

156 FERC ¶ 61,169  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Macquarie Energy LLC

Docket No. ER16-2198-000

ORDER ACCEPTING MARKET-BASED RATE TARIFF REVISIONS

(Issued September 12, 2016)

1. On July 14, 2016, Macquarie Energy LLC (Macquarie Energy) submitted proposed revisions to its market-based rate tariff (tariff) to specify that Macquarie Energy may engage in short-term simultaneous exchange transactions on the California Oregon Intertie (COI) north of the California Oregon Border (COB) for exchanges between the COB and John Day, Oregon (proposed transactions). In this order, we find that the proposed transactions are the type of simultaneous exchange transactions that require Commission authorization. Based on the specific information provided by Macquarie Energy, we find that the proposed transactions do not raise the types of open access transmission service concerns that were described in the Puget Sound Proceedings,<sup>1</sup> and thus we accept the proposed tariff revisions for filing, effective September 13, 2016.<sup>2</sup>

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<sup>1</sup> *Puget Sound Energy, Inc.*, 138 FERC ¶ 61,121 (2012) (*2012 Puget Sound Order*), *order on reh'g*, 153 FERC ¶ 61,131 (2015) (*First Puget Sound Rehearing Order*), *order on reh'g*, 155 FERC ¶ 61,175 (2016) (*Second Puget Sound Rehearing Order*) (collectively, the Puget Sound Proceedings).

<sup>2</sup> Because Macquarie Energy made its filings in this proceeding on July 14, 2016, the 60th day of the notice period is September 12, 2016. Thus, absent a request for waiver of the Commission's notice requirements, the earliest permissible effective date, without suspension, is September 13, 2016, rather than September 12, 2016 as proposed by Macquarie Energy. See *Utah Power & Light Co.*, 30 FERC ¶ 61,015, at 61,024 n.9 (1985).

## I. Background

2. Macquarie Energy states that it operates as a power marketer in various markets in the United States and that it is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates to wholesale purchasers.<sup>3</sup> Macquarie Energy states that except for two long-term firm power purchase agreements in PJM Interconnection, L.L.C. totaling approximately 5.7 megawatts to which Macquarie Energy is a party, Macquarie Energy does not own or control any electric generation. Macquarie Energy states that it does not own or operate any transmission or distribution facilities or any natural gas pipeline or storage facilities and does not own or control any inputs to electric power production.

3. Macquarie Energy states that, as result of Macquarie Energy's and Puget Sound Energy, Inc.'s (Puget Sound) common ownership or control by Macquarie Group Limited, Macquarie Energy is affiliated with Puget Sound.<sup>4</sup> Macquarie Energy states that, *inter alia*, Puget Sound operates a transmission system pursuant to an open access transmission tariff (OATT) on file with the Commission.<sup>5</sup> Macquarie Energy states that Puget Sound is one of several owners that share the capacity of COI north of the COB (COI north), and Bonneville Power Administration is the operator of COI north.<sup>6</sup>

## II. Instant Filing

4. Macquarie Energy proposes to amend its tariff to allow it to engage in specified short-term simultaneous exchanges. It explains that in the proposed transactions: (1) Macquarie Energy will sell capacity and energy to an unaffiliated counterparty for delivery at COB and the counterparty will sell an equivalent amount of capacity and energy to Macquarie Energy for delivery at John Day; or (2) Macquarie Energy will sell capacity and energy to an unaffiliated counterparty for delivery at John Day and the counterparty will sell an equivalent amount of capacity and energy to Macquarie Energy

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<sup>3</sup> Filing at 1-2 (citing *Macquarie Energy LLC*, Docket Nos. ER10-1533-000 (July 28, 2010) (delegated letter order); *Macquarie Energy LLC*, Docket No. ER10-622-000 (Mar. 11, 2010) (delegated letter order); *Macquarie Cook Power, Inc.*, Docket No. ER07-157-000 (Dec. 21, 2006) (delegated letter order)).

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* (citations omitted).

<sup>6</sup> Macquarie Energy states that the other owners of COI north are Seattle City Light, Pacific Northwest Generating Cooperative, Snohomish County Public Utility District, Tacoma Power, and PacifiCorp.

for delivery at COB.<sup>7</sup> Macquarie Energy states that the delivery periods for each party's deliveries to the other will overlap. Macquarie Energy asserts that these transactions may or may not use transmission on the COI.

5. Macquarie Energy notes that, in the *2012 Puget Sound Order*, the Commission determined 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.<sup>8</sup> Macquarie Energy further notes that the Commission stated that, when simultaneous exchanges 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.<sup>9</sup>

6. Macquarie Energy states that it does not believe that the proposed transactions require prior authorization from the Commission, but that the transactions are permissible under Macquarie Energy's current market-based rate authorization.<sup>10</sup> However, Macquarie Energy states that if the Commission determines that prior authorization is required, Macquarie Energy requests prior authorization from the Commission to engage in the proposed transactions and Commission acceptance of the proposed tariff revisions.

7. Macquarie Energy argues that the proposed transactions do not raise any of the concerns regarding circumvention of the Commission's transmission regulation noted in the Puget Sound Proceedings. While Macquarie Energy acknowledges that it technically satisfies the definition of a marketing function of Puget Sound, as defined in 18 C.F.R. § 358.3(c) (2016), Macquarie Energy contends that it is not Puget Sound's wholesale merchant function. Macquarie Energy states that its employees operate independent of Puget Sound. Macquarie Energy also states that it neither markets any of Puget Sound's generation nor purchases power for or on behalf of Puget Sound.

8. In addition, Macquarie Energy states that it does not serve load in Puget Sound's territory and, as such, cannot use network transmission service on Puget Sound's transmission system.<sup>11</sup> Macquarie Energy states that it only purchases point-to-point

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<sup>7</sup> Filing at 6.

<sup>8</sup> *Id.* at 3 (citing *2012 Puget Sound Order*, 138 FERC ¶ 61,121 at P 1).

<sup>9</sup> *Id.* (citing *2012 Puget Sound Order*, 138 FERC ¶ 61,121 at P 13).

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.* at 5.

transmission service from Puget Sound and, because of this, the proposed transactions would not require or involve any request for redispach from Puget Sound's transmission function. Further, Macquarie Energy states that the proposed simultaneous exchange transactions would not use any portion of Puget Sound's transmission system that is wholly owned by Puget Sound. Macquarie Energy also explains that, because of the nature of the COI north capacity and facility ownership, there is no guarantee that, at the time Macquarie Energy decides to obtain transmission for its deliveries on the line, the capacity used will belong to Puget Sound. Macquarie Energy notes that each of Macquarie Energy and its counterparty in the proposed transactions may obtain transmission from any of the COI north capacity owners.

### **III. Notice of Filing**

9. Notice of the filing was published in the *Federal Register*, 81 Fed. Reg. 48,787 (2016), with interventions and protests due on or before August 4, 2016. None was filed.

### **IV. Discussion**

10. As discussed below, we find that the transactions contemplated under Macquarie Energy's proposed tariff revisions are simultaneous exchange transactions as defined by the Commission in the Puget Sound Proceedings, and are the type of simultaneous exchange transactions that require prior Commission authorization. Based on the information provided by Macquarie Energy, we find, as discussed below, that the proposed transactions do not raise the types of open access transmission service concerns expressed by the Commission in the Puget Sound Proceedings.

11. In the *2012 Puget Sound Order*, the Commission found 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.<sup>12</sup> The Commission described simultaneous exchanges as follows:

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<sup>12</sup> *2012 Puget Sound Order*, 138 FERC ¶ 61,121 at P 1. The Commission explained that involvement 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 1 n.3; *id.* P 11 n.22.

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.<sup>[13]</sup>

In addition, in the *First Puget Sound Rehearing Order*, the Commission granted clarification that when the Commission uses the term “marketing function” for purposes of determining which simultaneous exchange transactions require prior approval,<sup>14</sup> it refers to the definition set forth in the Standards of Conduct, 18 C.F.R. § 358.3(c) (2016).<sup>15</sup>

12. In the instant proceeding, Macquarie Energy acknowledges that its proposed transactions fit within the Commission’s definition of simultaneous exchange transactions and that Macquarie Energy is a “marketing function” of transmission provider Puget Sound, as established in the Puget Sound Proceedings. Macquarie notes that it is an affiliate under common control with Puget Sound, and that the proposed transactions may involve Puget Sound as a possible transmission provider for the transactions, as Puget Sound is partial owner of capacity on the COI. We are not persuaded by Macquarie Energy’s argument that, because Macquarie Energy neither markets any of Puget Sound’s generation nor purchases any power for or on behalf of

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<sup>13</sup> *Id.* P 12.

<sup>14</sup> *First Puget Sound Rehearing Order*, 153 FERC ¶ 61,131 at P 24. In the *Second Puget Rehearing Order*, the Commission explained that a simultaneous exchange transaction involving the marketing function affiliate of a public utility transmission provider and the affiliated transmission provider’s system requires prior Commission approval, even if the purpose of that transaction is for bundled retail sales. *Second Puget Sound Rehearing Order*, 155 FERC ¶ 61,175 at P 12.

<sup>15</sup> The Standards of Conduct define marketing functions to mean “in the case of public utilities and their affiliates, the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales, including sales for electric energy made by providers of last resort (POLRs) acting in their POLR capacity . . . .” 18 C.F.R. § 358.3(c)(1) (2016).

Puget Sound and only purchases point-to-point transmission from Puget Sound, its affiliate relationship with Puget Sound is not equivalent to acting as the wholesale merchant function of a transmission provider and therefore merits different treatment. Macquarie Energy, as an affiliated power marketer, potentially could perform functions similar to those performed by Puget Sound's wholesale merchant function. Accordingly, we find that Macquarie Energy's proposed transactions require prior Commission approval.

13. In the *2012 Puget Sound Order*, the Commission identified information that applicants seeking approval of simultaneous exchange transactions should provide to support their applications.<sup>16</sup> In the *First Puget Sound Rehearing Order*, the Commission specifically allowed applicants to submit market-based rate tariff amendments that seek authorization for short-term exchanges between specified pairs of points.<sup>17</sup> The Commission stated that it expected an applicant submitting such a proposal to indicate specific points of exchange that it intends to use for short-term simultaneous exchanges and to provide sufficient detail for the Commission to evaluate whether the transaction is attempting to offer transmission service without reserving transmission.<sup>18</sup>

14. We find that Macquarie Energy has provided sufficient information to allow us to evaluate the proposed transactions. Macquarie Energy proposes to enter into short-term simultaneous exchange transactions with unaffiliated counterparties involving two specific locations in the Pacific Northwest: COB and John Day. Macquarie Energy also provides other information specified in the Puget Sound Proceedings.<sup>19</sup> We find that Macquarie Energy has adequately addressed the Commission's concern regarding circumvention of open access requirements and has demonstrated that its proposed transactions are not an attempt to offer transmission service without reserving transmission. Most importantly, Macquarie Energy cannot use network transmission service on Puget Sound's transmission system to engage in the proposed transactions. As a result, there is no way for Macquarie Energy to effectively provide service on Puget Sound's system without the reservation of service on that system because Macquarie Energy will need to purchase point-to-point transmission service if it wants to move

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<sup>16</sup> *2012 Puget Sound Order*, 138 FERC ¶ 61,121 at P 19.

<sup>17</sup> *First Puget Sound Rehearing Order*, 153 FERC ¶ 61,131 at P 22.

<sup>18</sup> *Id.*

<sup>19</sup> Because Macquarie Energy is seeking prior approval to enter into short-term transactions rather than a specific contract, some of the information sought in the Puget Sound Proceedings is not applicable.

power between COB and John Day.<sup>20</sup> Further, the inability to use network transmission service mitigates the concern that Macquarie Energy's proposed transaction will allow Puget Sound to earn revenue from both the explicit sale of transmission service and the implicit sale of transmission service via Macquarie Energy's proposed transactions.<sup>21</sup> In addition, any point-to-point transmission service Macquarie Energy may need to purchase on COI to facilitate the proposed transactions may not necessarily use any Puget Sound transmission capacity, such that the proposed transaction may not use any portion of Puget Sound's transmission system. That is, Puget Sound is one of several owners of COI north such that Macquarie Energy could obtain transmission from any of the capacity owners of COI north. Moreover, any transmission service obtained by Macquarie Energy on the COI would be under the OATT of the entity providing the service, including Puget Sound.

15. Accordingly, we find that the transactions contemplated under Macquarie Energy's proposed tariff revisions satisfy the requirements of the Puget Sound Proceedings. Therefore, we will accept the proposed tariff revisions for filing, effective September 13, 2016.

The Commission orders:

(A) Macquarie Energy's proposed transactions contemplated under Macquarie Energy's proposed market-based rate tariff revisions are simultaneous exchange transactions that require prior Commission authorization, as discussed in the body of this order.

(B) Macquarie Energy's proposed market-based rate tariff revisions are hereby accepted for filing, effective September 13, 2016, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>20</sup> *2012 Puget Sound Order*, 138 FERC ¶ 61,121 at P 13.

<sup>21</sup> *Id.* P 14.