

153 FERC ¶ 61,131
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Puget Sound Energy, Inc.

Docket No. EL10-71-001

ORDER ON REHEARING

(Issued November 2, 2015)

1. On February 16, 2012, the Commission issued an order that denied, in part, and granted, in part, Puget Sound Energy, Inc.'s (Puget) petition for declaratory order.¹ In this order, we grant, in part, and deny, in part, the requests for clarification and deny the request for rehearing of the Commission's February 2012 Order.

I. Background

2. On June 4, 2010, Puget filed a petition for declaratory order (Puget Petition) requesting that the Commission find that locational exchanges of electric power are permissible wholesale power transactions and not transmission transactions subject to an open access transmission tariff (OATT). In the February 2012 Order, the Commission found that, when a simultaneous exchange transaction² involves the marketing function of a public utility transmission provider, the public utility must seek prior approval from the Commission if the transaction involves its affiliated transmission provider's system.³

¹ *Puget Sound Energy, Inc.*, 138 FERC ¶ 61,121 (2012) (February 2012 Order).

² *Id.* P 12 (“Simultaneous exchanges occur when a pair of simultaneously arranged (i.e., part of the same negotiations) wholesale power transactions between the same counterparties in which party A sells an electricity product to party B at one location and party B sells a similar electricity product to party A at a different location have an overlapping delivery period. The simultaneous exchange is the overlapping portion (both in volume and delivery period) of these wholesale power transactions.”).

³ *Id.* P 11. The Commission noted that “[i]nvolvement of the transmission provider's system means that one point of the simultaneous exchange is either within or on the border of the transmission provider's system.” *Id.* P 11 n.22.

The Commission expressed its concern that certain simultaneous exchanges may resemble transmission service, because they involve a party placing power onto the power grid at one delivery point and then simultaneously receiving power at another delivery point, and when such transactions involve the marketing function of a transmission provider, they may appear to enable the marketing function, in effect, to provide service on its transmission provider's system without the reservation of service on that system.⁴ The Commission also explained that, within these types of transactions, the marketing function of a transmission provider could utilize the complexity of simultaneous exchanges in effect to perform transmission functions, thus, circumventing Commission open access regulations.⁵ Therefore, the Commission denied the Puget Petition, in part, with regard to proposed transactions involving the marketing function of a public utility transmission provider and its affiliated transmission provider's system.

3. The Commission further noted that its prior decisions involving simultaneous exchanges reflect the particular concern that certain types of simultaneous exchanges may enable the marketing function of a transmission provider, in effect, to provide transmission service.⁶ These orders set forth the Commission's broader concerns related to simultaneous exchange-like transactions and separation of functions between the marketing function and the transmission function of the transmission provider. However, as the Commission explained in the February 2012 Order, while the Commission is concerned with simultaneous exchanges by a marketing function of a transmission provider involving the transmission provider's system, the Commission has not prohibited all simultaneous exchange-like transactions involving marketing function affiliates and will permit such transactions, if the Commission's concerns regarding transmission service regulation circumvention are alleviated.⁷

4. In addition, the Commission granted the Puget Petition, in part, with regard to all other simultaneous exchange transactions, which the Commission concluded would not require prior Commission approval beyond the necessary authorization under section 205 of the Federal Power Act (FPA) for the sale for resale of electric energy.⁸ The

⁴ *Id.* P 13.

⁵ *Id.* P 14.

⁶ *Id.* P 15 (citing *United Associated Mun. Power Sys. V. PacifiCorp*, 83 FERC ¶ 61,337, at 62,367 (1998) (*UAMPS*), *reh'g*, 87 FERC ¶ 61,044, at 61,187-88 (1999)).

⁷ *Id.* P 16 (citing *El Paso Elec. Co.*, 115 FERC ¶ 61,312, at PP 18-22 (2006) (*El Paso*)).

⁸ *Id.* P 11.

Commission found that entities are permitted to engage in simultaneous exchanges without prior Commission approval, if such transactions do not include the marketing function of a transmission provider conducting simultaneous exchange transactions involving that transmission provider's system.⁹ Acknowledging that the obligation of the marketing function of the transmission provider to seek pre-approval to engage in these transactions may have not been sufficiently clear previously, the Commission clarified that it would not impose this obligation upon simultaneous exchanges that were effective prior to the date of the February 2012 Order's issuance.¹⁰

II. Motions to Intervene Out of Time

5. On March 16, 2012, Bonneville Power Administration and Powerex Corp. filed motions to intervene out of time. On March 19, 2012, Tucson Electric Power Company and UNS Electric, Inc., and El Paso Electric Company (El Paso) filed motions to intervene out of time. On March 20, 2012, NorthWestern Corporation filed a motion to intervene out of time. On April 23, 2012, Morgan Stanley Capital Group Inc. (Morgan Stanley) filed a motion to intervene out of time and comments.

III. Requests for Clarification and Rehearing

6. In their request for clarification, the Indicated Western Utilities¹¹ argue that, in the February 2012 Order, the Commission mandates, without explanation, disparate treatment for entities affiliated with transmission providers and those unaffiliated with transmission providers.¹² According to the Indicated Western Utilities, the fact that an entity is affiliated with a transmission provider does not make the exchange any more or less like transmission service than if the entity was unaffiliated with a transmission provider.¹³ The Indicated Western Utilities claim that the Commission failed to engage in reasoned, articulated decision-making, and that providing such disparate treatment gives unaffiliated entities a competitive advantage. The Indicated Western Utilities request clarification or, in the alternative, rehearing regarding the Commission's basis for

⁹ *Id.* P 17.

¹⁰ *Id.* P 18.

¹¹ The Indicated Western Utilities are: PacifiCorp; Tucson Electric Power Company and UNS Electric, Inc.; Arizona Public Service Company; Avista Corporation; Puget; Xcel Energy Services Inc.; Seattle City Light; and Bonneville Power Administration. Indicated Western Utilities Request for Clarification/Rehearing at 1.

¹² *Id.* at 7.

¹³ *Id.* at 8.

the disparate treatment. They request that the Commission narrow or eliminate its policy. The Indicated Western Utilities also claim that the Commission has not explained the “problem” it is seeking to solve.

7. The Indicated Western Utilities state that the Commission prohibits, absent prior approval, simultaneous exchange transactions where either “half” of the exchange touches upon an affiliated transmission system, and requests clarification or, in the alternative, rehearing, regarding whether the Commission intended to overturn *El Paso*.¹⁴ The Indicated Western Utilities interpret the February 2012 Order as prohibiting the transactions that were permitted in *El Paso*; i.e., that simultaneous exchanges are permissible when transmission service could have been obtained between the points of the exchange from a transmission provider other than the affiliate of the exchange participant, and an unaffiliated marketer could have engaged in the same exchange as the merchant affiliate.¹⁵ The Indicated Western Utilities request clarification that exchanges are permissible wholesale power transactions and do not require prior approval if there is a nonaffiliated transmission provider that owns facilities and offers transmission service between the points of exchange.¹⁶

8. The Indicated Western Utilities also seek clarification or, in the alternative, rehearing on various aspects of the prior approval requirement. Specifically, the Indicated Western Utilities seek clarification on what type of filing is required for seeking prior approval (i.e., an informational filing, request or submittal under section 205 of the FPA, or some other type of filing).¹⁷ The Indicated Western Utilities assert that the Commission should not require that such filings be made through petitions for declaratory order, although such petitions should not be prohibited. Moreover, the Indicated Western Utilities seek clarification on the standard of review that the Commission will apply in reviewing submittals for prior approval of simultaneous exchanges.

9. Additionally, the Indicated Western Utilities request clarification on certain information needed for prior approval filings. In particular, the Indicated Western Utilities state that, in the February 2012 Order, the Commission suggests that an entity seeking prior approval indicate “details of ultimate power sources and sinks;” however, information about sources and sinks would not be available for most simultaneous

¹⁴ *Id.* at 9.

¹⁵ *Id.* (citing February 2012 Order, 138 FERC ¶ 61,121 at P 16 n.29).

¹⁶ *Id.* at 10.

¹⁷ *Id.* at 11.

exchanges at the time prior approval would be sought.¹⁸ The Indicated Western Utilities request clarification that such information should be provided if known, but need not be provided if unknown. Furthermore, according to the Indicated Western Utilities, the Commission suggests that an entity “[i]dentify available competitive alternatives (accounting for physical constraints or whether transmission service for a related transaction has previously been denied).”¹⁹ The Indicated Western Utilities assert that it is not clear what information the Commission seeks, and request clarification on this issue.

10. The Indicated Western Utilities request that the Commission clarify that it would consider a proposed market-based rate tariff amendment authorizing certain types of acceptable simultaneous exchange transactions, such as short-term exchanges between specified pairs of points.²⁰ According to the Indicated Western Utilities, such an amendment could permit prior tariff authority to cover specified categories of exchanges conducted on a regular basis, which would ease the administrative burden of the requisite prior approval process on both the Commission and on the parties to an exchange.

11. The Indicated Western Utilities also seek clarification as to whether the Commission intends to implement an expedited process for its consideration of prior approval requests.²¹ The Indicated Western Utilities suggest that for specific simultaneous exchanges, the Commission should allow an applicant to seek expedited approval in the following manner: (1) a request for prior approval would be filed with the Commission by jurisdictional utilities under section 205; (2) the Commission would issue a formal notice of such a request, setting an expedited comment period of no more than five business days; and (3) if no entity contests the proposed exchange and the Commission does not take action prior to five business days thereafter, the proposed exchange is deemed to be approved and/or accepted.

12. The Indicated Western Utilities further seek clarification that the Commission did not intend that the February 2012 Order apply to short-term transactions.²² According to the Indicated Western Utilities, the vast majority of simultaneous exchange transactions employed in the West are short-term transactions, which may be arranged less than an

¹⁸ *Id.* at 12 (citing February 2012 Order, 138 FERC ¶ 61,121 at P 19).

¹⁹ *Id.* at 13 (citing February 2012 Order, 138 FERC ¶ 61,121 at P 19).

²⁰ *Id.*

²¹ *Id.* at 14.

²² *Id.* at 14-15.

hour in advance to respond to system contingencies and preserve reliable load service during peak periods. The Indicated Western Utilities argue that it would be impractical to seek Commission prior approval for such short-term trades even one day in advance, let alone 60 days in advance (as is normally required for section 205 filings), or even five business days in advance.²³

13. The Indicated Western Utilities request that the Commission confirm that brokered transactions fall outside of the scope of the transactions prohibited by the February 2012 Order.²⁴ According to the Indicated Western Utilities, when engaging in a brokered set of exchange transactions, it is impossible for an entity to know whether it may be entering into such exchanges with the same party or with different parties. Therefore, such brokered transactions do not present the concerns that the Commission was trying to address in the February 2012 Order. The Indicated Western Utilities state that, if the Commission declines to make such a finding, the Commission should permit prior tariff approval and clarify that brokered transactions are transactions for which utilities may seek such prior tariff approval.²⁵

14. Finally, the Indicated Western Utilities request that the Commission exclude from the prior approval requirement those exchanges where only one of the points of the simultaneous exchange is on the contiguous transmission system of the transmission provider's affiliate.²⁶ The Indicated Western Utilities assert that the Commission has never before articulated concern with energy exchange transactions that involve only one point of receipt or delivery on an affiliated provider's transmission system, and, in both *UAMPS* and *El Paso*, both of the points of exchange were located on the transmission provider's contiguous system.²⁷ According to the Indicated Western Utilities, even assuming for purposes of argument that a simultaneous exchange "may resemble transmission service," a transmission provider cannot provide a service between two points unless both points are on its contiguous system.²⁸ The Indicated Western Utilities argue that the Commission's conclusion that simultaneous exchanges in which neither

²³ *Id.* at 15.

²⁴ *Id.* at 16.

²⁵ *Id.* at 17.

²⁶ *Id.*

²⁷ *Id.* at 18 (citing *El Paso*, 115 FERC ¶ 61,312 at P 5; *UAMPS*, 83 FERC ¶ 61,337 at 62,363-64, 62,367).

²⁸ *Id.* (citing February 2012 Order, 138 FERC ¶ 61,121 at P 13).

party is affiliated with a transmission provider are, in essence, power sales transactions, and not possible transmission service transactions, is based on the logic that there is no affiliated transmission provider that could have provided the arguably equivalent transmission service. Similarly, the Indicated Western Utilities assert that the conclusion that simultaneous exchanges are permissible if neither exchange point is on an affiliated transmission provider's system seems to be based on the same logic – the affiliated transmission provider could not have provided the service between the points of exchange under its OATT. According to the Indicated Western Utilities, this same logic supports the conclusion that an exchange in which one, but not both, of the points of exchange are within or on the border of an affiliated transmission provider's contiguous system should not require prior approval, as this is not a circumstance in which the affiliated transmission function could have provided the equivalent service under its OATT.²⁹

15. El Paso seeks clarification on a single issue and asks whether the Commission uses the definition of “marketing function” set forth in the Standards of Conduct, 18 C.F.R. § 358.3(c) when it refers to “marketing function” within the definition of simultaneous exchange transaction.³⁰ Specifically, El Paso seeks clarification on whether prior approval is necessary where a public utility seeks to enter into a locational exchange for the purpose of making bundled retail sales and not for the purpose of engaging in marketing functions.³¹

IV. Motion for Technical Conference or Workshop

16. The Indicated Western Utilities request the Commission hold a technical conference or workshop regarding: (1) the scope of permissible exchange transactions; (2) the means for seeking approval for those transactions that may otherwise be subject to the filing requirements of the February 2012 Order; (3) Commission review of such filings; and (4) alternative methods for the Commission to address its concerns regarding potential market manipulation or violations of separation of function rules.³² The Indicated Western Utilities assert that a conference may be helpful in answering questions regarding the scope of exchange transactions that may continue to be permissible and the means for seeking approval for otherwise prohibited transactions, or

²⁹ *Id.* at 19.

³⁰ El Paso Request for Clarification at 1.

³¹ *Id.* at 1-2.

³² Indicated Western Utilities Request for Clarification/Rehearing at 19.

at least, a technical conference will allow the Commission and interested parties to articulate concerns.³³

V. Discussion

A. Procedural Matters

17. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission will grant the late-filed motions to intervene given the movants' interest in the proceeding and the absence of undue prejudice or delay.

B. Substantive Matters

18. We grant, in part, the Indicated Western Utilities' request for clarification. In particular, we grant the Indicated Western Utilities' request for clarification that the Commission did not overturn *El Paso* in the February 2012 Order.³⁴ In *El Paso*, the Commission stated that "[i]n Order No. 888, the Commission was concerned that certain buy/sell arrangements can be used to obfuscate the true transaction taking place, thereby allowing parties to circumvent transmission regulation. The Commission also expressed concern with retail buy/sell arrangements that in practical effect provided for jurisdictional service."³⁵ The Commission then went on to analyze *El Paso* on its facts, and it determined that the transaction did not raise concerns that the parties were circumventing transmission regulation.³⁶ We find that the Commission did not overturn *El Paso* in the February 2012 Order, as alleged by the Indicated Western Utilities. Instead, we find that the Commission's findings were consistent with *El Paso*, requiring a case-by-case analysis of whether a transaction involving a marketing function affiliate and its affiliated transmission provider's system present any concern that the parties are

³³ *Id.* at 20. In its late-filed comments, Morgan Stanley states that it supports the Indicated Western Utilities' request for a technical conference. Morgan Stanley Comments at 3-4.

³⁴ Indicated Western Utilities Request for Clarification/Rehearing at 9.

³⁵ *El Paso*, 115 FERC ¶ 61,312 at P 17.

³⁶ *Id.* PP 18-21.

circumventing transmission regulation.³⁷ We note that the Commission has granted prior approval for simultaneous exchange transactions, finding that, based on the information provided by the filing party, the proposed transactions required prior approval, but any concerns regarding open access rule circumvention were alleviated.³⁸ This precedent is also consistent with *El Paso* and the February 2012 Order.

19. We also grant the Indicated Western Utilities' request for clarification with respect to various aspects of the new approval requirement. In particular, we grant clarification that, for long-term contracts, we will require a filing under section 205, with the standard of review being the just and reasonable standard applicable to all section 205 filings.³⁹ We find that this is consistent with *El Paso*, in which the parties filed a long-term contract under section 205 for Commission acceptance.⁴⁰

20. Because the Commission will review submissions on a case-by-case basis, we decline to provide a prescriptive list of items required in the filing. Instead, we emphasize that we are interested in any type of information that would address the Commission's concerns regarding open access rule circumvention. We believe that in the February 2012 Order, as well as subsequent proceedings, the Commission has provided several useful illustrative examples of the type of information that could be included in the filings, including that an applicant could: (1) identify all the parties to the transaction; (2) specify the delivery and receipt points involved; (3) describe the terms and conditions, including any charges or compensation; (4) provide details of ultimate power sources and sinks; (5) identify available competitive alternatives (accounting for physical constraints or whether transmission service for a related transaction has previously been denied); (6) describe the operational implications, including any

³⁷ February 2012 Order, 138 FERC ¶ 61,121 at PP 11 (“The Commission finds that when a simultaneous exchange transaction . . . involves the marketing function of a public utility transmission provider, the public utility must seek prior approval from the Commission if the transaction involves its affiliated transmission provider’s system.”), 14 (“[W]e will not permit the marketing function of a transmission provider to engage in simultaneous exchanges involving that transmission provider’s system absent prior Commission authorization *as evaluated on a case-by-case basis.*”) (emphasis added).

³⁸ See, e.g., *Ariz. Pub. Serv. Co.*, 151 FERC ¶ 61,070, at P 13 (2015); *Ariz. Pub. Serv. Co.*, 146 FERC ¶ 61,064, at P 12 (2014); *Cheyenne Light, Fuel and Power Co.*, 143 FERC ¶ 61,113, at P 16 (2013) (*Cheyenne Light*).

³⁹ 16 U.S.C. § 824d (2012).

⁴⁰ *El Paso*; see also *Ariz. Pub. Serv. Co.*, 151 FERC ¶ 61,070 at P 13; *Ariz. Pub. Serv. Co.*, 146 FERC ¶ 61,064 at P 12; *Cheyenne Light*, 143 FERC ¶ 61,113 at P 16.

potential reliability and curtailment issues; (7) provide the power levels of the exchange; and (8) specify the desired dates and times for the exchange.⁴¹ We further grant the Indicated Western Utilities' request for clarification that, if ultimate power sources and sinks are unknown at the time of application, they need not be provided in the application. However, we will require that an applicant submit an informational filing to update this information, within 30 days that such information becomes known.⁴²

21. With regard to the Indicated Western Utilities' request for clarification on available competitive alternatives, we clarify that, in asking parties to “[i]dentify available competitive alternatives (accounting for physical constraints or whether transmission service for a related transaction has previously been denied),”⁴³ we are interested in understanding whether the proposed transaction should raise any concerns of transmission regulation circumvention. Therefore, we expect to see, for example, information that shows that a customer has the option of obtaining transmission from another source, has not requested a transmission provider's transmission function to re-dispatch, is not paying twice for the service, and could have entered into the transaction with another power marketer instead of the transmission provider's merchant affiliate.⁴⁴

22. We grant the Indicated Western Utilities' request for clarification that prior approval can be requested for categories of exchanges with common parameters.⁴⁵ Specifically, we will allow applicants to submit market-based rate tariff amendments that seek authorization for short-term exchanges between specified pairs of points. We will evaluate market-based tariffs for short-term transactions under the similar criteria used in *El Paso* and *Cheyenne Light*, and we expect that an applicant will indicate specific points of exchange that it intends to use for short-term simultaneous exchanges, and the applicant should provide sufficient detail for the Commission to evaluate whether the transaction is attempting to offer transmission service without reserving transmission.

⁴¹ February 2012 Order, 138 FERC ¶ 61,121 at P 19; *see Cheyenne Light*, 143 FERC ¶ 61,113 at P 15 (granting prior approval of simultaneous exchange where applicant described “the locations of the simultaneous exchange; the terms, conditions, and financial charges associated with the proposed transaction; the sources and sinks of power; and alternative options for transmitting power”).

⁴² Upon receipt, the Commission will not act on or notice the informational filing.

⁴³ Indicated Western Utilities Request for Clarification/Rehearing at 12 (citing February 2012 Order, 138 FERC ¶ 61,121 at P 19).

⁴⁴ *El Paso*, 115 FERC ¶ 61,312 at PP 18-21.

⁴⁵ Indicated Western Utilities Request for Clarification/Rehearing at 13.

Each request for a market-based tariff would be subject to a case-specific evaluation that was described in the February 2012 Order and similar to the analysis that the Commission has conducted in recent cases.⁴⁶ We clarify that, once such a market-based tariff is approved, the applicant would be able to engage in short-term simultaneous exchanges between those specified points without any further Commission approval.

23. We further grant clarification that brokered transactions, in which the independent parties do not know the counterparties to a transaction until after the fact, fall outside of the prior approval requirement. As stated by Indicated Western Utilities, in brokered transactions, brokers do not identify the counterparty to a transaction until after the fact, and, thus, the parties do not know the origin or destination of the other end of the exchange until the exchange has been completed.⁴⁷ We emphasize that only transactions in which the independent parties relying on brokers are completely blind to the counterparties would be exempt from the prior approval requirement.

24. Furthermore, we grant El Paso's request for clarification as to whether the Commission uses the definition of "marketing function" set forth in the Standards of Conduct, 18 C.F.R. § 358.3(c) when it refers to "marketing function" within the definition of simultaneous exchange transaction.⁴⁸ We note that the Commission recently stated that the "marketing function" term does refer to the definition in 18 C.F.R. § 358.3.⁴⁹ Moreover, we grant El Paso's request for clarification that prior approval is necessary where a public utility seeks to enter into a locational exchange for the purpose of making bundled retail sales, and not for the purpose of engaging in marketing functions, where the transaction involves a marketing function affiliate and affiliated transmission provider's system.

25. We deny the Indicated Western Utilities' request that the Commission act on requests for prior approval on an expedited basis. The Indicated Western Utilities have not shown that there is a need to grant expedited processing of filings for simultaneous

⁴⁶ See, e.g., *Ariz. Pub. Serv. Co.*, 151 FERC ¶ 61,070; *Ariz. Pub. Serv. Co.*, 146 FERC ¶ 61,064; *Cheyenne Light*, 143 FERC ¶ 61,113.

⁴⁷ Indicated Western Utilities Clarification/Rehearing Request at 16-17.

⁴⁸ El Paso Request for Clarification at 1.

⁴⁹ See *Cheyenne Light*, 143 FERC ¶ 61,113 at P 14 and n.8.

exchanges, especially given the Commission's concerns of open access rule circumvention associated with simultaneous exchanges on affiliated transmission systems.⁵⁰

26. We also deny the Indicated Western Utilities' request for clarification regarding the Commission's basis for its finding that prior approval is required for affiliated utilities, and their request that the Commission narrow its policy.⁵¹ Contrary to the Indicated Western Utilities' claim, the Commission did not fail to explain its basis for such treatment and failed to engage in reasoned, articulated decision-making. On the contrary: in the February 2012 Order, the Commission explained that "[t]he Commission's concern regarding simultaneous exchanges is that certain of these transactions may resemble transmission service . . . [and] when such transactions involve the marketing function of a transmission provider, they may appear to enable the marketing function to effectively provide service on its transmission provider's system without the reservation of service on that system."⁵² Furthermore, the Commission stated that "the marketing function of a transmission provider could utilize the complexity of simultaneous exchanges to effectively perform transmission functions where the transactions involve the transmission provider's system, circumventing Commission regulations involving open access transmission service."⁵³ The Indicated Western Utilities mischaracterize the February 2012 Order as prohibiting affiliates from entering into such transactions. This is not the case. The Commission's finding in the February 2012 Order allows affiliates to enter into such transactions as long as they obtain prior approval from the Commission and the Commission finds that there are no attempts to circumvent transmission service regulation or concerns of affiliate abuse or separation of functions violations.⁵⁴ For the same reasons, we deny rehearing. Specifically, we find that, in February 2012 Order, the Commission adequately explained the basis for requiring prior approval for simultaneous exchange transactions involving the marketing function of a transmission provider and the affiliated transmission provider's transmission system, as described above.

⁵⁰ See, e.g., February 2012 Order, 138 FERC ¶ 61,121 at PP 15-16; *El Paso*, 115 FERC ¶ 61,312 at PP 18-22; *UAMPS*, 83 FERC ¶ 61,337 at 62,367.

⁵¹ Indicated Western Utilities Clarification/Rehearing Request at 8.

⁵² February 2012 Order, 138 FERC ¶ 61,121 at P 13.

⁵³ *Id.* P 14.

⁵⁴ See, e.g., *Ariz. Pub. Serv. Co.*, 151 FERC ¶ 61,070 at P 13; *Ariz. Pub. Serv. Co.*, 146 FERC ¶ 61,064 at P 12; *Cheyenne Light*, 143 FERC ¶ 61,113 at P 16.

27. Additionally, we deny the Indicated Western Utilities' request that the Commission narrow the scope of its prior approval requirement to exclude exchanges where only one point of the simultaneous exchange is on the contiguous transmission system of the transmission provider's affiliate.⁵⁵ We note that the Commission's concern is not whether a transaction between affiliates occurs between two points on the transmission provider's system; rather, the Commission is concerned about whether, at any point on the transmission system, a marketing function affiliate is inappropriately performing transmission functions or both the affiliates are circumventing open access requirements.⁵⁶ For the same reasons, we deny rehearing on this issue.

28. Finally, we deny the Indicated Western Utilities' request for a technical conference because this order disposes of all the issues raised by the requests for clarification and rehearing.

The Commission orders:

(A) The requests for clarification are hereby granted, in part, and denied, in part, as discussed in the body of this order.

(B) The request for rehearing is hereby denied, as discussed in the body of this order.

⁵⁵ Indicated Western Utilities Clarification/Rehearing Request at 17.

⁵⁶ See, e.g., *Ariz. Pub. Serv. Co.*, 151 FERC ¶ 61,070 at P 13 (“[W]e find that the proposed [a]greement neither raises open access transmission service concerns nor appears to involve the implicit provision of transmission service on [the transmission provider’s] transmission system”); *Ariz. Pub. Serv. Co.*, 146 FERC ¶ 61,064 at P 12 (“[T]he Commission finds that the proposed [t]ransaction does not raise open access transmission service concerns nor does it appear to involve the implicit provision of transmission service on [the transmission provider’s] transmission system.”); *Cheyenne Light*, 143 FERC ¶ 61,113 at P 16 (“[T]he proposed [t]ransaction does not appear to involve the implicit provision of transmission service between the two points of delivery . . . without a reservation for such service.”).

(C) The motion for a technical conference is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.