

139 FERC ¶ 61,241
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Puget Sound Energy, Inc.

Docket No. EL10-72-001

ORDER DENYING REHEARING

(Issued June 21, 2012)

1. In this order, we deny Puget Sound Energy, Inc.'s (Puget) request for rehearing of the Commission's November 18, 2010 order in this proceeding.¹ The November 18 Order declined to grant Puget's petition for declaratory order (Petition) that sought confirmation of firm priority rights on generator lead lines associated with a multi-phased wind generation project (Project) that Puget was planning to construct. Here, we find that Puget's request for rehearing impermissibly raised materially different facts from facts that were presented in the Petition; therefore, we deny the request for rehearing.

I. Background

2. Puget filed the Petition on June 11, 2010, seeking confirmation of firm priority rights to use the capacity on proposed 230 kV generator lead lines which would connect its multi-phased Project to Bonneville Power Administration's (BPA) transmission system. Puget explained that it was developing a wind generation project in multiple phases and upon completion, the Project would interconnect approximately 1,250 MW of generating capacity to BPA's integrated system to help satisfy Puget's native load growth and meet Washington's renewable portfolio standard requirements. According to Puget, the generator lead lines to support the Project would ultimately span 53 miles, would run from the wind generation sites to the BPA transmission system, and would interconnect to a newly-constructed BPA substation. From there, the energy would be delivered to serve Puget's native load customers.² In its Petition, Puget sought confirmation of firm priority rights to transmission capacity built in Phases I through III (totaling 670 MW, although the generator lead lines constructed in these phases would be sized to accommodate 1,250 MW of capacity). In support of its Petition, Puget cited to the

¹ *Puget Sound Energy, Inc.*, 133 FERC ¶ 61,160 (2010) (November 18 Order).

² November 18 Order at P 2 (citing Petition at 4).

Commission's *Milford* decision, in which the Commission confirmed a merchant generator's firm priority rights on capacity associated with an 88-mile generator lead line for a multi-phased wind generation project.³

3. The November 18 Order declined to grant the confirmation sought by Puget. Specifically, the November 18 Order concluded that, where an applicant's generation project is serving its native load customers and where the applicant has an open access transmission tariff (OATT) on file with the Commission, generator lead lines to support such a project are properly governed by the terms and conditions of that existing OATT.⁴ This conclusion was based, in part, on representations by Puget in the Petition that the wind power generated by the Project would serve Puget's native load customers, the November 18 Order concluded that the generator lead lines are governed by Puget's existing open OATT and, consistent with its terms and conditions, Puget could reserve transmission capacity over the generator lead lines to serve its reasonably forecasted native load requirements. Therefore, the November 18 Order concluded that it was unnecessary to address Puget's request for firm priority rights over the generator lead lines under the *Milford* framework.⁵

II. Request for Rehearing and Clarification

4. Puget sought rehearing and clarification of the November 18 Order, asserting that the Commission erred in denying it firm priority rights over the generator lead lines as requested in the Petition. Puget argues that the November 18 Order failed to give appropriate weight to the fact that the generator lead lines do not interconnect through Puget's transmission system but rather interconnect with BPA's integrated transmission system. Additionally, Puget asserts that the November 18 Order erred in requiring Puget to create a posted path for the generator lead lines, noting that the lines are not classified as interconnection facilities under Puget's OATT because they do not interconnect with Puget's transmission system and because any service over the generator lead lines will be limited by the fact that, under the terms of the BPA tariff and large generator interconnection procedures, the lines are sole use facilities.

³ *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149 (2009) (*Milford*). In *Milford*, the Commission confirmed the petitioner had firm priority rights through the petitioner's demonstration that it had specific expansion plans with definite dates and milestones for construction, and that it had made material progress toward meeting its milestones.

⁴ November 18 Order at P 11.

⁵ *Id.* P 1.

5. Next, Puget argues that the November 18 Order erred because it blurs the Commission's requirements that integrated utilities functionally unbundle their operations. Puget explains that its power supply group independently planned and developed the Project, without involvement from its transmission department. However, Puget argues, the November 18 Order's conclusion that the generator lead lines are now transmission facilities under Puget's OATT appears to direct Puget to ignore its internal compartmentalization and transfer a piece of the Project from the power supply group to the transmission department. Thus, Puget maintains, the November 18 Order may require the reintegration of power supply and transmission facilities. According to Puget, this would mean that an integrated utility cannot operate its business units independently, a conclusion that undercuts the Commission's requirement that a transmission provider treat its affiliated power supply operation comparably to the way in which it treats third parties.

6. Moreover, Puget argues that the November 18 Order discriminates against Puget as compared with independent generation developers. According to Puget, it was not certain that the full development planned for the Project could or should be integrated into Puget's native load supply mix, and Puget may seek to sell off portions of the Project's planned capacity to another entity seeking to invest in renewable development. Puget states that those development rights are more valuable to prospective purchasers if they are accompanied by firm priority rights to any pre-built portion of the generator lead lines. However, under the November 18 Order, firm priority rights cannot be transferred. Further, Puget contends that the November 18 Order is inconsistent with the *pro forma* OATT and the Commission's generator interconnection rules. Moreover, Puget asserts that the approach taken in the November 18 Order raises rate and accounting issues that may work against third-party developers.

7. In addition, Puget requests clarification of several implementation issues associated with the November 18 Order's determination that Puget should reserve transmission capacity over the generator lead lines under its existing OATT: how Puget would reserve transmission capacity on facilities that are not interconnected with its own system but are interconnected only with BPA; whether it is appropriate for Puget to turn the generator lead lines into transmission facilities under a stand-alone tariff and for Puget to reserve point-to-point service over the lines; whether a generator interconnection agreement is not the correct contract to govern the use of the generator lead lines and whether an interface agreement would be required; whether the Commission would grant a waiver of the obligation to provide ancillary services; and whether BPA's tariff would apply.

8. Finally, Puget suggests that the difficulties arising from the November 18 Order and the Commission's treatment of generator lead lines generally could be mitigated by revising section 9.9.2 of the *pro forma* large generator interconnection agreement. Puget explains that this provision should be modified to address third-party access to

Interconnection Customer Interconnection Facilities, which it believes would be more efficient than requiring a third party to make multiple requests (e.g., for interconnection and transmission service from BPA, in addition to making a transmission service request from Puget).

III. Commission Determination

9. We deny rehearing of the November 18 Order. The Commission issued the November 18 Order, which declined to grant Puget's request for confirmation of firm priority rights over the generator lead lines, based on the specific facts and circumstances presented in the Petition. Specifically, the November 18 Order found that Puget's existing OATT governed the provision of transmission service over the generator lead lines in question. Further, the November 18 Order's determination that Puget could reserve transmission capacity for reasonably forecasted native load under its existing OATT was based on key representations set forth in the Petition. Based on our review of Puget's rehearing request, it appears that those key representations by Puget, upon which the Commission relied in making its determination, were either inaccurate or changed on rehearing. Accordingly, we deny rehearing on the basis that Puget has impermissibly raised materially new facts on rehearing.

10. In its Petition, Puget made a number of statements indicating that the energy generated by the Project "will be delivered to [Puget's] balancing authority to serve native load."⁶ Puget made this claim to support its request for firm priority rights over the generator lead lines. For example, Puget stated that it "will construct and finance the generator lead lines for the benefit of its retail customers. Those customers are entitled to reap the benefits of that investment."⁷ In addition, Puget, recognizing that the developer in *Milford* had provided evidence of a power purchase agreement as part of its plans and milestones demonstration, emphasized that "[t]here should be no need for [Puget] to document a power purchase agreement because as a load-serving utility, all power generated is intended to serve [Puget's] retail electric customers."⁸

11. The November 18 Order relied on these representations in reaching the outcome that it did, i.e., that Puget could reserve capacity under its existing OATT for reasonably forecasted native load and it was therefore unnecessary to address Puget's request for priority rights under the *Milford* standard.⁹ However, despite the Petition's insistence

⁶ Petition at 4.

⁷ *Id.* at 13.

⁸ *Id.* at 12.

⁹ November 18 Order, 133 FERC ¶ 61,160 at P 13.

that the energy generated by the Project would serve Puget's native load customers, Puget's request for rehearing materially qualifies these earlier statements indicating that "[t]he Project is being developed by Puget's power supply group *with an eye toward serving native load.*"¹⁰ The rehearing request explains that because each phase of the Project has not yet been approved by state regulators as part of Puget's least-cost resource plan to serve native load, "Puget's power supply group must retain the flexibility to sell portions of the Project or its output off-system."¹¹ Thus, Puget's rehearing request interjects new and different factual information from that which was represented in the Petition.

12. Petitions for declaratory order are based on the specific facts and circumstances presented.¹² That was the case here. The November 18 Order's conclusion that Puget could reserve capacity for reasonably forecasted native load under its OATT turned on the representation made a number of times in the Petition that the energy generated by the Project would serve Puget's native load customers.¹³ We relied on such statements,

¹⁰ Puget Rehearing at 2 (emphasis added).

¹¹ *Id.*; see also *id.* at 15 ("[I]t is not certain that the full development planned for the Project can or should be integrated into Puget's native load supply mix. While that is the current plan, it is possible that Puget may seek to sell off portions of the project's planned capacity to another entity seeking to invest in renewable development.").

¹² See, e.g., *Western Grid Development, LLC*, 130 FERC ¶ 61,056, at P 56 (2010) (granting petition for declaratory order and stating "our determination here is strictly limited to the specific circumstances identified by the applicant."); *Sharyland Utils., L.P.*, 121 FERC ¶ 61,006, at P 23 (2007) (granting petition for declaratory order "[b]ased on the specific facts presented . . ."); *accord Desert Southwest Power, Inc.*, 135 FERC ¶ 61,143, at P 109 (2011) (in the context of transmission rate incentives, "the Commission found that if an applicant obtained a declaratory order from the Commission and the applicant's proposal subsequently changed from the facts on which the declaratory order was issued, then the applicant could seek another declaratory order or wait to seek approval of the changes in the later FPA section 205 filing.") (citing *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 78 (2006)).

¹³ See P 10, *supra*. We note that the Petition included general statements that the Project would help the region meet its energy needs and that the region would benefit from the renewable energy generated by the Project. See Petition at 3-4, 7. These statements are not synonymous with making off-system sales or selling any portion of the Project to third parties. Indeed, when the Petition stated that the Project will help "provide for the electricity needs of the region," that discussion explained what Puget will need to do to meet projected electricity demand. *Id.* at 3-4.

particularly as Puget used them to support its request for firm priority rights under *Milford*, as noted above.

13. In addition, the Commission's longstanding rule is not to consider new evidence at the rehearing stage of the proceeding.¹⁴ Introducing new evidence is disruptive to the administrative process and allowing it would place the Commission in the untenable position of having to revise its orders constantly to account for such new evidence. Here, Puget's rehearing request materially qualifies the Petition's original representation that power generated by the Project would serve Puget's native load customers. We find that this is new evidence that cannot be raised in the rehearing stage of this proceeding. Accordingly, we reject Puget's introduction of new and materially different facts and, therefore, deny rehearing.¹⁵ Because Puget's request for rehearing and clarification raises materially different facts than those reflected in the underlying Petition and relied upon by the November 18 Order, we also decline to address the arguments and requests for clarification that Puget raises therein.

The Commission orders:

Puget's request for rehearing is denied, as discussed in the body of this order.

By the Commission. Commissioner Clark voting present.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁴ See, e.g., *Idaho Power Co.*, 137 FERC ¶ 61,235, at P 14 (2011) ("As the Commission has stated elsewhere, it is reluctant to chase a 'moving target' by considering new evidence presented for the first time at the rehearing stage of Commission proceedings."); *Boralex Livermore Falls LP*, 123 FERC ¶ 61,279, at P 62 (2008); *Southern Cal. Edison Co.*, 102 FERC ¶ 61,256, at P 17 (2003); *Philadelphia Elec. Co.*, 58 FERC ¶ 61,060, at 61,133 & n.4 (1992).

¹⁵ The Commission looks with disfavor on parties raising new issues, such as Puget's new argument that section 9.9.2 of the *pro forma* large generator interconnection agreement be revised to help address its concerns with the November 18 Order, at the rehearing stage. See, e.g., *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 & n.10 (2009) (stating that a request for rehearing was not the appropriate venue to raise new issues).