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 Consistent Therewith	No. _____ PETITION FOR DECLARATORY ORDER AND FOR ACCOUNTING ORDER

I. INTRODUCTION

1. Puget Sound Energy, Inc. ("PSE"), P.O. Box 97034, Bellevue, Washington 98009-9734, hereby petitions the Washington Utilities and Transportation Commission (the "Commission") for

(i) a declaratory order supporting PSE's proposed reclassification of those 55 kV to 115 kV Washington area facilities identified in Exhibit A and Exhibit B to this Petition (referred to hereinafter as the "Proposed Reclassified Facilities") as transmission facilities; and

(ii) 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 this Petition.[1]

[1] PSE has reconciled the lines and substations identified in Exhibit A and Exhibit B, respectively, to this Petition with the lines and substations identified in Exhibit A to the Petition for a Declaratory Order and Accounting Order filed in Docket No. UE-010010. PSE believes that the lines and substations identified in

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2. The following rules or statutes may be brought into issue by this Petition: RCW 34.05.240; RCW 80.01.040(3); RCW 80.04.090; WAC 480-07-930; and WAC 480-100-203.

3. PSE's proposed reclassification of the Proposed Reclassified Facilities as transmission and the corresponding accounting treatment of such reclassification in PSE's accounts, is an essential component to the demarcation of the boundaries of the jurisdiction of this Commission and that of the Federal Energy Regulatory Commission ("FERC"). Such reclassification serves the public interest by promoting greater certainty in regulation and avoiding regulatory conflicts and ensures all users of the transmission system are appropriately charged for their usage.

II. SUMMARY OF PETITION

4. PSE is a public service company engaged in, among other activities, the generation, transmission, distribution and sale at retail of electric energy in the State of Washington. Certain actions of PSE are subject to the authority of the Commission to regulate the same, in the public interest, pursuant to RCW 80.01.040 and other applicable public service laws.

Exhibit A and Exhibit B to this Petition reflect all of the modifications and changes that may have occurred to PSE's 55 kV – 115 kV transmission system. Nonetheless, it is possible that PSE may have inadvertently omitted a line or substation that PSE intends to reclassify as a transmission facility, and PSE requests that the order allow PSE to make administrative changes as necessary.

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5. FERC regulates, among other things, facilities used by PSE in transmitting electric energy in interstate commerce, pursuant to applicable provisions of the Federal Power Act. *See* Federal Power Act § 201, 16 U.S.C. § 824.

6. FERC has, from time to time, issued orders that bear upon the lines of demarcation between its regulatory authority and that of the states. *See 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 No. 888"). In Order No. 888, FERC acknowledged, among other things, that states have jurisdiction over local distribution facilities and the federal government has jurisdiction over the rates, terms and conditions of unbundled retail transmission in interstate commerce by public utilities.

7. 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 and to inequities in the recovery of costs from the appropriate users of such facilities. To avoid these issues and concerns, FERC has held:

> 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

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> utilities and their state regulatory authorities to attempt to agree to utility-specific classifications and allocations that the utility may file at [FERC].

Order No. 888, at 31,784 (emphasis added; footnote omitted). Thus, FERC requires utilities to consult with state regulatory authorities prior to filing transmission/local distribution classifications and cost allocations with FERC.

8. In Order No. 888, FERC promulgated a seven-factor test to guide the appropriate classification of transmission and distribution facilities. According to Order No. 888, the seven factors of local distribution are as follows:

> (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.

Order No. 888 at 30,341.

9. FERC has noted that the seven-factor test is not rigid and is intended to be flexible to account for unique regional or local conditions:

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> 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.

Id. at 30,342. Moreover, as to the Commission's determination of its jurisdiction over local distribution facilities (i.e., facilities other than facilities used in transmitting electric power in interstate commerce), FERC has stated as follows:

> [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.

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) (emphasis added) ("Order No. 888-A").

10. To this end, PSE respectfully requests that the Commission issue a declaratory order supporting PSE's reclassification of the Proposed Reclassified Facilities as transmission facilities. As discussed below, PSE has reevaluated the reclassification of facilities sought by PSE and approved by the Commission in Docket No. UE-010010. PSE now concludes that the Proposed Reclassified Facilities are transmission facilities and should be reclassified accordingly. As discussed more fully below and in the Affidavit of

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John Phillips, changes in both the use of PSE's transmission system and the overall operating and regulatory regime support the requested reclassification.

11. Further, as also discussed below, PSE respectfully requests that the Commission issue an accounting order authorizing PSE to apply such reclassification of facilities in PSE's accounts and reports to the Commission.

III. BACKGROUND REGARDING PSE'S BIFURCATION OF TRANSMISSION RATES AT FERC INTO "TRANSMISSION" RATES AND "WHOLESALE DISTRIBUTION" RATES

12. On December 26, 2001, PSE filed proposed rates with FERC in Docket No. ER02-605 to bifurcate the transmission rate under its Open Access Transmission Tariff ("OATT") into two components: (i) one for transmission service on 230 kV and above lines (and the Anderson Canyon-Beverly 115 kV line); and (ii) one for wholesale distribution service on 55 kV to 115 kV lines. On February 15, 2002, FERC issued an order that accepted PSE's proposed bifurcated rates but instructed PSE to refile the reclassification of facilities as a petition for declaratory order. *Puget Sound Energy, Inc.*, 98 FERC ¶ 61,168 (2002) (the "February 15 Order").

13. On April 17, 2002, PSE filed a petition for declaratory order with FERC in Docket No. EL02-77 for the following reclassification of facilities:

> (a) all transmission facilities 34 kV [sic] or less are distribution facilities; (b) all transmission facilities 230 kV (and above) are transmission facilities [and the Anderson Canyon-Beverly 115 kV line]; and (c) with one exception [the above-referenced Anderson Canyon-Beverly 115 kV line], all 115 kV and 55 kV facilities . . . formerly classified as transmission facilities are "wholesale distribution."

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Petition for Declaratory Order in FERC Docket No. EL02-77 at 3. In an order dated September 11, 2002, FERC denied PSE's petition for declaratory order on the grounds that FERC viewed such petition as "essentially requesting a bifurcation of its [FERC]-jurisdictional transmission facilities into higher-voltage and lower-voltage transmission service" and noted that FERC's "February 15 Order already approved [PSE's] rates based upon its high-voltage and low-voltage transmission proposal." *Puget Sound Energy, Inc.*, 104 FERC ¶ 61,272 (2003) (the "September 11 Order").

14. On October 10, 2003, PSE filed a request for clarification or rehearing of the September 11 Order. In its request, PSE sought clarification that FERC had authorized the following items:

(1) PSE would provide wholesale transmission service under PSE's OATT over the facilities classified as transmission facilities, at the rates approved in the February 15 Order;

(2) Puget would provide "wholesale distribution" service over the facilities classified as distribution facilities (primarily facilities 55 kV to 115 kV) at the rates and terms of service approved in the February 15 Order;

(3) Puget would provide unbundled retail transmission service over the facilities classified as transmission facilities to Schedule 449 customers, at OATT rates, in accordance with the service agreements accepted by FERC in Docket No. ER01-2149;

(4) PSE would provide "unbundled retail distribution service" over the facilities classified as distribution facilities (primarily facilities 55 kV to 115 kV) to Schedule 449 customers at the rates and terms of service approved by the Commission; and

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(5) PSE would continue to account for its transmission and distribution facilities as proposed in Docket No. ER02-605 and approved in the February 15 Order.

Request for Rehearing in FERC Docket No. EL02-77 at 8-9.

15. On November 9, 2004, FERC held a technical conference regarding PSE's petition for declaratory order, and representatives from PSE, the Cogeneration Coalition of Washington, and Bonneville Power Administration ("BPA") attended. PSE and BPA submitted joint post-technical conference comments that argued that the type of service (bundled retail, unbundled retail, or wholesale) determines whether FERC or this Commission has jurisdiction, rather than a bright line classification that cuts across all types of wholesale and retail service. According to the joint post-technical conference comments, the effect of the proposed dual jurisdiction is as follows:

- If the service is being provided to a wholesale customer (over transmission or local distribution facilities), FERC has exclusive jurisdiction and PSE's OATT and applicable service agreement apply.

- If the service is being provided to a bundled retail customer (over transmission and local distribution facilities), this Commission has exclusive jurisdiction and PSE's retail rate schedules apply.

- If the service is being provided to an unbundled retail customer, the FERC has jurisdiction over the transmission service component and this Commission has jurisdiction over the service over local distribution facilities.

Joint Comments on Issues Raised at Technical Conference in FERC Docket No. EL02-77.

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16. In an order dated March 4, 2005, FERC granted PSE's request for rehearing, dismissed its request for clarification as moot, and adopted the dual jurisdiction proposed in the joint post-technical conference comments:

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

Puget Sound Energy, Inc., 110 FERC ¶ 61,229 (2005).

IV. REQUEST FOR A DECLATORY ORDER CONFIRMING THE RECLASSIFICATION OF THE PROPOSED RECLASSIFIED FACILITIES AS TRANSMISSION FACILITIES

A. Jurisdictional Boundaries between Transmission and Distribution Facilities

17. FERC regulates facilities used by PSE to transmit electric energy in interstate commerce, pursuant to applicable provisions of the Federal Power Act. *16 U.S.C. § 824*. FERC has, from time to time, issued orders that bear upon the jurisdictional boundaries between its regulatory authority and that of the state. Order No. 888 at 31,770. In Order No. 888, FERC acknowledged, among other things, that: (i) states have jurisdiction over local distribution facilities; and (ii) the federal government exercises jurisdiction over the rates, terms, and conditions of unbundled retail transmission in interstate commerce by public utilities.

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18. 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 and recovery of costs from the appropriate users of such facilities. To avoid these issues and concerns, FERC requires utilities to consult with state regulatory authorities prior to filing transmission/local distribution classifications and cost allocations with FERC:

> 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 [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].

Order No. 888, at 31,784 (emphasis added).

B. The Seven-Factor Test

19. In Order No. 888, FERC promulgated a seven-factor test to guide the appropriate classification of transmission and distribution facilities. According to Order No. 888, the seven factors of local distribution are as follows:

(1) Local distribution facilities are normally in close proximity to retail customers.

(2) Local distribution facilities are primarily radial in character.

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(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.

Order No. 888 at 30,341.

20. PSE has evaluated the Proposed Reclassified Facilities using FERC's seven-factor test in light of the changed regulatory and operational landscape and proposes to reclassify such wholesale distribution facilities as transmission facilities. Attached as Exhibit A to this Petition is a list of lines that PSE seeks reclassification as transmission facilities. Attached as Exhibit B to this Petition is a list of substations that PSE seeks reclassification as transmission facilities.[2] Attached as Exhibit C to this Petition is the Affidavit of John M. Phillips ("Phillips Affidavit"), which explains the methodology used by PSE to identify and reclassify these Proposed Reclassified Facilities as transmission facilities.

1. First Factor: Local Distribution Facilities are Normally in Close Proximity to Retail Customers

21. The first factor of whether facilities are local distribution facilities is whether

[2] The Proposed Reclassified Facilities include six 55 kV lines and five 55 kV substatuins that PSE anticipates upgrading to 115 kV in the near future. PSE operates and plans for these lines as transmission facilities.

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such facilities are normally in close proximity to retail customers. In a recent order of FERC that considered the seven-factor test,[3] FERC determined that the first factor indicated that 69 kV facilities owned by the City of Pella, Iowa, were transmission facilities because such facilities "are used to support service to communities across a wide region."[4] In support of such conclusion, FERC noted that "Pella's 69 kV facilities are used to support service to communities and rural areas up to 30 miles from Pella."[5]

22. Due to the nature of its service territory, PSE's transmission system facilities are in relatively close physical proximity to its load. However, such facilities are typically used to support service to communities across a wide region. Additionally, the majority of PSE's customers are served at secondary voltage levels (less than 600 V) with some additional load being served at primary voltage levels (typically at 12.5 kV or 34.5 kV). These loads are two- and one-transformation levels, respectively, removed from PSE's transmission system facilities. Although a few customers take direct service at the 115 kV level, PSE serves the majority of this load through PSE's OATT-based service. The Proposed Reclassified Facilities support the transmission of power over a broad region.[6]

2. Second Factor: Local Distribution Facilities are Primarily Radial in Character

23. The second factor looks to whether the facilities in question are primarily radial in character. In *City of Pella, Iowa*, FERC determined the second factor indicated that

[3] *City of Pella, Iowa v. Midwest Indep. Transmission Sys. Operator, Inc. & MidAmerican Energy Co.*, 134 FERC ¶ 61,081 (2011) (hereinafter referred to as "*City of Pella, Iowa*").

[4] *Id.* at ¶ 73.

[5] *Id.*

[6] Phillips Affidavit at ¶ 11.

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Pella's 69 kV facilities were transmission facilities because "Pella's 69 kV facilities are not primarily radial in character, as they are required to ensure that an integrated network is maintained by surrounding utilities and that power flows may continue across the facilities to and from the facilities of MidAmerican, [Central Iowa Power Cooperative], and ITC Midwest."[7]

24. PSE operates its transmission system facilities as a network system with most of the system having at least two sources. The networked nature of PSE's system places it in parallel operation with higher voltage (i.e., 230 kV, 345 kV, and 500kV) facilities. For example, the Bonneville Power Administration ("BPA"), as path operator of the Westside Northern Intertie transmission path between Washington and British Columbia, studies the Puget Sound area transmission system to determine the transfer capability of the path, and PSE's transmission system facilities can affect the transfer capacity of the path. Due to the networked nature of the greater Puget Sound transmission system, PSE works with its neighboring transmission owners through ColumbiaGrid, a regional planning entity, to address constraints and reliability concerns on the system down to and including the 55 kV level. The Proposed Reclassified Facilities are part of an integrated network with neighboring (and overlapping) transmission providers.[8]

[7] *City of Pella, Iowa* at ¶ 73.
[8] Phillips Affidavit at ¶ 12.

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3. Third Factor: Power Flows Into Local Distribution Systems; It Rarely, If Ever, Flows Out

25. The third factor addresses power flows. In *City of Pella, Iowa*, FERC determined that the third factor indicated that Pella's 69 kV facilities were transmission facilities because "energy flowing into Pella's interconnection points between 2007 and 2009 flowed out of Pella's facilities."[9]

26. Historically, the flow of power on PSE's transmission system facilities has primarily delivered power from PSE generation and off-network resources to retail load. For areas within PSE's service territories, with greater concentrations of generation and lower loads, such as Whatcom and Skagit Counties, this can result in power flowing out of PSE's system in those areas and flowing back onto the system in other areas, such as King County. Also, with the increase in third-party generation and cross-system transmission service, PSE is now seeing (i) generation being exported out of its system and (ii) transmission service entering PSE's transmission system facilities at one point of receipt and flowing across the Proposed Reclassified Facilities and leaving at a different point of delivery. Since 2001, PSE has seen and continues to see increased power flows into, across, and out of the Proposed Reclassified Facilities.[10]

4. Fourth Factor: When Power Enters a Local Distribution System, It is Not Reconsigned or Transported on to Some Other Market

27. The fourth factor considers whether power that enters a local distribution system is reconsigned or transported on to some other market. In *City of Pella, Iowa*, FERC

[9] *City of Pella, Iowa* at ¶ 73.
[10] Phillips Affidavit at ¶ 13.

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determined that the fourth factor indicated that Pella's 69 kV facilities were transmission facilities because "power that enters Pella's 69 kV facilities is transported across its system to other markets, including to [Central Iowa Power Cooperative] and MidAmerican; in fact, the evidence indicates that power from MidAmerican and [Central Iowa Power Cooperative] flow over Pella's 69 kV facilities."[11]

28. PSE provided transfer service to third-party wholesale customers, such as BPA and municipal utilities, utilizing PSE's transmission system facilities. PSE has converted all of its historical transfer service agreements to service pursuant to its OATT. In recent years, PSE has interconnected third-party generators, such as independent power producers, that export power out of PSE's system to off-system customers. In the future, PSE is likely to see additional requests for interconnection for off-system exports and may see additional exports from existing third-party generation on its system. In addition, PSE is seeing long-term and short-term use across PSE's transmission system facilities to deliver power to and from the Canadian border.[12]

5. Fifth Factor: Power Entering a Local Distribution System is Consumed in a Comparatively Restricted Geographical Area

29. The fifth factor considers whether power entering a local distribution system is consumed in a comparatively restricted geographical area. In *City of Pella, Iowa*, FERC determined that the fifth factor indicated that Pella's 69 kV facilities were transmission facilities because "power that enters Pella's system is not consumed in a comparatively

[11] *City of Pella, Iowa* at ¶ 73.
[12] Phillips Affidavit at ¶ 14.

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restricted geographical area." As an example, FERC pointed to the fact that Pella's the Beacon Substation "is located approximately 18 miles beyond Pella's retail boundary."[13]

30. PSE's transmission system facilities deliver power to distribution substations, which transform the power from either 55 kV or 115 kV to 4 kV, 12.5 kV (more typically), or 34.5 kV. The majority of these distribution substations deliver power through radial 12.5 kV feeders to restricted geographic areas typically several miles in radius. In addition to its radial nature, the lower 12.5 kV voltage restricts these feeders from delivering power over longer distances due to voltage constraints. In contrast, PSE's 55 kV and above facilities, due to their networked nature and higher voltages and capacities, are capable of delivering power over longer distances and broader geographic regions, such as entire counties or multiple counties. In short, power flows (i) into the Proposed Reclassified Facilities to serve PSE load and (ii) through the Proposed Reclassified Facilities to other systems and to serve loads of other utilities.[14]

6. Sixth Factor: Meters are Based at the Transmission/Local Distribution Interface to Measure Flows Into the Local Distribution System

31. The sixth factor looks to whether meters are based at the transmission/local distribution interface to measure flows into the local distribution system. In *City of Pella, Iowa*, FERC determined that the sixth factor indicated that Pella's 69 kV facilities were

[13] *City of Pella, Iowa* at ¶ 73.
[14] Phillips Affidavit at ¶ 15.

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transmission facilities because "Pella's meters are designed to measure bilateral flows . . . ."[15]

32. PSE employs interchange metering at all of its interfaces with neighboring Balancing Authorities at the 115 kV, 230 kV, and 500 kV voltage levels. These meters constantly monitor flows both into and out of PSE's transmission system and allow PSE to balance loads and generation within its Balancing Authority. For example, PSE uses its transmission system facilities (as measured by these meters) to provide imbalance service for third-party transactions when scheduled power flows do not match the customer's actual load or actual generation output and when deploying generation reserves when resources are lost. PSE uses these meters to measure power flows into and out of the system for operational and ancillary services.[16]

7. Seventh Factor: Local Distribution Systems will be of Reduced Voltage

33. The seventh factor addresses whether the facilities will be of reduced voltage. In *City of Pella, Iowa*, FERC determined that the seventh factor indicated that Pella's 69 kV facilities were transmission facilities because "Pella's 69 kV facilities operate at a higher voltage than those facilities that Pella uses to serve retail load."[17]

34. As discussed above, PSE serves the majority of its customers at secondary voltage levels (less than 600 V) with some additional load being served at primary voltage levels (typically 12.5 kV). These loads are two- and one-transformation levels, respectively,

[15] *City of Pella, Iowa* at ¶ 73.
[16] Phillips Affidavit at ¶ 16.
[17] *City of Pella, Iowa* at ¶ 73.

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removed from PSE's transmission system facilities. PSE's distribution operations, planning, and construction standards are based on the 34.5 kV and below system. In summary, PSE's local distribution facilities operate at lower voltages (typically 12.5 kV) to deliver power within a smaller geographic area, whereas PSE's transmission facilities operate at higher voltages (55 kV and above) to transmit power across larger geographic areas.[18]

C. Regulatory Changes Suggest Facilities the Proposed Reclassified Facilities May be Classified as Transmission Facilities

35. In addition to the operational changes occurring on PSE's system, the regulatory landscape has also changed since 2001 and continues to evolve. On August 8, 2005, the Energy Policy Act of 2005 was signed into law. The Energy Policy Act of 2005 contained a new section 215 of Federal Power Act, 16 U.S.C. § 824o, in which Congress sought to ensure elements of the bulk electric system are operated to prevent "instability, uncontrolled separation, or cascading failures." 16 U.S.C. § 824o(a)(4). The statute directed the FERC to certify an electric reliability organization charged with developing and enforcing continent-wide reliability standards. *Id.* § 824o(c). Section 215 of the Federal Power Act required the electric reliability organization to develop reliability standards with stakeholder involvement subject to FERC's review and approval. *Id.* § 824o(d). Section 215 of the Federal Power Act also charged the electric reliability organization with enforcing the reliability standards and may impose penalties of up to $1 million per day, per violation subject to FERC review and approval. *Id.* § 824o(e)(1).

[18] Phillips Affidavit at ¶ 17.

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36. In 2006, FERC certified the North American Electric Reliability Corporation ("NERC") as the electric reliability organization in the United States. *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). As the electric reliability organization, NERC has issued and FERC has 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"). *See* http://www.nerc.com/files/Reliability_Standards_Complete_Set.pdf. The Reliability Standards are applicable to a wide range of entities, covering all organizations that own, operate or use the bulk electric system.

37. On November 18, 2010, FERC issued Order No. 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." *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 133 FERC ¶ 61,150 at paragraph 96 (2010) ("Order No. 743").

38. Order No. 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:

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> 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 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.

Id. Although Order No. 743 has been challenged in the courts,[19] the trend towards more robust reliability standards, and related costs, is apparent.

39. The Reliability Standards include, among other things, operational requirements of the system, including but not limited to situational awareness, resources balancing, scheduling, protection, vegetation management and maintenance. Additionally, mandatory reliability standards also address transmission planning, interconnection requirements, facility ratings and modeling data requirements. In practice, many requirements of these standards also influence planning and operation of PSE's few

[19] *See Pub. Util. Dist. No. 1 of Snohomish County v. FERC*, Petition for Review (9th Cir.), Case No. 11-71366 (9th Cir., May 13, 2011) and Order Transferring Petition to U.S. Ct of App., D.C. Circuit (Aug. 16, 2011).

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remaining 55 kV facilities.[20] These requirements do not extend to distribution facilities, such as the reduced voltage system operated at 4 kV, 12.5 kV and 34.5 kV.[21]

40. PSE provides transmission and generating modeling data to the Western Electricity Coordinating Council ("WECC") for its facilities 55 kV and above. These data are used in creating the computer model of the Western Interconnection that is used in planning studies across the Western United States. WECC, ColumbiaGrid, PSE, and other transmission providers use this model to perform regional planning studies, sub-regional planning studies, and local planning studies, respectively. WECC, ColumbiaGrid, PSE, and other transmission providers also use this model in determining operational and transmission service needs.[22]

D. PSE Now Seeks to Eliminate the Unnecessary Bifurcation of Its Facilities and Requests the Reclassification of the Proposed Reclassified Facilities as Transmission Facilities

41. Prior to PSE's requests to reclassify facilities before this Commission (in 2001) and FERC (in 2002), all PSE facilities 55 kV and above were classified as transmission facilities. After the approvals by this Commission and FERC to reclassify facilities, PSE's facilities 55 kV and above are now 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).

[20] The Proposed Reclassified Facilities include six 55 kV lines and five 55 kV substations that PSE anticipates upgrading to 115 kV in the near future. PSE operates and plans for these lines as transmission facilities. Further, only those 55 kV substations that are loop through and include 115 kV facilities are considered transmission facilities. A radial tap substation is not considered transmission.

[21] Phillips Affidavit at ¶ 7.

[22] Phillips Affidavit at ¶ 6

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42. While there were valid reasons for the reclassification in 2001, the continued need for bifurcation of facilities is unnecessary. Almost all of PSE's customers pay both the transmission rate and the wholesale distribution rate identified in the PSE OATT. Indeed, 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. The removal of such bifurcation will allow PSE to seek a single rate for use of PSE's transmission system facilities and will streamline PSE's OATT administration and billing processes.

43. Moreover, Order No. 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. Reclassification of PSE's facilities will allow PSE to more equitably spread these costs to all users of PSE's transmission system facilities in an efficient and non-discriminatory manner.

44. For the reasons set forth above, PSE seeks to eliminate the unnecessary bifurcation of its facilities and requests the reclassification of the Proposed Reclassified Facilities as transmission facilities.

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E. Appropriateness of Declaratory Order

45. A declaratory order by the Commission adopting PSE's proposed classifications is appropriate in this case. By authority of WAC 480-07-930 and RCW 34.05.240(1), the Commission may enter a declaratory order upon a showing:

> (1) That uncertainty necessitating resolution exists;
>
> (2) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;
>
> (3) That the uncertainty adversely affects the petitioner;
>
> (4) That 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; and
>
> (5) That the petition complies with any additional requirements established by the agency under RCW 34.05.240(2).

For the reasons set forth below, the declaratory order requested by PSE meets these requirements.[23]

1. Uncertainty Necessitating Resolution

46. The uncertainty to be resolved by this Petition is the precise demarcation between PSE's transmission and distribution facilities to be applied in the future to reports to this Commission and to FERC. As to the jurisdictional significance of such distinctions, FERC invites proposals filed by public utilities under the Federal Power Act to classify

[23] The Commission has not established additional requirements under RCW 34.05.240(1)(e), but rather requires that petitions for declaratory order comply with the remaining subsections of RCW 34.05.240(1). *See* RCW 34.05.240(2).

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transmission and distribution facilities, and cost allocations associated therewith. However, this Commission must first speak to the issue. Indeed, FERC recognized that state determination of its jurisdictional boundaries was a necessary prerequisite to federal consideration of such questions:

> [A]s a prerequisite to filing transmission/local distribution facility classifications and/or cost allocations with [FERC], utilities *must* consult with their state regulatory authorities.

Order No. 888-A, at 30,336 (emphasis added).

2. Actual Controversy Arising From the Uncertainty Such That a Declaratory Order Will Not Be Merely an Advisory Opinion

47. The controversy arises from uncertainty as to the classification of PSE's transmission system facilities. As stated above, FERC defers to state regulatory authorities as to the classification of transmission and distribution facilities. FERC is unlikely to allow PSE to establish a single rate for the use of PSE's transmission system facilities until this Commission issues an order allowing for the reclassification of the Proposed Reclassified Facilities.

3. The Uncertainty Adversely Affects the Petitioner

48. The uncertainty adversely affects PSE in that, absent resolution thereof, PSE faces potentially conflicting regulatory mechanisms for establishing rates for the use of its transmission facilities. In this regard, FERC said:

> We also believe it is important to develop mechanisms to avoid regulatory conflict and to help provide certainty to utilities as to which regulator has jurisdiction over which facilities.

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Order No. 888, at 31,783. As stated above, FERC is unlikely to allow PSE to establish a single rate for the use of PSE's transmission system facilities unless and until this Commission issues an order supporting the reclassification of the Proposed Reclassified Facilities.

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

49. Resolution of the questions raised in this petition will not result in any adverse effect on others or the general public. On the contrary, a declaratory order serves the public interest by removing inefficiencies inherent in the unnecessary bifurcation of PSE's transmission system facilities, in order to ensure recovery of costs from the appropriate users of such facilities.

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V. REQUEST FOR AN ACCOUNTING ORDER AUTHORIZING PSE TO REFLECT IN ITS ACCOUNTS THE RECLASSIFICATION OF THE PROPOSED RECLASSIFIED FACILITIES

50. If the Commission adopts PSE's proposed classification, PSE proposes to account for such reclassification by making adjustments to its Electric Plant Chart of Accounts. Under WAC 480-100-031, this Commission uses "the uniform system of accounts applicable to major and nonmajor electric utilities as published by [FERC] in Title 18 of the Code of Federal Regulations, Part 101." Under FERC's Uniform System of Accounts, is C.F.R. Part 101, FERC requires utilities to classify and report the original cost of the utility's transmission and distribution plant. For transmission plant facilities, FERC requires the utility to report miscellaneous power plant equipment, land and land rights, structures and improvements, station equipment towers and structures, poles and fixtures, overhead conductors and devices, underground conduit, underground conductors and devices and roads and trails, each of which is used in connection with transmission operations or purposes or is used primarily as transmission facilities. Sections 350-359 of Part 101. Likewise, under FERC's Uniform System of Accounts, utilities are required to report distribution facilities such as land and land rights, structures and improvements, station equipment, storage battery equipment, poles, towers and fixtures, overhead conductors and devices, underground conduit, underground conductors and devices, each of which is used in connection with distribution operations or distribution purposes. Sections 360-369 of Part 101. If the Commission were to approve PSE's proposed classification of

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transmission and distribution, PSE would seek to report its transmission and distribution plant to FERC under and in light of such adoption by the Commission.

51. With regard to its reporting requirements to this Commission, PSE makes its reports concerning its transmission and distribution plant to this Commission in its semiannual commission basis and annual reports. Pursuant to WAC 480-100-252(1), PSE's annual report to this Commission consists of PSE's FERC Form No. 1. PSE proposes that if its proposed classification of transmission and distribution facilities was adopted by the Commission, PSE would, commencing from the date of Commission's order, report its transmission and distribution plant in its annual report (and PSE's semiannual commission basis reports) under and in light of such adoption by the Commission.

52. PSE will continue to depreciate the Proposed Reclassified Facilities using the currently approved depreciation rates associated with that plant. In PSE's next depreciation study, the Proposed Reclassified Facilities will be evaluated with other transmission plant instead of distribution plant, and the new depreciation rates will reflect that analysis.

53. PSE does have classes of customers that may be adversely impacted with the reclassification of the Proposed Reclassified Facilities. PSE's large industrial customers taking service under Electric Schedule 448 (Power Supplier Choice), Electric Schedule 449 (Retail Wheeling Service), Electric Schedule 458 (Back-Up Distribution Service), and Electric Schedule 459 (Back-Up Distribution Service). The respective rates for customers taking service under each of these rate schedules are currently determined in part on: (i) the OATT rate; and (ii) recovery of a portion of the Proposed Reclassified Facilities. PSE

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proposes that, upon the establishment of a new OATT rate by FERC that includes recovery of Proposed Reclassified Facilities, PSE will modify Electric Schedules 448, 449, 458, and 459 to eliminate the equivalent Proposed Reclassified Facilities that are currently recovered under the distribution portion of the rates applicable to such schedules.

VI. PRAYER FOR RELIEF

54. PSE respectfully requests that the Commission enter an order declaring support for PSE's proposed reclassification of the Proposed Reclassification Facilities identified in Exhibit A and Exhibit B to this Petition as transmission facilities. PSE requests that the Commission enter an accounting order authorizing PSE to reflect such reclassification in its accounts.

55. As described in more detail above, PSE submits this Petition as a necessary first step in order for PSE to make a similar request to FERC in conjunction with a filing to update its transmission rates with FERC later this year. Accordingly, PSE respectfully requests the Commission issue a decision on this Petition on or before November 1, 2011 to allow PSE to incorporate the Commission's decision into the FERC filing later in November 2011.

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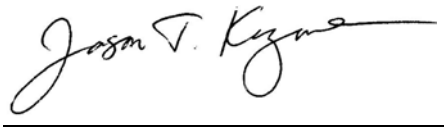
Dated this 16th day of September 2011, at Bellevue, Washington.

PERKINS COIE LLP

By: 

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