

EXHIBIT NO. ___(RG-11)
DOCKET NO. UE-09___/UG-09___
2009 PSE GENERAL RATE CASE
WITNESS: ROGER GARRATT

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

Docket No. UE-09___
Docket No. UG-09___

**TENTH EXHIBIT (NONCONFIDENTIAL) TO THE
PREFILED DIRECT TESTIMONY OF
ROGER GARRATT
ON BEHALF OF PUGET SOUND ENERGY, INC.**

MAY 8, 2009

UNITED STATES OF AMERICA 125 FERC ¶ 62,156
FEDERAL ENERGY REGULATORY COMMISSIONMint Farm Energy Center LLC
Puget Sound Energy, Inc.

Docket No. EC08-127-000

ORDER AUTHORIZING DISPOSITION AND
ACQUISITION OF JURISDICTIONAL FACILITIES

(Issued November 14, 2008)

On September 26, 2008, Mint Farm Energy Center LLC (Mint Farm) and Puget Sound Energy, Inc. (Puget Sound) (collectively, Applicants) filed an application seeking authorization under sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)¹ for the disposition and acquisition of jurisdictional facilities in connection with the transfer of all of the interests in Mint Farm to Puget Sound, and the subsequent dissolution of Mint Farm (Transaction). The jurisdictional facilities associated with the Transaction consist of Mint Farm's market-based rate tariff and related books and records and interconnection equipment.

Mint Farm is a Delaware limited liability company and a subsidiary of Wayzata Opportunities Fund, LLC (Wayzata). Mint Farm owns and operates the Mint Farm Facility, an approximately 296 megawatt (MW) gas-fired electric generating facility located in Longview, Washington. The Mint Farm Facility is interconnected to the transmission system of Bonneville Power Administration. Mint Farm is an exempt wholesale generator (EWG) with market-based rate authority.

Through Wayzata, Mint Farm is affiliated with California Power Holdings, LLC (CA Power) and Thompson River Power, LLC (Thompson River). CA Power owns and operates a 49 MW gas-fired electric generating facility located in Chowchilla, California and a 45 MW gas-fired electric generating facility located in Red Bluff, California. CA Power is authorized by the Commission to make wholesale sales at market-based rates. Thompson River owns and operates a 12.5 MW wood waste and coal-fired cogeneration facility located in Thompson Falls, Montana. Thompson River is authorized by the Commission to make wholesale sales at market-based rates.

Puget Sound, a wholly-owned subsidiary of Puget Energy, Inc. (Puget), is a vertically-integrated utility that provides retail electric service in the Puget Sound region of Washington. Puget Sound owns facilities used for the sale and transmission of

¹ 16 U.S.C. § 824b (2006).

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electricity in interstate commerce located within Washington. Puget Sound is authorized by the Commission to sell electricity at market-based rates and operates its transmission system pursuant to an Open Access Transmission Tariff on file with the Commission. Puget Sound also provides retail natural gas service and owns natural gas distribution facilities in Washington.

Puget Sound is the parent company of Hydro Energy Development Corporation, which in turn owns Black Creek Hydro, Inc. (Black Creek). Black Creek is an EWG that owns a 3.7 MW hydroelectric generating facility and sells the entire output to Avista Corporation pursuant to a rate schedule on file with the Commission.²

Under the Purchase and Sale Agreement by and between Puget Sound and Mint Farm, dated as of September 24, 2008, Mint Farm agrees to sell, and Puget Sound agrees to purchase, all of the membership interests in Mint Farm. Applicants state that Puget Sound will then dissolve Mint Farm, with the result that Puget Sound will thereafter directly own and operate the Mint Farm Facility.

Applicants state that the Transaction is consistent with the public interest because it will not adversely affect competition, rates, or regulation. With respect to competition, Applicants contend that the Transaction raises no horizontal or vertical market power concerns. Applicants state that the Transaction will not have an adverse effect on horizontal competition in the Bonneville Power Authority market. Applicants argue that the Transaction will not enable Puget Sound to exercise horizontal market power because (1) the latter has no ability to withhold generation to exercise market power because much of its resource portfolio is from hydroelectric resources that in most cases are run-of-river facilities, and (2) Applicants' analysis for available economic capacity shows only isolated screen failures in two periods in which Puget Sound has no available economic capacity (and hence no ability to withhold generation from the market). Applicants state that no vertical market concentration concerns exist because Puget Sound's transmission facilities are operated in accordance with a Commission-approved Open Access Transmission Tariff. Applicants also state that the Transaction does not

² By order issued on April 17, 2008, the Commission authorized a merger pursuant to which Puget and its public utility subsidiaries Puget Sound and Black Creek will become indirectly owned by a consortium of investors consisting of Macquarie Infrastructure Partners, Macquarie-FSS Infrastructure Trust, Macquarie Capital Group Limited, the Canada Pension Plan Investment Board, British Columbia Investment Management Corporation, and Alberta Investment Management (collectively, Investor Consortium). Applicants submit that the pending merger between Puget and the Investor Consortium should not affect the Commission's consideration of the Transaction under this Application, because no member of the Investor Consortium owns or controls any electric generation, transmission, or distribution facilities in the geographical market relevant to the Transaction.

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involve any gas transportation asset or other inputs to gas generation facilities and that Puget Sound has no ability or incentive to exercise vertical market power in delivered gas services.

With respect to rates, Applicants state that the Transaction will have no effect on transmission service rates because the Transaction does not involve any transmission facilities. Applicants also state that Puget Sound is authorized to sell electric energy at market-based rates, and those rates will not be affected by the Transaction.

Applicants state that the Transaction will have no adverse effect on regulation because the Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate Puget Sound or the output of the Mint Farm Facility.

Applicants state that the Transaction does not pose a risk of cross-subsidization and does not pledge or otherwise encumber utility assets. Applicants confirm that, based on the facts known to them, or that are reasonably foreseeable, the Transaction will not result in, at the time of the Transaction or in the future: (i) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (ii) any new issuances of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (iii) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (iv) any new affiliate contract between a non-utility associate company and a traditional public utility company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities other than non-power goods and services agreements subject to review under FPA sections 205 and 206.³

The filing was noticed on September 30, 2008, with comments, protests, or interventions due on or before October 17, 2008. None was received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

³ Exhibit M at M-2 through M-3.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301 (c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of this transaction is based on such examination ability.

Order No. 652 requires that sellers with market-based rate authorization timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁴ The foregoing authorization may result in a change in status. Accordingly, Applicants are advised to make a change in status filing as required by Order No. 652, if necessary. In addition, Applicants shall make appropriate filings under section 205 of the FPA, to implement the Transaction.

After consideration, it is concluded that the Transaction is consistent with the public interest and is hereby authorized, subject to the following conditions:

- (1) The Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before the Commission;
- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under Sections 203(b) and 309 of the FPA to issue further orders as appropriate;
- (5) If the Transaction results in changes in the status or the upstream ownership of Applicants' affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made;

⁴ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

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- (6) Applicants shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction;
- (7) Applicants must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Transaction; and
- (8) Applicants shall notify the Commission within 10 days of the date that the disposition and acquisition of the jurisdictional facilities has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Tariffs and Market Development - West, under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713.

Steve P. Rodgers
Director
Division of Tariffs and Market Development -West