

104 FERC ¶ 61,272
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Puget Sound Energy, Inc.

Docket No. EL02-77-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued September 11, 2003)

1. This order addresses a petition for declaratory order filed by Puget Sound Energy, Inc. (Puget),¹ in which Puget requests that the Commission approve its reclassification of facilities as transmission or distribution.

I. Background

2. On April 17, 2002, Puget filed with the Commission a petition for a declaratory order requesting that the Commission approve its reclassification of facilities as either transmission or distribution (Petition). Puget states that the refunctionalization is to classify transmission facilities for the purpose of setting rates, terms and conditions for wholesale and unbundled retail transmission service customers under Commission jurisdiction. Puget asks the Commission to defer to the Washington Utilities and Transportation Commission's (Washington Commission) approval of Puget's reclassification.² Puget states that the reclassification was necessary because Puget had

¹Puget is a public utility engaged in the production, purchase, transmission, distribution and sale of electric power to wholesale and retail customers in the Puget Sound region of Washington State. Puget's provision of retail electric service is regulated by the Washington Utilities and Transportation Commission.

²The Washington Commission approved Puget's proposed reclassification of its transmission and distribution facilities on April 5, 2001, Docket No. UE010010 (Washington Commission Order).

developed and was about to file a retail access initiative for certain industrial customers.³ In order to allow these customers to take unbundled transmission and distribution service, Puget sought a Washington Commission declaratory order concerning the reclassification of Puget's electric transmission and wholesale distribution facilities.

3. Puget had previously filed its request for reclassification with this Commission, together with proposed rate revisions for transmission service under its open access transmission tariff (OATT). In that proposal, Puget included new, disaggregated rates that preserved a previous rate settlement.⁴ As part of the disaggregation, Puget included a wholesale distribution service rate for customers using facilities previously classified as transmission and now classified as wholesale distribution. The Commission approved Puget's proposed rate changes based upon the reclassification, but instructed Puget to refile the reclassification itself as a petition for declaratory order.⁵

4. In its Petition, Puget proposes to designate: (a) all transmission facilities 34 kV or less as wholesale distribution facilities; (b) all transmission facilities 230 kV (and above) as transmission facilities; and (c) with one exception,⁶ all 115 kV and 55kV facilities (and

³Puget Petition at 3-4, citing Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,784 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order 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, 122 S.Ct. 1012 (2002) (Order No. 888).

⁴Docket No. ER02-605-000. Puget states that after the Washington Commission issued its order, Puget reviewed its transmission rates and developed new, proposed disaggregated rates to reflect the state-approved classification of its transmission and wholesale distribution facilities.

⁵Puget Sound Energy, Inc., 98 FERC ¶ 61,168 at 61,622 (2002) (February 15 Order), reh'g denied, 99 FERC ¶ 61,134 (2002) (April 30 Order).

⁶The Anderson Canyon-Beverly Line (115 kV), King County, Washington has been classified as transmission.

one 34.5 kV facility⁷) formerly classified as transmission facilities as wholesale distribution. Puget states that its analysis, used in the Washington Commission proceeding, is based upon this Commission's seven-factor test for identifying local distribution facilities in Order No. 888.⁸ Puget acknowledges that, regardless of the classification as local distribution or transmission facilities, the Commission has jurisdiction over Puget's rates, terms and conditions for service over all facilities used for transmission of wholesale and unbundled retail transmission service in interstate commerce. It also recognizes that this classification will not determine which facilities are transferred to a regional transmission organization (RTO) in the future.⁹

5. Puget requests a January 1, 2002 effective date for the reclassification, contemporaneous with the effective date of its newly disaggregated rate system.

6. Notice of Puget's April 17, 2002 filing was published in the Federal Register, 67 Fed. Reg. 21,654 (2002), with comments, protests and interventions due on or before May 17, 2002. Timely motions to intervene and protest were filed by Tanner Electric Cooperative (Tanner),¹⁰ Public Utility District No. 1 of Whatcom County, Washington (Whatcom),¹¹ Bonneville Power Administration (Bonneville), and the Cities of Sumas and Blaine, Washington (the Cities).¹² On June 6, 2002, Puget filed an answer to the protests. On July 2, 2002, the Cities and Whatcom filed answers to Puget's answer.

⁷ Shannon Substation (34.5 kV), Whatcom County, Washington.

⁸ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,771.

⁹ Puget Petition at 7-8.

¹⁰ Tanner is a transmission dependent utility that uses delivery service from Puget to provide retail electric service in areas that are adjacent to or overlapping with the areas served by Puget.

¹¹ Whatcom has facilities for the delivery of electric power for resale to customers and competes with Puget for the provision of retail electric service to customers in Whatcom County, Washington.

¹² The Cities have facilities in Washington for the delivery of electric power for resale to customers. Electric power is delivered to the Cities by transmission over facilities owned by Bonneville, and then by transmission over facilities owned by Puget.

II. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely, unopposed motions to intervene make the filing entities parties to this proceeding.

8. Notwithstanding that Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2002), generally prohibits the filing of an answer to a protest, we find that good cause exists to grant Puget's June 6 answer, as it assisted in our understanding and resolution of the issues. Rule 213 also prohibits the filing of an answer to an answer unless otherwise ordered by the decisional authority. Because their answers do not aid our decision in this case, we are not persuaded to accept the answers filed by the Cities and Whatcom.

B. Intervenors' Concerns

9. Tanner protests Puget's reclassification of Puget's Washington State facilities as wholesale distribution facilities. Tanner requests that the Commission set the matter for hearing to determine which of Puget's facilities, if any, should be reclassified as distribution. Specifically, Tanner argues that Puget's proposal results in wholesale transmission customers being exposed to a pancaked rate structure and that Puget has misapplied the seven-factor test. Further, Tanner states that Puget's proposal is unreasonable and unnecessary and could undermine open access rates and the development of RTO West.¹³

10. Whatcom, the Cities and Bonneville contend that the seven-factor test is inapplicable here, since it is designed to distinguish between "local distribution" facilities, over which the Commission has no jurisdiction, and transmission facilities. Whatcom and the Cities argue that the reclassification should be rejected because Puget has failed to establish that the transmission facilities used to serve them should not be included in Puget's proposed transmission service rates, rather than in Puget's

¹³RTO West is a proposed regional transmission organization in the Pacific Northwest, of which Puget is a member. See *Avista Corporation, et al. (Avista)*, 95 FERC ¶ 61,114 (2001) (Stage 1 filing), 100 FERC ¶ 61,274 (2002) (Stage 2 filing), order on clarification, 101 FERC ¶ 61,034 (2002), order on reh'g, 101 FERC 61,346 (2002).

Washington Area Wholesale Distribution Service rates. They argue that the Washington Commission's determination is not entitled to deference by the Commission with respect to Puget's transmission facilities that are used to serve Whatcom or the Cities.

11. Bonneville objects to Puget's reclassification of facilities from transmission to distribution and asks the Commission to either reject Puget's request or set the matter for hearing. Bonneville states that Puget's proposed reclassification and wholesale distribution rate are unnecessary and unreasonable. It notes that the Commission has rejected attempts to reclassify entire systems below 100 kV as distribution, and instead requires a case-by-case determination of the functions served by the facilities.¹⁴ Bonneville argues that Puget's proposal is unreasonable because it is a blanket reclassification of almost all of Puget's integrated facilities under 230 kV. Bonneville also argues that Puget's proposal will expose wholesale transmission customers to a pancaked rate structure and that it will undermine the structure and pricing of RTO West. Further, Bonneville argues that the Commission should make its own determination and not defer to the findings of the Washington Commission.

C. Puget's Answer

12. Puget responds that the intervenors have raised no issues of material fact that warrant an evidentiary hearing. Puget clarifies that it has not sought to remove from the Commission's jurisdiction any facilities used for the transmission of wholesale electric power. Puget recognizes that, regardless of the potential approval of its proposed reclassification, the Commission has exclusive jurisdiction regarding the rates, terms and conditions of all wholesale and unbundled retail transmission service in interstate commerce on any Puget facilities.¹⁵

13. Puget also argues that the Commission, contrary to Bonneville's assertion, has allowed reclassification as distribution of transmission facilities that are of higher voltage than those proposed here.¹⁶ Further, Puget contends that the reclassification is reasonable

¹⁴See Bonneville Protest at 7, citing Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 61,231 at 62,172 (1998).

¹⁵Puget Answer at 5.

¹⁶Puget Answer at 8, citing Mid-American Energy Company, et al., 90 FERC ¶ 61,105 (2000) (Mid-American).

because of a Washington Commission order that allowed a number of Puget's industrial customers to gain retail access and because Order No. 888 directs electric utilities with retail access programs to perform a refunctionalization of their facilities using the seven-factor test. As a result, Puget states that certain facilities (55 to 115 kV) satisfy the seven-factor test for classification as distribution. Puget also argues that its transmission rates and its wholesale distribution service rates are not at issue in this petition because the Commission has already accepted those rates.

14. Finally, Puget argues that the proposed reclassification will not affect the development of RTO West. Puget's proposal does not purport to affect the formation, structure and prices of RTO West, or any other regional transmission entity that may evolve. Puget states that when a regional transmission entity is ultimately approved by the Commission for the Pacific Northwest, Puget will be required to make filings at the Commission regarding the inclusion of its facilities under the RTO control and pricing.

D. Commission Determination

15. Puget's filing asks the Commission to bifurcate Puget's Commission-jurisdictional transmission facilities by reclassifying them as either higher-voltage transmission facilities (which it refers to as "transmission") or lower-voltage transmission facilities (which it refers to as "distribution") for purposes of providing service under Puget's OATT. Puget contends that it does not seek to remove any facilities from the Commission's jurisdiction through reclassification. However, its request is based on an analysis of the facilities using the seven-factor test adopted in Order No.888.¹⁷ As explained below, Puget's filing appears to be premised on a misunderstanding of the purpose and jurisdictional implications of reclassifying facilities under the Order No. 888 seven-factor test. Thus, because Puget's petition presents the Commission with additional information regarding its reclassification, we now understand that there is no jurisdictional issue here, only rate issues, and accordingly we find that Puget's petition is unnecessary.

16. In Order No. 888, the Commission concluded that, under Section 201(b)(1) of the Federal Power Act (FPA),¹⁸ it has jurisdiction over the interstate transmission of electric

¹⁷Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,771.

¹⁸16 U.S.C. 824(b)(1) (2000). Section 201(b)(1) of the FPA grants the Commission jurisdiction over "transmission of electric energy in interstate commerce[,] . . . the sale of electric energy at wholesale in interstate commerce," and the facilities used
(...continued)

energy to any wholesale or unbundled retail customer.¹⁹ With regard to unbundled retail wheeling²⁰ by public utilities, the Commission recognized that in most (but not necessarily all) instances such service would have two components -- a transmission component (subject to the Commission's jurisdiction) and a local distribution component (subject to state jurisdiction).²¹ Order No. 888 also identified seven factors²² to take into account in determining whether a given facility is a "local distribution" facility (over which the Commission lacks jurisdiction) or a transmission facility.²³ Thus, the purpose of the seven-factor test is to evaluate particular facilities in order to identify the jurisdiction under which the facilities fall, *i.e.*, whether the facilities are subject to state or Commission jurisdiction

17. In Docket No. ER02-605-000, Puget requested that the Commission approve rates for both transmission and local distribution, and thus apparently sought to reclassify certain facilities as subject only to state jurisdiction. Here, however, Puget does not seek to reclassify any Commission-jurisdictional transmission facilities as state-jurisdictional local distribution facilities. To the contrary, Puget emphasizes that its filing is not

(...continued)

for such transmissions and wholesale transactions." 16 U.S.C. § 824(b)(1). The Commission does not have jurisdiction "over facilities used in local distribution." *Id.*

¹⁹ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,980.

²⁰ The term "wheeling" covers any delivery of electric energy from a supplier to a purchaser, *i.e.*, transmission, distribution, and/or local distribution. Order No. 888 at 31,771 n.516.

²¹ Order No. 888 at 31,770-71 and 31,980-81.

²² The seven factors are as follows: (1) local distribution facilities are normally close in proximity to retail customers; (2) local distribution facilities are primarily radial in character; (3) power flows into local distribution systems; it rarely, if ever, flows out; (4) when power enters a local distribution system, it is not reconsigned or transported on to some other market; (5) power entering a local distribution system is consumed in a comparatively restricted geographic area; (6) meters are based at the transmission local distribution interface to measure flows into the local distribution system; and (7) local distribution systems will be of reduced voltage. Order No. 888 at 31,981.

²³ Order No. 888 at 31,770-71 and 31,981.

intended to affect jurisdiction. Since the purpose of the seven-factor test is to determine the jurisdiction under which facilities fall (and consequently which facilities must be under an OATT), and this filing does not seek to reclassify any of Puget's facilities to change their jurisdictional status, the seven-factor test is simply not applicable here. Accordingly, we find that Puget's petition for reclassification is unnecessary. If Puget does seek to change the jurisdictional status of its facilities to make them subject to state jurisdiction rather than the Commission's jurisdiction, our determination here is without prejudice to Puget filing for a reclassification of facilities as local distribution facilities, as described in Order No. 888, with adequate factual support.

18. We view Puget's proposal as essentially requesting a bifurcation of its Commission-jurisdictional transmission facilities into higher-voltage and lower-voltage transmission service. We note that our February 15 Order already approved Puget's rates based upon its high-voltage and low-voltage transmission proposal. In light of that ruling, we see no need to issue a further ruling reiterating our acceptance of Puget's bifurcation of its facilities into higher- and lower-voltage transmission. Since Puget filed this petition pursuant to our earlier order, we will entertain any request for a refund of the filing fee.

The Commission orders:

We find that Puget's petition for declaratory order is dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.