

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Puget Sound Energy, Inc.

Docket No. EL02-77-001

ORDER ON REHEARING, REQUEST FOR REFUND AND TECHNICAL
CONFERENCE

(Issued March 4, 2005)

1. In this order, we grant Puget Sound Energy, Inc.'s (Puget) request for clarification or rehearing of the Commission's September 11, 2003 Order.¹ In doing so, we also grant Puget's petition for declaratory order to reclassify certain transmission facilities as local distribution. This order benefits customers by clarifying when facilities, and transactions over those facilities, are subject to Commission jurisdiction and thus providing greater regulatory certainty for transmission customers.

I. Background

2. On February 15, 2002, the Commission approved Puget's bifurcation of its rates for transmission service under its open access transmission tariff (OATT).² Puget included a "wholesale distribution service" rate for customers using facilities previously classified as transmission and proposed to be classified as "wholesale distribution." The Commission approved Puget's proposed bifurcated rates based upon the reclassification, but instructed Puget to refile the reclassification itself as a petition for declaratory order. Puget did so, stating that the purpose was solely to classify transmission facilities for the purpose of setting rates, terms and conditions for wholesale and unbundled retail transmission service customers under Commission jurisdiction.

¹ *Puget Sound Energy, Inc.*, 104 FERC ¶ 61,272 (2003) (September 11 Order).

² *Puget 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).

3. In the September 11 Order, the Commission explained that Puget's petition for declaratory order (Petition) appeared to be premised on a misunderstanding of the purpose and jurisdictional implications of reclassifying facilities under the Order No. 888³ seven-factor test and stated that there was no jurisdictional issue, only rate issues.⁴ The Commission also stated that it viewed Puget's proposal "as essentially requesting a bifurcation of its Commission-jurisdictional transmission facilities into higher-voltage and lower-voltage transmission service" and noted that "our February 15 Order already approved Puget's rates based upon its high-voltage and low-voltage transmission proposal."⁵ Thus, we held that 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" and that Puget's Petition for reclassification was unnecessary.⁶ Accordingly, the Commission held that since Puget filed its Petition "pursuant to our earlier order, we will entertain any request for a refund of the filing fee."⁷

4. On October 10, 2003, Puget filed a motion for refund of filing fee and request for clarification or rehearing of the September 11 Order. Puget requests clarification or rehearing of the Commission's September 11 Order.

5. In order to fully identify the issues raised in this proceeding, on November 9, 2004, the Commission held a technical conference regarding Puget's filings. Representatives from Puget, Cogeneration Coalition of Washington, and Bonneville

³ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs., Regulations Preambles January 1991 - June 1996 ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs., Regulations Preambles July 1996 - December 2000 ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

⁴ September 11 Order at P 15.

⁵ *Id.* at P 18.

⁶ *Id.* at P 15, 18.

⁷ *Id.* at P 18.

Power Administration (Bonneville) attended. Parties in attendance were instructed to file comments on the technical conference by December 1, 2004 and reply comments by December 8, 2004. They did so, as discussed below.

II. Discussion

A. Conditional Request for Clarification or Rehearing

6. Puget seeks clarification that the Commission has authorized the following: (1) Puget will provide wholesale transmission service over the facilities described as transmission facilities in its Petition under Puget's OATT, at the rates approved in the February 15 Order;⁸ (2) Puget will provide "wholesale distribution" service over the facilities described as "distribution" in its Petition (primarily facilities 34.5 kV to 115 kV) at the rates and terms of service approved in the February 15 Order; (3) Puget will provide unbundled retail transmission service over the facilities described as transmission facilities in Puget's Petition to customers participating in its state-approved retail access program, at OATT rates, in accordance with the service agreements accepted by the Commission in Docket No. ER01-2149;⁹ (4) Puget will provide "unbundled retail distribution service" over the facilities described as "distribution" in Puget's Petition (primarily facilities 34.5 kV to 115 kV) to customers participating in its state-approved retail access program at the rates and terms of service approved by the Washington Utilities and Transportation Commission (Washington Commission); and (5) Puget will continue to account for its transmission and "local distribution" facilities as proposed in Docket No. ER02-605-000.¹⁰

7. Puget states that if it has misunderstood the Commission's September 11 Order, it requests rehearing. Puget explains that it is providing "unbundled retail transmission service" to certain customers as described in (3) above, but is also providing "local distribution service" over facilities determined by the state to be distribution facilities. Puget states that it is accounting for its facilities in order to accommodate the state determination that these facilities are distribution facilities and Puget's retail access

⁸ In its Petition, Puget stated that: (a) all transmission facilities 34 kV or less are wholesale distribution facilities; (b) all transmission facilities 230 kV (and above) are transmission facilities; and (c) with one exception, all 115 kV and 55kV facilities (and one 34.5 kV facility) formerly classified as transmission facilities are "wholesale distribution." Petition at 3.

⁹ Those service agreements were accepted for filing by Commission letter order on July 11, 2001.

¹⁰ Docket No. ER02-605-000 was accepted in part in the February 15 Order.

program for certain industrial customers. Puget also states that providing service on that basis is consistent with the Commission's orders, including Order No. 888, which recognizes that states have jurisdiction over the "local distribution" portion of service to unbundled retail customers under state retail access programs, and that states determine which facilities are "local distribution" facilities and are thus subject to state jurisdiction for such customers. With respect to its limited retail access program, Puget states that it has acted in accordance with Order No. 888 and other applicable Commission orders.

B. Post-Technical Conference Comments

8. Puget and Bonneville submitted joint post-technical comments. They explain that Puget's proposal was indeed intended to reclassify certain transmission facilities from transmission to local distribution, subject to the jurisdiction of the state. The reclassified facilities will be used both for wholesale transactions, subject to this Commission's jurisdiction, and for unbundled retail service under the Washington state retail access program.

9. Puget and Bonneville explain that their proposal is that the type of service (bundled retail, unbundled retail, or wholesale) determines whether this Commission or the Washington Commission has jurisdiction, rather than a bright line classification that cuts across all types of wholesale and retail service. According to Puget and Bonneville, the effect of their proposed dual jurisdiction is:

- If the service is being provided to a wholesale customer (over transmission or local distribution facilities), the Commission has exclusive jurisdiction and Puget's OATT and applicable service agreement apply.
- If the service is being provided to a bundled retail customer (over transmission and local distribution facilities), the Washington Commission has exclusive jurisdiction and Puget's retail rate schedules apply.
- If the service is being provided to an unbundled retail customer, the Commission has jurisdiction over the transmission service component and the Washington Commission will have jurisdiction over the service over local distribution facilities.

10. Bonneville supports Puget's proposal. Puget and Bonneville explain that their solution would satisfy the concerns raised by Bonneville in its pleadings in both the ER02-605-000 proceeding and this one.

11. Bonneville seeks clarification that Puget's OATT continues to apply to wholesale transactions over facilities that Puget wishes to reclassify as local distribution, and that no additional terms and conditions need to be added to Bonneville's approved service agreements to continue transmission service for its customers. Puget and Bonneville state that if the Commission accepts their proposal, then from the wholesale customers'

perspective, the reclassification is equivalent, for rates and jurisdiction purposes, to a split between transmission and sub-transmission service.¹¹ If the Commission were to reject the reclassification or the rolled-in rate design, Puget and Bonneville argue that such a decision would upset previous settlement of Puget's OATT rates.

C. Commission Determination

12. The technical conference has enlightened the Commission to the true nature of Puget's request. Puget seeks to have certain transmission facilities reclassified as local distribution. Puget also proposes that if these same facilities are used for wholesale transmission, this Commission will have exclusive jurisdiction over the rates, terms and conditions of that service.¹² Thus, our jurisdiction over wholesale service is not diminished. Therefore, we will grant rehearing of the September 11 Order and grant Puget's petition to reclassify the facilities as local distribution, with this Commission having exclusive jurisdiction over the rates, terms and conditions of wholesale transmission service over these facilities.

13. The Commission stated in Order No. 888 that it would defer to state commission recommendations as to what constitutes local distribution facilities provided that such recommendations are consistent with the essential elements of Order No. 888. The Commission specifically indicated that it would provide deference to state regulatory authorities regarding certain transmission/local distribution matters that arise when retail wheeling occurs.

14. The Washington Commission has approved Puget's proposed reclassifications through review of the seven factor test set forth in Order No. 888.¹³ Thus, consistent with

¹¹ Under the rate structure approved by the Commission in ER02-605-000 et al., Puget charges a rolled-in rate for the use of its transmission facilities, and a rolled-in "wholesale distribution" rate for wholesale users that must use the facilities proposed to be reclassified as local distribution.

¹² As accepted in the February 15 Order, Puget now has a bifurcated rate reflecting transmission and wholesale distribution services under its OATT.

¹³ The Washington Commission's acceptance of Puget's reclassification was issued concurrently with the Washington Commission's approval of a retail rate case settlement between Puget and certain industrial customers eligible for retail access and a final order on the Washington State retail access program. Furthermore, in accepting Puget's reclassification, the Washington Commission stated that its determination based upon the seven factor test does not set precedent for any future proceeding before that Commission.

Order No. 888, we will defer to the Washington Commission's determination regarding the Puget facilities that are the subject of this proceeding. Accordingly, we will grant Puget's Petition.

15. We emphasize that to the extent that the local distribution facilities continue to be used for wholesale customers, that service will remain exclusively under the jurisdiction of this Commission and will be provided under Puget's OATT.¹⁴ Our jurisdiction in this case is consistent with our acceptance of Puget's transmission rates in Docket No. ER02-605-000, *et al.*¹⁵ In addition, the rates, terms, and conditions of all wholesale and unbundled retail transmission service provided by public utilities in interstate commerce are subject to this Commission's jurisdiction and review.¹⁶

16. Our deference in this proceeding only resolves the identification of the facilities used in the local distribution component of unbundled retail service; this ruling does not dictate transmission pricing. Further, as recognized by Puget in its post-technical conference comments, our deference in this proceeding does not affect the Commission's separate determination of what facilities must be under the operational control of regional transmission organizations, including independent system operators and Transcos.¹⁷

¹⁴ The D.C. Circuit court recently stated that “[w]hen a local distribution facility is used to delivery energy to an unbundled retail customer, FERC lacks any statutory authority, and the state has jurisdiction over that transaction. ... By contrast, when a local distribution facility is used in a wholesale transaction, FERC has jurisdiction over that transaction pursuant to its wholesale jurisdiction under FPA [section] 201(b)(1).” *Detroit Edison Co.*, 334 F.3d 48, 51 (D.C. Cir., 2003) (citations omitted). *See also* Order No. 888 at 31,980; *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 695 (D.C. Cir. 2000).

¹⁵ In that case, Puget retained the facilities to be classified as local distribution under the rates, terms and conditions of its OATT, subject to this Commission's exclusive jurisdiction and review.

¹⁶ In Docket No. ER02-605-000, the Commission accepted a wholesale distribution rate under Puget's tariff for transmission to wholesale customers over the facilities proposed as local distribution.

¹⁷ *MidAmerican Energy Company*, 90 FERC ¶ 61,105, at p. 61,337 (2000); *Central Illinois Light Company*, 102 FERC ¶ 61,286 at P 4 (2003); *Northeast Utilities Service Company*, 107 FERC ¶ 61,246 at P 23 (2004).

17. Since we are in fact allowing the reclassification of Puget's facilities, Puget's Petition was necessary; therefore Puget's request for a refund of its \$16,530 filing fee is rejected. With the clarification from the technical conference regarding Puget's intent by these proceedings, the fee for the declaratory petition is required.

18. Likewise, we will grant Puget's request for rehearing. Puget may account for its transmission facilities as described in the body of its rehearing request. As a result, Puget's request for clarification has been rendered moot.

The Commission orders:

(A) Puget's request for rehearing is granted and its clarification request is hereby dismissed as moot, as discussed in the body of this order.

(B) Puget's request for a refund of its \$16,530 filing fee is rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.