

¹¹ *Id.*

¹² *Id.* at 6.

the proceedings in Docket Nos. ER13-1146-000 and ER13-1193-000, as it maintains that the three proceedings contain common issues of law and fact.¹³

5. Morgan Stanley explains that it filed an untimely motion to intervene because, until Powerex filed its comments, there was no reason for it to intervene in this proceeding.¹⁴ Morgan Stanley argues that Powerex's motion to intervene should be rejected because Powerex has no interest in the Service Agreements and because acceptance of the Service Agreements will not affect the issues raised by Powerex in its request for clarification of the May 20 Order (i.e., the procedures that Puget will employ when curtailing conditional firm service).¹⁵ Morgan Stanley argues that, to the extent the Commission clarifies the May 20 Order and/or directs Puget to modify its business practices regarding the curtailment of conditional firm service, no action is required in this docket because any clarification of the May 20 Order would apply to Puget's business practices and all agreements subject to those practices (including the Service Agreements).¹⁶ Thus, Morgan Stanley concludes that there is no need for the Commission to condition its acceptance of the Service Agreements in the instant proceeding subject to the outcome in Docket Nos. ER13-1146-000 and ER13-1193-000, and that acceptance of these agreements will not directly impact Powerex's interests.¹⁷ Finally, Morgan Stanley argues that there is no need to grant Powerex's motion to consolidate.¹⁸

6. We grant the motions to intervene by Powerex and Morgan Stanley. We find that Powerex has expressed an interest in the outcome of this proceeding that is not represented by another party and that its participation may be in the public interest. We also grant Morgan Stanley's late-filed motion to intervene given its interests in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay from granting its motion to intervene. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Morgan Stanley's answer because it has provided information that assisted us in our decision-making process.

¹³ *Id.*

¹⁴ Morgan Stanley Comments at 5.

¹⁵ *Id.* at 6.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 7-8.

7. We accept for filing Service Agreement Nos. 669 and 670, effective August 3, 2013, as requested. We deny Powerex's requests to make the acceptance of these agreements subject to the outcome of the proceedings in Docket Nos. ER13-1146-000 and ER13-1193-000¹⁹ or to consolidate this proceeding with those proceedings. Nothing in our acceptance of Puget's agreements in the instant proceeding touches on the pending issues in Docket Nos. ER13-1146-000 and ER13-1193-000, and our acceptance here of Service Agreement Nos. 669 and 670 does not override our findings in those proceedings. Moreover, as we did not set the proceedings in Docket Nos. ER13-1146-000 and ER13-1193-000 for hearing, there is nothing to consolidate.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁹ However, we note that any determination on rehearing as to Puget's business practices would govern here, as well.