

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Puget Sound Energy, Inc. for a Declaratory Order and Accounting Order regarding the Reclassification of Certain Facilities and Accounting Treatment.

DOCKET U-111701

COMMISSION STAFF
STATEMENT OF FACTS AND
LAW IN SUPPORT OF PETITION
FOR DECLARATORY ORDER

I. INTRODUCTION

1 Puget Sound Energy, Inc. (“PSE” or the “Company”) operates 55 kV – 115 kV facilities to provide service to all of its customers. Those facilities are classified currently as “wholesale distribution” facilities by the Washington Utilities and Transportation Commission (“Commission”) and the Federal Energy Regulatory Commission (“FERC”). The cost of those facilities is recovered in rates set by the Commission and FERC.

2 On September 16, 2011, the Company filed with the Commission a Petition for Declaratory Order (“Petition”) to reclassify the 55 kV – 115 kV facilities from wholesale distribution facilities to transmission facilities. PSE also requests an Accounting Order authorizing it to apply this reclassification in its accounts and reports to the Commission. The Petition is a prerequisite to the Company requesting FERC approval of a single rate for PSE’s wholesale transmission customers, rather than the bifurcated rate in effect currently.¹

3 By notice dated September 23, 2011, the Commission invited interested persons to submit statements of fact and law on issues raised by the Petition, including the applicability

¹ The Company’s current Open Access Transmission Tariff (“OATT”) has two components. The first component covers transmission service on 230 kV and above lines. The second component covers wholesale distribution service on 55 kV – 115 kV lines. Petition at ¶12.

of Washington statutes or rules to those issues. Commission Staff submits this response to that invitation. With certain conditions discussed below, Staff recommends the Commission issue the Declaratory Order and Accounting Order, as requested by PSE.

II. LEGAL ISSUES

4 The Company’s Petition is filed under RCW 34.05.240. The primary legal issue, therefore, is whether the Petition meets the requirements of the statute, allowing the Commission to enter a declaratory order. Staff concludes that the Petition meets the statutory requirements and, therefore, a declaratory order can issue.

A. **The Petition Asks the Commission to Apply Statutes That It Enforces to Facilities Used By the Company to Provide Electricity**

5 RCW 34.05.240(1) allows any person to petition for a declaratory order “with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the [Commission].” The issue raised by the Petition is the extent to which use of PSE’s 55 kV – 115 kV facilities will be subject to regulation by FERC or the Commission.²

6 The Commission is charged with regulating PSE’s rates, services, facilities, and practices in the public interest, as provided by the public service laws.³ This is a broad mandate that allows the Commission to determine the boundaries of its jurisdiction. Thus, the Petition asks the Commission to apply a statute it enforces to the classification of certain facilities operated by PSE to provide electricity service.

² FERC has jurisdiction over facilities used in the “the transmission of electric energy in interstate commerce” and “the sale of electric energy at wholesale in interstate commerce”. Jurisdiction over facilities used for the “local distribution” of electric energy is reserved to the states. Federal Power Act, 16 U.S.C. §824(b).

FERC jurisdiction under the FPA includes unbundled retail transmission, but does not include bundled retail transmission. *New York, et al. v. FERC*, 535 U.S. 1 (2002). Thus, reclassifying the Company’s 55 kV – 115 kV lines from wholesale distribution to transmission may affect the demarcation of jurisdiction between the Commission and FERC, depending on the type of service those facilities are used to provide. See Section III, *infra*.

³ RCW 80.01.040(3).

7 Moreover, the Commission has specific authority to regulate the form and method of accounting for utility facilities⁴ and has promulgated rules under that authority.⁵ The Petition involves application of that authority to the Company's 55 kV – 115 kV facilities.

8 The Company notes correctly that FERC has addressed potential conflicts regarding the line between federal and state jurisdiction over facilities used to provide utility service. FERC requires utilities to first bring that issue to their state commission before filing with FERC classifications and cost allocations between transmission and local distribution facilities:

As a means of facilitating jurisdictional line-drawing, we will entertain proposals by public utilities, filed under section 205 of the FPA, containing classifications and/or cost allocations for transmission and local distribution facilities. However, as a prerequisite to filing transmission/local distribution facility classifications and/or cost allocations with the [FERC], utilities must consult with their state regulatory authorities. If the utility's classifications and/or cost allocations are supported by the state regulatory authorities and are consistent with the principles established by the Final Rule, [FERC] will defer to such classifications and/or cost allocations. We encourage public utilities and their state regulatory authorities to attempt to agree to utility-specific classifications and allocations that the utility may file at [FERC].⁶

FERC has also stated that it will rely heavily upon the determination of the state commission regarding jurisdictional divisions:

[W]e intend to provide broad deference to states in determining what facilities are [FERC]-jurisdictional transmission facilities and what facilities are state-jurisdictional local distribution facilities, so long as our comparability principles are not compromised and we are able to fulfill our responsibilities under the statute.⁷

⁴ RCW 80.04.090.

⁵ WAC 480-100, Part III.

⁶ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities: Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, F.E.R.C. Stats. & Regs. ¶ 31,036, at 31,784 (1996) ("Order No. 888").

⁷ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities: Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, F.E.R.C. Stats. & Regs. 131,048, at 30,345 (1997) ("Order No. 888-A").

While Order 888 or Order 888A are not orders of this Commission's to enforce, the Company's Petition complies with FERC's directive to first apply to the Commission to address the classification of PSE's 55 kV – 115 kV facilities.

B. The Petition Meets the Remaining Requirements of RCW 34.05.240

9 In order for the Commission to enter a declaratory order, the petitioner must show that:

- (1) Uncertainty necessitating resolution exists;
- (2) There is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;
- (3) The uncertainty adversely affects the petitioner; and
- (4) The adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

10 Staff agrees with the Company that the Petition meets these requirements. The uncertainty addressed by the Petition is the dividing line between PSE's transmission facilities and its distribution facilities, in light of operational and regulatory changes the Petition explains have occurred since the issue was last addressed. That division has jurisdictional significance that must be addressed first by this Commission, whose decision will be given deference. Thus, a determination by the Commission of the proper classification of PSE's 55 kV – 115 kV facilities will not be merely an advisory opinion.

11 Indeed, PSE could be adversely affected if the Commission does not address the proper classification of the 55 kV – 115 kV facilities because FERC will not allow the Company to request a single rate for wholesale transmission service absent a Commission decision. Assuming all proper regulatory approvals, no other entities will be adversely affected. A single transmission rate may actually produce public interest benefits by

streamlining tariff administration in the Company's OATT and ensuring that costs are recovered from the appropriate users of PSE's transmission system.

C. There is Commission Precedent to Address Facility Classifications in a Declaratory Order Proceeding

12 Finally, the Commission has previously allowed facility classifications and corresponding accounting to be determined by declaratory order. On January 2, 2001, the Company filed with the Commission a petition for declaratory order to classify its 230 kV and above facilities as transmission and to change the classification of its 55 kV – 115 kV facilities from transmission to distribution. The Company also requested an accounting order to reflect these classifications. On April 5, 2001, the Commission issued a Declaratory Order approving the requested classifications and accounting.⁸ We see no reason why a similar process should not be used in the current docket.

III. FACTUAL ISSUES

A. The Petition Supports Classifying the Company's 55 kV – 115 kV Facilities As Transmission Facilities

13 In Order No. 888, FERC established the following seven-factor test to guide the appropriate classification of transmission versus local distribution facilities:

- (1) Local distribution facilities are normally in close 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 re-consigned or transported on to some other market.
- (5) Power entering a local distribution system is consumed in a comparatively restricted geographical area.

⁸ *In the Matter of the Petition of Puget Sound Energy, Inc., Declaratory Order Approving Petition and Adopting Accounting Provisions, Docket UE-010010 (April 5, 2001).*

(6) Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.

(7) Local distribution systems will be of reduced voltage.⁹

14 PSE evaluated its 55 kV – 115 kV facilities in light of FERC’s seven-factor test and regulatory changes since 2001 when those facilities were last classified by the Commission and FERC.¹⁰ It concluded from that analysis that the facilities are not local distribution.

15 While Staff has not performed and cannot perform an independent evaluation of the Company’s facilities, Staff has reviewed PSE’s analysis and finds the analysis and conclusions reasonable. However, Staff would not object to additional procedures, perhaps including evidentiary hearings, should another interested person submit comments that cast doubt on the Company’s analysis and conclusions.

B. Reclassification of the Company’s 55 kV – 115 kV Facilities Should Not Adversely Impact Ratepayers

16 The Petition states that the only customers that may be adversely impacted by the reclassification of the 55 kV – 115 kV facilities are large industrial customers taking service under Schedules 448 and 449 set by the Commission.¹¹ Staff agrees.

17 Schedule 448/449 customers pay currently both the OATT rate for unbundled retail transmission service over these facilities and Schedule 448/449 rates for unbundled retail distribution service over the same facilities. Reclassifying the 55 kV – 115 kV facilities as transmission will shift those facilities from dual Commission/FERC jurisdiction to exclusive FERC jurisdiction for Schedule 448/449 customers.¹² The Company will then seek FERC

⁹ Order No. 888 at 30,341.

¹⁰ Petition at ¶¶21-40; Affidavit of John M. Phillips.

¹¹ Petition at ¶53.

¹² Distribution service over facilities below 55 kV will not be affected by the reclassification and will still be recovered through Schedule 448 and 449 rates set by this Commission.

approval to revise the OATT to recover costs imposed by Schedule 448/449 customers on the 55 kV – 115 kV facilities. Upon approval of that revision, PSE will seek Commission approval to remove from Schedule 448/449 cost recovery of those facilities. Schedule 448/449 customers should be indifferent to this change because, overall, they will incur the same cost for service.¹³

18 Reclassification of the 55 kV – 115 kV facilities should have no effect on the Company's native load customers. These customers use PSE's transmission and distribution facilities to purchase bundled retail service. Thus, the cost of that use will still be recovered through rates established by the Commission even with reclassification.¹⁴

19 Finally, the Company's wholesale transmission customers do not pay any rate set by the Commission. They pay only the current bifurcated rate set by FERC in the Company's OATT. As stated above, reclassification of PSE's 55 kV – 115 kV facilities will only set up the elimination of the bifurcation so that these customers will pay one FERC-set transmission rate.

IV. STAFF RECOMMENDED CONDITIONS

20 In the Commission's 2001 Declaratory Order addressing the classification of the Company's 55 kV – 115 kV facilities, the Commission set the following conditions:¹⁵

- (1) The classification of PSE's facilities is not determinative of the appropriate rate accounting or other treatment that should be afforded to particular facilities. Nor does the classification establish precedent with respect to how facilities owned by other utility companies should be classified.

¹³ It is possible that FERC may include more costs in the OATT (for example, a higher rate of return than allowed PSE by the Commission) than are removed from Schedules 448 and 449. However, those customers will have every opportunity to contest that issue before FERC.

¹⁴ Petition at ¶15, second bullet.

¹⁵ *In the Matter of the Petition of Puget Sound Energy, Inc.*, Declaratory Order Approving Petition and Adopting Accounting Provisions at ¶¶35-37, Docket UE-010010 (April 5, 2001).

- (2) The classification will not affect the depreciation rates PSE charges.¹⁶
- (3) The classification of PSE's facilities in no way alters or modifies the Commission's jurisdiction over facilities that are classified as either transmission or distribution and that are used to provide services properly subject to our jurisdiction.

21 These conditions are reasonable and appropriate safeguards of Commission jurisdiction and discretion. Staff recommends that the Commission adopt these same conditions in its Declaratory Order in this proceeding.

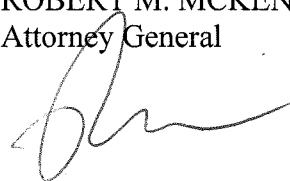
IV. CONCLUSION

22 For the reasons set forth above, Staff recommends that the Commission enter the Declaratory Order and Accounting Order, as requested by the Company, with the conditions recommended above.

DATED this 30th day of September 2011.

Respectfully submitted,

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¹⁶ This means that PSE will continue to charge its current depreciation rates until revised by a new depreciation study approved by the Commission. The Company already acknowledges this condition in the Petition at ¶52.