

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET U-111701
)	
PUGET SOUND ENERGY, INC.)	ORDER 01
)	
For a Declaratory Order and Accounting)	DECLARATORY ORDER
Order Regarding the Reclassification of)	
Certain Facilities and Accounting)	
Treatment)	
)	
.....)	

MEMORANDUM

1 On September 16, 2011, Puget Sound Energy, Inc. (PSE) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for a Declaratory Order and For Accounting Order (Petition) approving PSE’s proposed reclassification of its 55 kV-115 kV distribution facilities as transmission facilities and authorizing the Company to apply such reclassification in PSE’s accounts and reports to the Commission. The Commission gave notice of its receipt of PSE’s Petition on September 23, 2011, and provided an opportunity for interested persons to file statements of fact and law by September 30, 2011.

I. Background

2 PSE is a public service company engaged in the generation, transmission, distribution and sale at retail of electric energy in the state of Washington. As such, PSE is subject to the Commission’s authority to regulate, in the public interest, in accordance with RCW 80.01.040, Chapter 80.28 RCW, and other applicable public service laws.

3 The Federal Energy Regulatory Commission (FERC) regulates facilities used by PSE to transmit electric energy in interstate commerce, under applicable provisions of the

Federal Power Act.¹ FERC, from time to time, has issued orders that bear upon the jurisdictional boundaries between its regulatory authority and that of the state, including Order 888.² FERC acknowledged in Order 888 that states have jurisdiction over local distribution facilities while the federal government has jurisdiction over the rates, terms, and conditions of unbundled retail transmission by public utilities in interstate commerce.

- 4 The classification of transmission and distribution facilities for various regulatory purposes may lead to uncertainty and potential conflicts regarding the boundaries of federal/state jurisdiction. To avoid these issues and concerns, FERC determined in Order 888, as follows:

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 Commission, 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, the Commission 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 the Commission.³

- 5 Order 888 established a seven-factor test to aid in the classification of facilities as either transmission or distribution.⁴ According to Order 888, the seven factors of local distribution are as follows:

¹ 16 U.S.C. § 824.

² *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 31,770 (1996) (“Order 888”).

³ Order 888, at 31,784 (*emphasis added*).

⁴ *Id.* at 30,341.

- (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 reconsigned or transported on to some other market.
- (5) Power entering a local distribution system is consumed in a comparatively restricted geographical area.
- (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.⁵

6 The seven-factor test is not rigid. FERC intended it to be a flexible test that can account for unique regional or local conditions:

The seven-factor test is intended to provide sufficient flexibility to take into account unique local characteristics and historical usage of facilities used to serve retail customers. We specifically stated in the Final Rule that we will consider jurisdictional recommendations by states that take into account other technical factors that states believe are appropriate in light of historical uses of particular facilities. Moreover, we will defer to facility classifications and/or cost allocations that are supported by state regulatory authorities.⁶

In January 2001, applying the seven-factor test to the pertinent facts, as then extant, PSE petitioned the Commission in Docket UE-010010 to classify the same facilities that are the subject of its Petition in this docket. At that time, PSE represented that application of the seven-factor test led the Company to conclude that PSE's 230 kV

⁵ *Id.*

⁶ *Id.* at 30,342.

(and above) facilities were transmission facilities. These facilities connected PSE's systems to bulk transmission grids and supported transfers to regional markets. PSE also stated that all of its facilities of 34 kV or lower were inherently distribution facilities. PSE stated that application of the seven-factor test to its 115 kV facilities, confirmed by PSE's power flow analysis, demonstrated that these facilities were distribution facilities, with one exception.⁷ Principally, PSE said, this was because the Company's 115 kV facilities functioned to serve local loads and rarely, if ever, served to transfer power to other markets. PSE also requested in 2001 that the Commission issue an accounting order authorizing the Company to apply its proposed classification of transmission and distribution facilities in PSE's accounts and reports to the Commission, under and in light of the FERC's seven-factor test.

- 7 The Commission granted PSE's petition for a declaratory order and an accounting order in Docket UE-010010.⁸ After the approvals by this Commission and FERC to reclassify facilities, PSE's facilities 55 kV and above were bifurcated into: (i) "transmission facilities" (*i.e.*, facilities 230 kV and above); and (ii) "wholesale distribution facilities" (*i.e.*, facilities 55 kV through 115 kV).
- 8 PSE states in its Petition in this docket that it has reevaluated the classification of facilities approved by the Commission in Docket UE-010010. PSE now concludes that certain facilities previously classified as distribution should now be reclassified as transmission facilities. PSE refers to these facilities in its Petition as "Proposed Reclassified Facilities." PSE states that "changes in both the use of PSE's transmission system and the overall operating and regulatory regime support the requested reclassification."⁹

⁷ The exception to this classification was PSE's 115 kV Anderson Canyon-Beverly Line. This line was classified as transmission because, at the time of PSE's Petition, it was non-radial in nature, connected commercial markets, and had traditionally and contractually been used as part of PSE's cross-Cascade mountain range transmission capacity to provide access, for example, to the Mid-Columbia wholesale power market.

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).

⁹ PSE Petition ¶ 10.

9 PSE contends that, while there were valid reasons for this classification in 2001,¹⁰ the continued need for bifurcation of facilities is unnecessary today. Almost all of PSE's customers pay both the transmission rate and the wholesale distribution rate identified in PSE's Open Access Transmission Tariff (OATT). According to PSE, the bifurcation of its facilities into transmission facilities and wholesale distribution facilities is unique among transmission providers offering OATT-based service in the Pacific Northwest. PSE states that elimination of this bifurcation will allow it to put in place a single rate for use of PSE's transmission system facilities, which will streamline PSE's OATT administration and billing processes.

10 PSE evaluated the Proposed Reclassified Facilities using FERC's seven factor test in light of the changed regulatory and operational landscapes in which the Company operates today. PSE specifically petitions the Commission for a declaratory order supporting PSE's proposed reclassification of certain 55 kV to 115 kV Washington facilities identified in Exhibit A and Exhibit B to its Petition as transmission facilities, and an accounting order authorizing PSE to reflect such reclassification in its accounts. PSE proposes no reclassification of any facilities not identified in either Exhibit A or Exhibit B to its Petition. PSE states that it has reconciled the lines and substations identified in Exhibits A and B, respectively, with the lines and substations identified in Exhibit A to its earlier Petition for a Declaratory Order and Accounting Order filed in Docket UE-010010. PSE believes that the lines and substations identified in Exhibits A and B to its Petition reflect all of the modifications and changes that may have occurred to PSE's 55 kV – 115 kV transmission system. Nonetheless, PSE acknowledges that it is possible the Company may have inadvertently omitted a line or substation that PSE intends to reclassify as a transmission facility. PSE requests, in that event, that the Commission's order here allow PSE to make administrative changes, if necessary.

11 PSE attached the Affidavit of John M. Phillips ("Phillips Affidavit") as Exhibit C to its Petition. The Phillips Affidavit explains the methodology PSE used to identify and reclassify the Proposed Reclassified Facilities as transmission facilities.

¹⁰ Prior to PSE's requests to reclassify facilities before the Commission in 2001 and FERC in 2002, all PSE facilities 55 kV and above were classified as transmission facilities.

12 PSE states that in addition to the operational changes occurring on PSE's system since 2001, the regulatory landscape has changed and continues to evolve. Important in connection with PSE's Petition, FERC certified the North American Electric Reliability Corporation ("NERC") in 2006, as the electric reliability organization in the United States.¹¹ As the electric reliability organization, NERC issued and FERC approved over 120 reliability standards, which collectively impose over 1400 discrete compliance requirements on owners, operators, and users of the bulk electric system (the "Reliability Standards").¹² The Reliability Standards apply to a wide range of entities, covering all organizations that own, operate or use the bulk electric system, including PSE.

13 On November 18, 2010, FERC issued Order 743 directing NERC to revise its definition of the term "bulk electric system" to ensure that "certain facilities needed for the reliable operation of the nation's bulk electric system are subject to mandatory and enforceable Reliability Standards, and that exemption methodologies would be developed by NERC and subject to [FERC] review."¹³ Order 743 proposed a bright-line standard that facilities 100 kV and above are part of parallel networks with high voltage and extra high voltage facilities and are necessary for reliable operation and thus subject to the Reliability Standards:

We find that the vast majority of 100 kV and above facilities are part of parallel networks with high voltage and extra high voltage facilities and are necessary for reliable operation. As a result, and consistent with our previous statements in Order No. 672, we find it is best for [NERC] to establish a uniform definition that eliminates subjectivity and regional variation in order to ensure reliable operation of the bulk electric system. We further find that the existing [Northeast Power Coordinating Council, Inc.] impact test is not a consistent, repeatable, and comprehensive alternative to the bright-line, 100kV definition we

¹¹ See *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

¹² See http://www.nerc.com/files/Reliability_Standards_Complete_Set.pdf.

¹³ *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order 743, 133 FERC ¶ 61,150 at paragraph 96 (2010) ("Order 743").

prefer. By directing the [NERC] to revise the definition of “bulk electric system,” through the approach proposed by the [FERC], or through an equally effective alternative proposed approach, [FERC] is fulfilling its responsibility to ensure reliable operation of the grid. Any alternative proposal from [NERC] must be as effective as, or more effective than the 100 kV threshold at ensuring facilities necessary for reliable operation are captured in the definition while also addressing the issues outlined in this Final Rule.¹⁴

PSE contends that, although Order 743 has been challenged in the courts, the trend towards more robust reliability standards, and related costs, is apparent to the Company. In PSE’s view, Order 743 makes clear that, at least as far as FERC is concerned, the vast majority of 100 kV and above facilities are transmission in nature and subject to the Reliability Standards. The costs associated with these Reliability Standards are a primary factor in PSE’s increasing capital and operations and maintenance expenditures for facilities 100 kV and above. PSE states that reclassification of its facilities will allow the Company to more equitably spread these costs to all users of PSE’s transmission system facilities in an efficient and non-discriminatory manner.

14 On September 30, 2011, the Commission’s regulatory staff (Staff) filed comments supporting PSE’s Petition. Staff agrees with PSE that the only customers that may be 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.¹⁵

15 Staff explains in its comments that Schedule 448/449 customers pay currently both the OATT rate for unbundled retail transmission service over the facilities PSE wishes to reclassify and Schedule 448/449 rates for unbundled retail distribution service over the same facilities. According to Staff, 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.¹⁶ The

¹⁴ *Id.*

¹⁵ Staff Comments ¶15.

¹⁶ 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.

Company will then seek FERC 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. According to Staff, Schedule 448/449 customers should be indifferent to this change because, overall, they will incur the same cost for service.¹⁷

- 16 Staff also states that 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.
- 17 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 transmission rate, set by FERC.
- 18 Staff recommends, however, that the Commission impose conditions on the reclassification of the Company’s 55 kV – 115 kV facilities, as it did when classifying these facilities in 2001. Staff specifically recommends that the Commission set the following conditions:
- (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.

¹⁷ 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.

- (2) The classification will not affect the depreciation rates PSE charges.¹⁸
- (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.

Staff argues 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.

19 Industrial Customers of Northwest Utilities, some members of which take service from PSE under Schedules 448 and 449, filed a Petition to Intervene in this docket on October 3, 2011. ICNU expresses concern that some of the listed substations proposed to be reclassified from distribution to transmission facilities appear to be customer-owned substations. For example, ICNU states, a non-exclusive listing of such facilities within Exhibit B to PSE's Petition possibly includes: ARCO Central, ARCO North, ARCO South, Boeing Auburn, Boeing Puyallup, Boeing Renton No. 1, Boeing Renton No. 2, Liquid Air, March Point, Olympia Brewery, SeaTac, Texaco East, Texaco West, U.S. Navy Bangor, U.S. Navy Keyport, and West Campus.¹⁹ ICNU is concerned, in addition, because PSE's Petition does not present any financial data concerning possible ratepayer impacts from reclassification.²⁰ ICNU recommends that the Commission delay a determination upon PSE's petition in order to allow parties more time to investigate the Company's proposal and supporting rationale.

20 On October 7, 2011, the Commission gave notice that it would conduct a prehearing conference in this proceeding to determine what process might be required, on what schedule, to bring this docket to conclusion. Mr. Cowell, representing ICNU, stated that while ICNU had some concerns, as stated in its Petition and Comments, it was

¹⁸ 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 its Petition at ¶ 52.

¹⁹ ICNU Petition and Comments ¶ 8.

²⁰ *Id.* ¶ 9.

not certain that ICNU would ultimately oppose PSE's Petition. The parties agreed at the conference to proceed informally with an exchange of information to allow ICNU an opportunity to delve into the details of the proposed reclassification.

21 On December 9, 2011, ICNU filed a letter with the Commission stating that the organization conducted discovery and had discussions with PSE addressing its initial concerns. The result of these undertakings is that ICNU now supports PSE's Petition. ICNU states that it reserves its right to address issues related to the proposed reclassification in PSE's pending general rate case in Dockets UE-111048 and UG-111049 (consolidated).

22 Considering the foregoing, the Commission determines that it should approve PSE's now unopposed Petition for a Declaratory Order and For Accounting Order authorizing PSE's proposed reclassification of its 55 kV-115 kV distribution facilities as transmission facilities and authorizing the Company to apply such reclassification in PSE's accounts and reports to the Commission. The Commission also determines that it should in this case, as it did in 2001, impose the conditions Staff identifies in stating its support for PSE's proposed reclassification.

ORDER

THE COMMISSION ORDERS THAT:

- 23 (1) Puget Sound Energy, Inc.'s proposed classification of its facilities as shown in Appendices A and B to its Petition is reasonable, and Puget Sound Energy, Inc., is authorized to reflect this classification in its accounts and reports to this Commission.
- 24 (2) If the Company has inadvertently omitted in Appendices A or B to its Petition a line or substation that PSE intends to reclassify as a transmission facility, the Company is allowed to make administrative changes, subject to the Company providing notice to Staff and other parties to this proceeding and to the completion of such further process, if any, as may be required if Staff or another interested person contests a proposed administrative change within 10 days after service of notice.

- 25 (3) The classification of Puget Sound Energy, Inc.'s facilities approved by this Order is not determinative of the appropriate rate accounting or other treatment that should be afforded to particular facilities. Nor does this Order establish precedent with respect to how facilities owned by other utility companies should be classified.
- 26 (4) This change in classification will not affect the depreciation rates Puget Sound Energy, Inc., charges.
- 27 (5) The classification of Puget Sound Energy, Inc.'s facilities approved by this Order 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.
- 28 The Commission retains jurisdiction to effect the provisions of this Order.

Dated at Olympia, Washington, and effective December 14, 2011.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.