



Via Email

February 28, 2001

Ms. Carole Washburn, Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: *In the Matter of Puget Sound Energy, Inc., for a Declaratory Order and Accounting Order Regarding the Classification of Certain Facilities and Accounting Treatment Consistent Therewith.*
Docket No. UE-010010

Dear Ms. Washburn,

This letter responds to Puget Sound Energy's Petition for Declaratory Order and an Accounting Order. In that Petition, PSE asks the Commission to enter a declaratory order to adopt PSE's proposed classification of transmission and distribution facilities consistent with the requirements of FERC Orders 888 and 888-A.

The Cogeneration Coalition of Washington¹ believes that it would be premature for the Commission to take action on PSE's proposed transmission and distribution classifications for the following reasons:

- The seven factors test is a determination applied to open access tariffs. Until PSE has filed the appropriate wholesale distribution access tariffs, it would be premature to approve such classifications.
- Hasty action taken in response to PSE's Petition may have a deleterious effect on the ultimate formation of a regional transmission organization by withdrawing facilities that would be classified as "main grid" and properly under RTO control.

The Commission decline to adopt PSE's proposal or, if desired, set the matter for hearing.

¹ CCW is comprised of Qualifying Facilities that hold WUTC-approved power sales agreements with PSE. By traditional power production standards, these cogenerators are small, efficient plants that target energy needs close to where the power is needed. These facilities help maintain competitive industrial operations in the state, enhance employment, and contribute significantly to both the state and local tax base. In addition, the plants are efficient, technologically advanced, and extremely clean producers of power.

Open Access Concerns

PSE may be inappropriately applying the “seven factors” test. The cornerstone of FERC’s Order 888² is to “remedy undue discrimination in access to the monopoly owned transmission wires that control whether and to whom electricity can be transported in interstate commerce.”³ The remedy included the proposed unbundling of retail service and development of open access tariffs.

In the Order, FERC recognized that once retail service was unbundled, there would be a need to draw a distinction between facilities that are used for transmission and those used for local distribution. To assist in the demarcation process, FERC adopted seven indicators to evaluate whether or not an individual facility would be subject to the jurisdiction of the state or of FERC.⁴

FERC has indicated that it will give great weight to the expertise of the state commissions in making the initial determinations. However, as noted by FERC in *Alliant Energy Corporate Services*, “[w]e emphasized that before we would defer to the state’s determination, the state must have implemented a state retail access program.”⁵ (Emphasis added.)

CCW would like to point out that the state has not adopted a retail access program nor has PSE sought FERC approval of a wholesale distribution access tariff. Until PSE has such documents on file, it is premature to approve the classifications and inappropriate to use the seven factors test as it is applied to open access tariffs.

Moreover, there is a fair amount of judgment involved in applying the seven factors test. Reasonable people may apply the same seven factors and come out with different, yet supportable results. The appropriate categorization of transmission and distribution facilities should depend on historical facts related to the unique design of the utility's system and its uses. In Exhibit A to Puget’s Petition, several 115 kV lines have been proposed as distribution level facilities, which, under additional scrutiny could just as easily be labeled transmission facilities. FERC recognized that “in some cases the seven indicators may not be fully dispositive of the issue and that states may find other

² 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, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996, 31,036, at 31,635 (1996), order on reh’g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Statutes and Regulations 31,048, at 30,490 (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).

³ Order 888, at 31,636.

⁴ Order 888 at 31,780.

⁵ *Alliant Energy Corporate Services*, 90 FERC 61,344 (March 31, 2000).

technical indicators that may be related....⁶ CCW agrees that PSE has not provided sufficient information to evaluate its classifications.

Impact on RTO Formation

CCW is concerned that action taken by the Commission on this Petition may have significant impacts on future wholesale transactions. In particular, PSE's classifications may affect which facilities are or are not under the control of a regional transmission organization, such as RTO West, and may therefore affect the ease with which new generators interconnect and the efficiency of transactions by new market entrants. While RTO West is still some months away from finalizing documents, it is imperative that all parties work collectively toward building an impartial, regional transmission service, characterized by non-pancaked rates, increased reliability, and the ability to address transmission constraints on a regionwide basis.

PSE's proposed classification would, in effect, withhold much of PSE's transmission lines, including "main grid" or transmission level facilities from the control of RTO West. PSE's action would require anyone using such withheld facilities for a wholesale transaction to pay pancaked rates -- both a rate to PSE and a rate to the RTO. In addition, the withholding of these facilities would also significantly limit the authority of the RTO over generation interconnection and planning with respect to those facilities. Unduly burdensome rules could inhibit non-discriminatory interconnection and access to transmission facilities by independent power producers and marketers in the rapidly growing Puget Sound area -- an area which is in dire need of additional generation to satisfy rapid load growth.

RTOs formed pursuant to FERC's Order 2000 must have authority over all FERC-jurisdictional services provided within their region. Jurisdiction under the Federal Power Act hinges on the nature of the transactions and functions for which facilities are used, rather than the voltage rating of facilities. If a facility is used for wholesale transactions, it is within FERC's jurisdiction and it should therefore also be under the authority of the RTO. Consequently, PSE's classifications may not hold up at the federal level. In *Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), the United States Court of Appeals for the District of Columbia Circuit held that:

FERC's assertion of jurisdiction over all wholesale transactions, regardless of the nature of the facility, is clearly within the scope of its statutory authority.... Wisconsin-Michigan Power Co. v. FPC, 197 F.2d 472, 477 (7th Cir. 1952) (finding that transmission facilities used at wholesale are not "local distribution facilities"). 225 F.3d at 696.

If PSE classifies transmission level 115 kV lines as distribution, some of PSE's facilities used for interstate commerce would not be included, either directly or indirectly, under the control of an impartial RTO West. As a result, PSE would be able to exercise significant control over those facilities, possibly in a way that favors utility transactions over those of others who wish to interconnect and effectuate wholesale transactions.

⁶ Order 888 at 31,784.

PSE would be able to establish and implement interconnection standards, maintenance standards, and plan and construct any facilities it chooses to support the excluded facilities, retaining the ability to pancake rates. PSE would also have the right under the draft RTO documents to determine the thermal ratings of the facilities, and thereby Total Transmission Capacity ("TTC") and Available Transmission Capacity ("ATC"), to a wholesale generator or load connected to such excluded facilities. These retained rights by the transmission owner would have a tremendous impact on the customer's ability to obtain equal and nondiscriminatory access to the main grid.

There are significant questions and concerns associated with the transmission classifications. CCW respectfully requests that this Commission not act hastily on PSE's Petition. The matter is premature, absent an open access program. Or, if so desired, the Commission could set the matter for further evidentiary hearings.

Sincerely,

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